

ARTURO M. TOLENTINO AND ARTURO C. MOJICA, PETITIONERS, VS. COMMISSION ON ELECTIONS, SENATOR RALPH G. RECTO AND SENATOR GREGORIO B. HONASAN, RESPONDENTS.

G.R. No. 148334. January 21, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for prohibition to set aside Resolution No. NBC 01-005 dated 5 June 2001 (“Resolution No. 01-005”) and Resolution No. NBC 01-006 dated 20 July 2001 (“Resolution No. 01-006”) of respondent Commission on Elections (“COMELEC”). Resolution No. 01-005 proclaimed the 13 candidates elected as Senators in the 14 May 2001 elections while Resolution No. 01-006 declared “official and final” the ranking of the 13 Senators proclaimed in Resolution No. 01-005.

The Facts

Shortly after her succession to the Presidency in January 2001, President Gloria Macapagal-Arroyo nominated then Senator Teofisto T. Guingona, Jr. (“Senator Guingona”) as Vice-President. Congress confirmed the nomination of Senator Guingona who took his oath as Vice-President on 9 February 2001.

Following Senator Guingona’s confirmation, the Senate on 8 February 2001 passed Resolution No. 84 (“Resolution No. 84”) certifying to the existence of a vacancy in the Senate. Resolution No. 84 called on COMELEC to fill the vacancy through a special election to be held simultaneously with the regular elections on 14 May 2001. Twelve Senators, with a 6-year term each, were due to be elected in that election.[1] Resolution No. 84 further provided that the “Senatorial candidate garnering the 13[th] highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr.,” which ends on 30 June 2004.[2]

On 5 June 2001, after COMELEC had canvassed the election results from all the provinces but one (Lanao del Norte), COMELEC issued Resolution No. 01-005 provisionally proclaiming 13 candidates as the elected Senators. Resolution No. 01-005 also provided that “the first twelve (12) Senators shall serve for a term of six (6) years and the thirteenth (13[th]) Senator shall serve the unexpired term of three (3) years of Senator Teofisto T. Guingona, Jr. who was appointed Vice-President.”[3] Respondents Ralph Recto (“Recto”) and Gregorio Honasan (“Honasan”) ranked 12th and 13[th], respectively, in Resolution No. 01-005.

On 20 June 2001, petitioners Arturo Tolentino and Arturo Mojica (“petitioners”), as voters and taxpayers, filed the instant petition for prohibition, impleading only COMELEC as respondent. Petitioners sought to enjoin COMELEC from proclaiming with finality the candidate for Senator receiving the 13[th] highest number of votes as the winner in the special election for a single three-year term seat. Accordingly, petitioners prayed for the nullification of Resolution No. 01-005 in so far as it makes a proclamation to such effect.

Petitioners contend that COMELEC issued Resolution No. 01-005 without jurisdiction because: (1) it failed to

notify the electorate of the position to be filled in the special election as required under Section 2 of Republic Act No. 6645 ("R.A. No. 6645");[4] (2) it failed to require senatorial candidates to indicate in their certificates of candidacy whether they seek election under the special or regular elections as allegedly required under Section 73 of Batas Pambansa Blg. 881;[5] and, consequently, (3) it failed to specify in the Voters Information Sheet the candidates seeking election under the special or regular senatorial elections as purportedly required under Section 4, paragraph 4 of Republic Act No. 6646 ("R.A. No. 6646").[6] Petitioners add that because of these omissions, COMELEC canvassed all the votes cast for the senatorial candidates in the 14 May 2001 elections without distinction such that "there were no two separate Senate elections held simultaneously but just a single election for thirteen seats, irrespective of term." [7]

Stated otherwise, petitioners claim that if held simultaneously, a special and a regular election must be distinguished in the documentation as well as in the canvassing of their results. To support their claim, petitioners cite the special elections simultaneously held with the regular elections of 13 November 1951 and 8 November 1955 to fill the seats vacated by Senators Fernando Lopez and Carlos P. Garcia, respectively, who became Vice-Presidents during their tenures in the Senate.[8] Petitioners point out that in those elections, COMELEC separately canvassed the votes cast for the senatorial candidates running under the regular elections from the votes cast for the candidates running under the special elections. COMELEC also separately proclaimed the winners in each of those elections.[9]

Petitioners sought the issuance of a temporary restraining order during the pendency of their petition.

Without issuing any restraining order, we required COMELEC to Comment on the petition.

On 20 July 2001, after COMELEC had canvassed the results from all the provinces, it issued Resolution No. 01-006 declaring "official and final" the ranking of the 13 Senators proclaimed in Resolution No. 01-005. The 13 Senators took their oaths of office on 23 July 2001.

In view of the issuance of Resolution No. 01-006, the Court required petitioners to file an amended petition impleading Recto and Honasan as additional respondents. Petitioners accordingly filed an amended petition in which they reiterated the contentions raised in their original petition and, in addition, sought the nullification of Resolution No. 01-006.

In their Comments, COMELEC, Honasan, and Recto all claim that a special election to fill the seat vacated by Senator Guingona was validly held on 14 May 2001. COMELEC and Honasan further raise preliminary issues on the mootness of the petition and on petitioners' standing to litigate. Honasan also claims that the petition, which seeks the nullity of his proclamation as Senator, is actually a quo warranto petition and the Court should dismiss the same for lack of jurisdiction. For his part, Recto, as the 12[th] ranking Senator, contends he is not a proper party to this case because the petition only involves the validity of the proclamation of the 13[th] placer in the 14 May 2001 senatorial elections.

The Issues

The following are the issues presented for resolution:

(1) Procedurally –

- (a) whether the petition is in fact a petition for quo warranto over which the Senate Electoral Tribunal is the sole judge;
- (b) whether the petition is moot; and
- (c) whether petitioners have standing to litigate.

(2) On the merits, whether a special election to fill a vacant three-year term Senate seat was validly held on 14 May 2001.

The Ruling of the Court

The petition has no merit.

On the Preliminary Matters

The Nature of the Petition and the Court's Jurisdiction

A quo warranto proceeding is, among others, one to determine the right of a public officer in the exercise of his office and to oust him from its enjoyment if his claim is not well-founded.[10] Under Section 17, Article VI of the Constitution, the Senate Electoral Tribunal is the sole judge of all contests relating to the qualifications of the members of the Senate.

A perusal of the allegations contained in the instant petition shows, however, that what petitioners are questioning is the validity of the special election on 14 May 2001 in which Honasan was elected. Petitioners' various prayers are, namely: (1) a "declaration" that no special election was held simultaneously with the general elections on 14 May 2001; (2) to enjoin COMELEC from declaring anyone as having won in the special election; and (3) to annul Resolution Nos. 01-005 and 01-006 in so far as these Resolutions proclaim Honasan as the winner in the special election. Petitioners anchor their prayers on COMELEC's alleged failure to comply with certain requirements pertaining to the conduct of that special election. Clearly then, the petition does not seek to determine Honasan's right in the exercise of his office as Senator. Petitioners' prayer for the annulment of Honasan's proclamation and, ultimately, election is merely incidental to petitioners' cause of action. Consequently, the Court can properly exercise jurisdiction over the instant petition.

On the Mootness of the Petition

COMELEC contends that its proclamation on 5 June 2001 of the 13 Senators and its subsequent confirmation on 20 July 2001 of the ranking of the 13 Senators render the instant petition to set aside Resolutions Nos. 01-005 and 01-006 moot and academic.

Admittedly, the office of the writ of prohibition is to command a tribunal or board to desist from committing an act threatened to be done without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[11] Consequently, the writ will not lie to enjoin acts already done.[12] However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review.[13] Thus, in *Alunan III v. Mirasol*,^[14] we took cognizance of a petition to set aside an order canceling the general elections for the Sangguniang Kabataan ("SK") on 4 December 1992 despite that at the time the petition was filed, the SK election had already taken place. We noted in *Alunan* that since the question of the validity of the order sought to be annulled "is likely to arise in every SK elections and yet the question may not be decided before the date of such elections," the mootness of the petition is no bar to its resolution. This observation squarely applies to the instant case. The question of the validity of a special election to fill a vacancy in the Senate in relation to COMELEC's failure to comply with requirements on the conduct of such special election is likely to arise in every such election. Such question, however, may not be decided before the date of the election.

On Petitioners' Standing

Honasan questions petitioners' standing to bring the instant petition as taxpayers and voters because petitioners do not claim that COMELEC illegally disbursed public funds. Neither do petitioners claim that they sustained personal injury because of the issuance of Resolution Nos. 01-005 and 01-006.

“Legal standing” or locus standi refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury because of the challenged governmental act.[15] The requirement of standing, which necessarily “sharpens the presentation of issues,”[16] relates to the constitutional mandate that this Court settle only actual cases or controversies.[17] Thus, generally, a party will be allowed to litigate only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[18]

Applied strictly, the doctrine of standing to litigate will indeed bar the instant petition. In questioning, in their capacity as voters, the validity of the special election on 14 May 2001, petitioners assert a harm classified as a “generalized grievance.” This generalized grievance is shared in substantially equal measure by a large class of voters, if not all the voters, who voted in that election.[19] Neither have petitioners alleged, in their capacity as taxpayers, that the Court should give due course to the petition because in the special election held on 14 May 2001 “tax money [was] ‘x x x extracted and spent in violation of specific constitutional protections against abuses of legislative power’ or that there [was] misapplication of such funds by COMELEC or that public money [was] deflected to any improper purpose.”[20]

On the other hand, we have relaxed the requirement on standing and exercised our discretion to give due course to voters’ suits involving the right of suffrage.[21] Also, in the recent case of Integrated Bar of the Philippines v. Zamora,[22] we gave the same liberal treatment to a petition filed by the Integrated Bar of the Philippines (“IBP”). The IBP questioned the validity of a Presidential directive deploying elements of the Philippine National Police and the Philippine Marines in Metro Manila to conduct patrols even though the IBP presented “too general an interest.” We held:

[T]he IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its locus standi. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry x x x.

Having stated the foregoing, this Court has the discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved. In not a few cases, the court has adopted a liberal attitude on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people. Thus, when the issues raised are of paramount importance to the public, the Court may brush aside technicalities of procedure. In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later.[23] (Emphasis supplied)

We accord the same treatment to petitioners in the instant case in their capacity as voters since they raise important issues involving their right of suffrage, considering that the issue raised in this petition is likely to arise again.

Whether a Special Election for a Single, Three-Year Term
Senatorial Seat was Validly Held on 14 May 2001

Under Section 9, Article VI of the Constitution, a special election may be called to fill any vacancy in the Senate

and the House of Representatives “in the manner prescribed by law,” thus:

In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term. (Emphasis supplied)

To implement this provision of the Constitution, Congress passed R.A. No. 6645, which provides in pertinent parts:

SECTION 1. In case a vacancy arises in the Senate at least eighteen (18) months or in the House of Representatives at least one (1) year before the next regular election for Members of Congress, the Commission on Elections, upon receipt of a resolution of the Senate or the House of Representatives, as the case may be, certifying to the existence of such vacancy and calling for a special election, shall hold a special election to fill such vacancy. If Congress is in recess, an official communication on the existence of the vacancy and call for a special election by the President of the Senate or by the Speaker of the House of Representatives, as the case may be, shall be sufficient for such purpose. The Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

SECTION 2. The Commission on Elections shall fix the date of the special election, which shall not be earlier than forty-five (45) days nor later than ninety (90) days from the date of such resolution or communication, stating among other things the office or offices to be voted for: Provided, however, That if within the said period a general election is scheduled to be held, the special election shall be held simultaneously with such general election. (Emphasis supplied)

Section 4 of Republic Act No. 7166 subsequently amended Section 2 of R.A. No. 6645, as follows:

Postponement, Failure of Election and Special Elections. – x x x In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election. (Emphasis supplied)

Thus, in case a vacancy arises in Congress at least one year before the expiration of the term, Section 2 of R.A. No. 6645, as amended, requires COMELEC: (1) to call a special election by fixing the date of the special election, which shall not be earlier than sixty (60) days nor later than ninety (90) after the occurrence of the vacancy but in case of a vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election; and (2) to give notice to the voters of, among other things, the office or offices to be voted for.

Did COMELEC, in conducting the special senatorial election simultaneously with the 14 May 2001 regular elections, comply with the requirements in Section 2 of R.A. No. 6645?

A survey of COMELEC’s resolutions relating to the conduct of the 14 May 2001 elections reveals that they contain nothing which would amount to a compliance, either strict or substantial, with the requirements in Section 2 of R.A. No. 6645, as amended. Thus, nowhere in its resolutions[24] or even in its press releases[25] did COMELEC state that it would hold a special election for a single three-year term Senate seat simultaneously with the regular elections on 14 May 2001. Nor did COMELEC give formal notice that it would proclaim as winner the senatorial candidate receiving the 13th highest number of votes in the special election.

The controversy thus turns on whether COMELEC’s failure, assuming it did fail, to comply with the requirements in Section 2 of R.A. No. 6645, as amended, invalidated the conduct of the special senatorial election on 14 May 2001 and accordingly rendered Honasan’s proclamation as the winner in that special election void. More precisely, the question is whether the special election is invalid for lack of a “call” for such election and for

lack of notice as to the office to be filled and the manner by which the winner in the special election is to be determined. For reasons stated below, the Court answers in the negative.

COMELEC's Failure to Give Notice
of the Time of the Special Election Did Not
Negate the Calling of such Election

The calling of an election, that is, the giving notice of the time and place of its occurrence, whether made by the legislature directly or by the body with the duty to give such call, is indispensable to the election's validity.[26] In a general election, where the law fixes the date of the election, the election is valid without any call by the body charged to administer the election.[27]

In a special election to fill a vacancy, the rule is that a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections fixes the date at which the special election is to be held and operates as the call for that election. Consequently, an election held at the time thus prescribed is not invalidated by the fact that the body charged by law with the duty of calling the election failed to do so.[28] This is because the right and duty to hold the election emanate from the statute and not from any call for the election by some authority[29] and the law thus charges voters with knowledge of the time and place of the election.[30]

Conversely, where the law does not fix the time and place for holding a special election but empowers some authority to fix the time and place after the happening of a condition precedent, the statutory provision on the giving of notice is considered mandatory, and failure to do so will render the election a nullity.[31]

In the instant case, Section 2 of R.A. No. 6645 itself provides that in case of vacancy in the Senate, the special election to fill such vacancy shall be held simultaneously with the next succeeding regular election. Accordingly, the special election to fill the vacancy in the Senate arising from Senator Guingona's appointment as Vice-President in February 2001 could not be held at any other time but must be held simultaneously with the next succeeding regular elections on 14 May 2001. The law charges the voters with knowledge of this statutory notice and COMELEC's failure to give the additional notice did not negate the calling of such special election, much less invalidate it.

Our conclusion might be different had the present case involved a special election to fill a vacancy in the House of Representatives. In such a case, the holding of the special election is subject to a condition precedent, that is, the vacancy should take place at least one year before the expiration of the term. The time of the election is left to the discretion of COMELEC subject only to the limitation that it holds the special election within the range of time provided in Section 2 of R.A. No. 6645, as amended. This makes mandatory the requirement in Section 2 of R.A. No. 6645, as amended, for COMELEC to "call x x x a special election x x x not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy" and give notice of the office to be filled. The COMELEC's failure to so call and give notice will nullify any attempt to hold a special election to fill the vacancy. Indeed, it will be well-nigh impossible for the voters in the congressional district involved to know the time and place of the special election and the office to be filled unless the COMELEC so notifies them.

No Proof that COMELEC's
Failure to Give Notice of the Office
to be Filled and the Manner of
Determining the Winner in the Special
Election Mised Voters

The test in determining the validity of a special election in relation to the failure to give notice of the special

election is whether the want of notice has resulted in misleading a sufficient number of voters as would change the result of the special election. If the lack of official notice misled a substantial number of voters who wrongly believed that there was no special election to fill a vacancy, a choice by a small percentage of voters would be void.[32]

The required notice to the voters in the 14 May 2001 special senatorial election covers two matters. First, that COMELEC will hold a special election to fill a vacant single three-year term Senate seat simultaneously with the regular elections scheduled on the same date. Second, that COMELEC will proclaim as winner the senatorial candidate receiving the 13[th] highest number of votes in the special election. Petitioners have neither claimed nor proved that COMELEC's failure to give this required notice misled a sufficient number of voters as would change the result of the special senatorial election or led them to believe that there was no such special election.

Instead, what petitioners did is conclude that since COMELEC failed to give such notice, no special election took place. This bare assertion carries no value. Section 2 of R.A. No. 6645, as amended, charged those who voted in the elections of 14 May 2001 with the knowledge that the vacancy in the Senate arising from Senator Guingona's appointment as Vice-President in February 2001 was to be filled in the next succeeding regular election of 14 May 2001. Similarly, the absence of formal notice from COMELEC does not preclude the possibility that the voters had actual notice of the special election, the office to be voted in that election, and the manner by which COMELEC would determine the winner. Such actual notice could come from many sources, such as media reports of the enactment of R.A. No. 6645 and election propaganda during the campaign.[33]

More than 10 million voters cast their votes in favor of Honasan, the party who stands most prejudiced by the instant petition. We simply cannot disenfranchise those who voted for Honasan, in the absence of proof that COMELEC's omission prejudiced voters in the exercise of their right of suffrage so as to negate the holding of the special election. Indeed, this Court is loathe to annul elections and will only do so when it is "impossible to distinguish what votes are lawful and what are unlawful, or to arrive at any certain result whatever, or that the great body of the voters have been prevented by violence, intimidation, and threats from exercising their franchise." [34]

Otherwise, the consistent rule has been to respect the electorate's will and let the results of the election stand, despite irregularities that may have attended the conduct of the elections.[35] This is but to acknowledge the purpose and role of elections in a democratic society such as ours, which is:

to give the voters a direct participation in the affairs of their government, either in determining who shall be their public officials or in deciding some question of public interest; and for that purpose all of the legal voters should be permitted, unhampered and unmolested, to cast their ballot. When that is done and no frauds have been committed, the ballots should be counted and the election should not be declared null. Innocent voters should not be deprived of their participation in the affairs of their government for mere irregularities on the part of the election officers, for which they are in no way responsible. A different rule would make the manner and method of performing a public duty of greater importance than the duty itself.[36] (Emphasis in the original)

Separate Documentation and Canvassing
not Required under Section 2 of R.A. No. 6645,

Neither is there basis in petitioners' claim that the manner by which COMELEC conducted the special senatorial election on 14 May 2001 is a nullity because COMELEC failed to document separately the candidates and to canvass separately the votes cast for the special election. No such requirements exist in our election laws. What is mandatory under Section 2 of R.A. No. 6645 is that COMELEC "fix the date of the election," if necessary, and "state, among others, the office or offices to be voted for." Similarly, petitioners' reliance on Section 73 of B.P.

Blg. 881 on the filing of certificates of candidacy, and on Section 4(4) of R.A. No. 6646 on the printing of election returns and tally sheets, to support their claim is misplaced. These provisions govern elections in general and in no way require separate documentation of candidates or separate canvass of votes in a jointly held regular and special elections.

Significantly, the method adopted by COMELEC in conducting the special election on 14 May 2001 merely implemented the procedure specified by the Senate in Resolution No. 84. Initially, the original draft of Resolution No. 84 as introduced by Senator Francisco Tatad (“Senator Tatad”) made no mention of the manner by which the seat vacated by former Senator Guingona would be filled. However, upon the suggestion of Senator Raul Roco (“Senator Roco”), the Senate agreed to amend Resolution No. 84 by providing, as it now appears, that “the senatorial candidate garnering the thirteenth (13[th]) highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr.” Senator Roco introduced the amendment to spare COMELEC and the candidates needless expenditures and the voters further inconvenience, thus:

S[ENATOR] T[ATAD]. Mr. President, I move that we now consider Proposed Senate Resolution No. 934 [later converted to Resolution No. 84].

T[HE] P[RESIDENT]. Is there any objection? [Silence] There being none, the motion is approved.

Consideration of Proposed Senate Resolution No. 934 is now in order. With the permission of the Body, the Secretary will read only the title and text of the resolution.

T[HE] S[ECRETARY]. Proposed Senate Resolution No. 934 entitled
RESOLUTION CERTIFYING TO THE EXISTENCE OF A VACANCY IN THE SENATE AND CALLING
ON THE COMMISSION ON ELECTIONS (COMELEC) TO FILL UP SUCH VACANCY THROUGH
ELECTION TO BE HELD SIMULTANEOUSLY WITH THE REGULAR ELECTION ON MAY 14, 2001
AND THE SENATOR THUS ELECTED TO SERVE ONLY FOR THE UNEXPIRED TERM

WHEREAS, the Honorable Teofisto T. Guingona, Jr. was elected Senator of the Philippines in 1998 for a term which will expire on June 30, 2004;

WHEREAS, on February 6, 2001, Her Excellency President Gloria Macapagal Arroyo nominated Senator Guingona as Vice-President of the Philippines;

WHEREAS, the nomination of Senator Guingona has been confirmed by a majority vote of all the members of both House of Congress, voting separately;

WHEREAS, Senator Guingona will take his Oath of Office as Vice-President of the Philippines on February 9, 2001;

WHEREAS, Republic Act No. 7166 provides that the election for twelve (12) Senators, all elective Members of the House of Representatives, and all elective provincial city and municipal officials shall be held on the second Monday and every three years thereafter; Now, therefore, be it

RESOLVED by the Senate, as it is hereby resolved, to certify, as it hereby certifies, the existence of a vacancy in the Senate and calling the Commission on Elections (COMELEC) to fill up such vacancy through election to be held simultaneously with the regular election on May 14, 2001 and the Senator thus elected to serve only for the unexpired term.

Adopted,

(Sgd.) FRANCISCO S. TATAD
Senator

S[ENATOR] T[ATAD]. Mr. President, I move for the adoption of this resolution.

S[ENATOR] O[SMEÑA] (J). Mr. President.

T[HE] P[RESIDENT]. Sen. John H. Osmeña is recognized.

S[ENATOR] O[SMEÑA] (J). Thank you, Mr. President. Will the distinguished Majority Leader, Chairman of the Committee on Rules, author of this resolution, yield for a few questions?

S[ENATOR] T[ATAD]. With trepidation, Mr. President. [Laughter]

S[ENATOR] O[SMEÑA] (J). What a way of flattery. [Laughter]

Mr. President, I think I recall that sometime in 1951 or 1953, there was a special election for a vacant seat in the Senate. As a matter of fact, the one who was elected in that special election was then Congressman, later Senator Feli[s]berto Verano.

In that election, Mr. President, the candidates contested the seat. In other words, the electorate had to cast a vote for a ninth senator – because at that time there were only eight – to elect a member or rather, a candidate to that particular seat.

Then I remember, Mr. President, that when we ran after the EDSA revolution, twice there were 24 candidates and the first 12 were elected to a six-year term and the next 12 were elected to a three-year term.

My question therefore is, how is this going to be done in this election? Is the candidate with the 13[th] largest number of votes going to be the one to take a three-year term? Or is there going to be an election for a position of senator for the unexpired term of Sen. Teofisto Guingona?

S[ENATOR] T[ATAD]. Mr. President, in this resolution, we are leaving the mechanics to the Commission on Elections. But personally, I would like to suggest that probably, the candidate obtaining the 13[th] largest number of votes be declared as elected to fill up the unexpired term of Senator Guingona.

S[ENATOR] O[SMEÑA] (J). Is there a law that would allow the Comelec to conduct such an election? Is it not the case that the vacancy is for a specific office? I am really at a loss. I am rising here because I think it is something that we should consider. I do not know if we can... No, this is not a Concurrent Resolution.

S[ENATOR] T[ATAD]. May we solicit the legal wisdom of the Senate President.

T[HE] P[RESIDENT]. May I share this information that under Republic Act No. 6645, what is needed is a resolution of this Chamber calling attention to the need for the holding of a special election to fill up the vacancy created, in this particular case, by the appointment of our colleague, Senator Guingona, as Vice President.

It can be managed in the Commission on Elections so that a slot for the particular candidate to fill up would be that reserved for Mr. Guingona's unexpired term. In other words, it can be arranged in such a manner.

x x x x

S[ENATOR] R[OCO]. Mr. President.

T[HE] P[RESIDENT]. Sen. Raul S. Roco is recognized.

S[ENATOR] R[OCO]. May we suggest, subject to a one-minute caucus, wordings to the effect that in the simultaneous elections, the 13[th] placer be therefore deemed to be the special election for this purpose. So we just nominate 13 and it is good for our colleagues. It is better for the candidates. It is also less expensive because the ballot will be printed and there will be less disfranchisement.

T[HE] P[RESIDENT]. That is right.

S[ENATOR] R[OCO]. If we can just deem it therefore under this resolution to be such a special election, maybe, we satisfy the requirement of the law.

T[HE] P[RESIDENT]. Yes. In other words, this shall be a guidance for the Comelec.

S[ENATOR] R[OCO]. Yes.

T[HE] P[RESIDENT]. – to implement.

S[ENATOR] R[OCO]. Yes. The Comelec will not have the flexibility.

T[HE] P[RESIDENT]. That is right.

S[ENATOR] R[OCO]. We will already consider the 13[th] placer of the forthcoming elections that will be held simultaneously as a special election under this law as we understand it.

T[HE] P[RESIDENT]. Yes. That will be a good compromise, Senator Roco.

S[ENATOR] R[OCO]. Yes. So if the sponsor can introduce that later, maybe it will be better, Mr. President.

T[HE] P[RESIDENT]. What does the sponsor say?

S[ENATOR] T[ATAD]. Mr. President, that is a most satisfactory proposal because I do not believe that there will be anyone running specifically –

T[HE] P[RESIDENT]. Correct.

S[ENATOR] T[ATAD]. – to fill up this position for three years and campaigning nationwide.

T[HE] P[RESIDENT]. Actually, I think what is going to happen is the 13th candidate will be running with specific groups.

S[ENATOR] T[ATAD]. Yes. Whoever gets No. 13.

T[HE] P[RESIDENT]. I think we can specifically define that as the intent of this resolution.

S[ENATOR] T[ATAD]. Subject to style, we accept that amendment and if there will be no other amendment, I move for the adoption of this resolution.

x x x x

ADOPTION OF S. RES. NO. 934

If there are no other proposed amendments, I move that we adopt this resolution.

T[HE] P[RESIDENT]. There is a motion to adopt this resolution. Is there any objection? [Silence] There being none, the motion is approved.[37]

Evidently, COMELEC, in the exercise of its discretion to use means and methods to conduct the special election within the confines of R.A. No. 6645, merely chose to adopt the Senate's proposal, as embodied in Resolution No. 84. This Court has consistently acknowledged and affirmed COMELEC's wide latitude of discretion in adopting means to carry out its mandate of ensuring free, orderly, and honest elections subject only to the limitation that the means so adopted are not illegal or do not constitute grave abuse of discretion.[38] COMELEC's decision to abandon the means it employed in the 13 November 1951 and 8 November 1955

special elections and adopt the method embodied in Resolution No. 84 is but a legitimate exercise of its discretion. Conversely, this Court will not interfere should COMELEC, in subsequent special senatorial elections, choose to revert to the means it followed in the 13 November 1951 and 8 November 1955 elections. That COMELEC adopts means that are novel or even disagreeable is no reason to adjudge it liable for grave abuse of discretion. As we have earlier noted:

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere.[39]

A Word to COMELEC

The calling of a special election, if necessary, and the giving of notice to the electorate of necessary information regarding a special election, are central to an informed exercise of the right of suffrage. While the circumstances attendant to the present case have led us to conclude that COMELEC's failure to so call and give notice did not invalidate the special senatorial election held on 14 May 2001, COMELEC should not take chances in future elections. We remind COMELEC to comply strictly with all the requirements under applicable laws relative to the conduct of regular elections in general and special elections in particular.

WHEREFORE, we DISMISS the petition for lack of merit.

SO ORDERED.

Panganiban, Quisumbing, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Davide, Jr., C.J., Vitug, Ynares-Santiago, and Tinga, JJ., join the dissent of Justice Puno.

Puno, J., please see dissent.

[1] As provided under Section 2 of Republic Act. No. 7166, as amended.

[2] Resolution No. 84 reads:

WHEREAS, the Honorable Teofisto Guingona, Jr. was elected Senator of the Philippines in 1998 for a term which will expire on June 30, 2004;

WHEREAS, on February 6, 2001, Her Excellency President Gloria Macapagal-Arroyo nominated Senator Guingona as Vice-President of the Philippines;

WHEREAS, the nomination of Senator Guingona has been conferred by a majority vote of all the members of both Houses of Congress, voting separately;

WHEREAS, Senator Guingona will take his Oath of Office as Vice-President of the Philippines on February 9, 2001;

WHEREAS, Republic Act No. 7166 provides that the election for twelve (12) Senators, all elective Members of the House of Representatives, and all elective provincial, city and municipal officials shall be held on the second Monday of May and every three years thereafter. Now, therefore be it Resolved by the Senate, as it is hereby

resolved to certify as it hereby certifies, the existence of a vacancy in the Senate and calling the Commission on Elections (COMELEC) to fill up said vacancy through election to be held simultaneously with the regular election on May 14, 2001 and the senatorial candidate garnering the thirteenth (13th) highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr. (Emphasis supplied)

[3] Resolution No. 01-005 reads:

WHEREAS, the Commission on Elections, sitting [E]n [B]anc as the National Board of Canvassers for the election of Senators of the Philippines, officially canvassed in open and public proceedings the certificates of canvass of votes cast nationwide for senators in the national and local elections conducted on May 14, 2001.

Based on the canvass of the Certificates of Canvass submitted by seventy-eight (78) out of seventy-nine (79) Provincial Boards of Canvassers, twenty (20) City Boards of Canvassers of cities comprising one (1) or more legislative districts, two (2) District Boards of Canvassers of Metro Manila, and one (1) Absentee Voting, and the remaining uncanvassed certificate of canvass which will not anymore affect the results, the Commission on Elections sitting En Banc as the National Board of Canvassers finds that the following candidates for senators in said elections obtained as of June 04, 2001 the following number of votes as indicated opposite their names:

Name

Votes Garnered

(as of 4 June 2001)

NOLI DE CASTRO 16,157,811

JUAN M. FLAVIER 11,676,129

SERGIO R. OSMEÑA, III 11,531,427

FRANKLIN M. DRILON 11,223,020

RAMON B. MAGSAYSAY, JR. 11,187,447

JOKER P. ARROYO 11,163,801

MANUEL B. VILLAR, JR. 11,084,884

FRANCIS N. PANGILINAN 10,877,989

EDGARDO J. ANGARA 10,746,843

PANFILO M. LACSON 10,481,755

LUISA P. EJERCITO ESTRADA 10,456,674

RALPH G. RECTO 10,387,108

GREGORIO G. HONASAN 10,364,272

NOW, THEREFORE, by virtue of the powers vested in it under the Constitution, the Omnibus Election Code and other election laws, the Commission on Elections sitting En Banc as the National Board of Canvassers hereby PROCLAIMS the above-named thirteen (13) candidates as the duly elected Senators of the Philippines in the May 14, 2001 elections. Based on the certificates of canvass finally tabulated, the first twelve (12) Senators shall serve for a term of six (6) years and the thirteenth (13th) Senator shall serve the unexpired term of three (3) years of Senator Teofisto T. Guingona, Jr. who was appointed Vice-President of the Philippines pursuant to Section 9,

Article VII of the Constitution, in relation to Section 9, Article VI thereof, as implemented under Republic Act No. 6645. (Emphasis supplied)

[4] This provision states: “The Commission on Elections shall fix the date of the special election, which shall not be earlier than forty-five (45) days nor later than ninety (90) days from the date of such resolution or communication, stating among other things the office or offices to be voted for: Provided, however, That if within the said period a general election is scheduled to be held, the special election shall be held simultaneously with such general election.”

[5] This provision reads: “Certificate of candidacy. – No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath.

No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them. However, before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy may declare under oath the office for which he desires to be eligible and cancel the certificate of candidacy for the other office or offices.

The filing or withdrawal of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred.”

[6] This provision reads: “Certificates of Candidacy; Certified List of Candidates. – x x x The names of all registered candidates immediately followed by the nickname or stage name shall also be printed in the election returns and tally sheets.”

[7] Rollo, pp. 5-7, 12-14.

[8] Senator Roseller T. Lim was elected in the special election of 13 November 1951 while Senator Felisberto Verano was elected in the special election of 8 November 1955.

[9] Rollo, pp. 8-12.

[10] *Castro v. Del Rosario*, 25 Phil. 611 (1967); Section 1(a), Rule 66, the 1997 RULES OF CIVIL PROCEDURE.

[11] Sections 1-2, Rule 65, The 1997 RULES OF CIVIL PROCEDURE.

[12] *Gil v. Benipayo*, G.R. No. 148179, 26 June 2001 (minute resolution).

[13] *Acop v. Guingona*, G.R. No. 134856, 2 July 2002, 383 SCRA 577; *Viola v. Hon. Alunan III*, 343 Phil. 184 (1997); *Alunan III v. Mirasol*, 342 Phil. 467 (1997).

[14] 342 Phil. 467 (1997).

[15] *Joya v. Presidential Commission on Good Government*, G.R. No. 96541, 24 August 1993, 225 SCRA 568.

[16] *Kilosbayan, Incorporated v. Morato*, 316 Phil. 652 (1995).

[17] Const., art. VIII, secs. 1 and 5(2).

[18] *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 352 Phil. 153 (1998).

[19] See *Warth v. Seldin*, 442 U.S. 490, 45 L.Ed.2d 343 (1975).

[20] *Dumlao v. COMELEC*, G.R. No. L-52245, 22 January 1980, 95 SCRA 392 (internal citations omitted).

[21] *De Guia v. COMELEC*, G.R. No. 104712, 6 May 1992, 208 SCRA 420; *Gonzales v. COMELEC*, 129 Phil. 7 (1967). See also *Telecom & Broadcast Attys. of the Phils., Inc. v. COMELEC*, 352 Phil. 153 (1998).

[22] G.R. No. 141284, 15 August 2000, 338 SCRA 81.

[23] *Integrated Bar of the Philippines vs. Zamora*, G.R. No. 141284, 15 August 2000, 338 SCRA 81.

[24] E.g. Resolution No. 3258, dated 28 September 2000 (providing for the calendar of activities and periods of prohibited acts in connection with the 14 May 2001 elections as amended by Resolution Nos. 3322, dated 5 October 2000; 3284, dated 20 October 2000; 3306, dated 7 November 2000; 3426, dated 22 December 2000; and 3359, dated 6 February 2001); Resolution No. 3632, dated 1 March 2001 (canceling the certificates of candidacy of nuisance senatorial candidates); and Resolution No. 3743, dated 12 March 2001 (providing for the general instructions to the Boards of Election Inspectors on the casting and counting of votes).

[25] E.g. undated COMELEC pamphlet entitled “Frequently Asked Questions on the May 14, 2001 Elections.”

[26] 26 Am. Jur. 2d Elections § 281 (1996); 29 C.J.S. Elections § 70 (1965).

[27] *Ibid*; *ibid*.

[28] 26 Am. Jur. 2d Elections § 282 (1996).

[29] *Ibid*.

[30] *McCoy v. Fisher*, 67 S.E. 2d 543 (1951).

[31] 26 Am. Jur. 2d Elections § 281 (1996); 29 C.J.S. Elections § 70 (1965).

[32] See 26 Am. Jur. 2d Elections § 292 (1996); 29 C.J.S. Elections § 72 (1965).

[33] Indeed, the fact that 13 senators were due to be elected in the 14 May 2001 elections and that the senator elected to the 13th place will serve the remaining term of Senator Guingona was published in news reports (see *Philippine Star*, 9 February 2001, pp. 1, 6 and *Daily Tribune*, 9 February 2001, pp. 1, 8; *Philippine Daily Inquirer*, 12 February 2001, pp. 1, 10; 14 February 2001, pp. 1, A20; *Today*, 8 February 2001, p. 10; *Manila Bulletin*, 9 February 2001, pp. 3, 8). Furthermore, the fact that the administration and opposition coalitions each fielded 13 senatorial candidates (and not only 12) was similarly given extensive coverage by news publications (see *Philippine Daily Inquirer*, 12 February 2001, pp. 1, 10; 13 February 2001, pp. 1, A14; 14 February 2001, pp. 1, A20; *Philippine Star*, 13 February 2001, pp. 1, 4; 14 February 2001, pp. 1, 6; *Today*, 9 February 2001, pp. 1, 4; 12 February 2001, pp. 1, 10; 13 February 2001, pp. 1, 10; *Manila Standard*, 13 February 2001, pp. 1, 2; *Malaya*, 13 February 2001, pp. 1, 6; 14 February 2001, pp. 1, 4; *Daily Tribune* 14 February 2001, pp. 1, 6; *Manila Times*, 14 February 2001, pp. 1, 2A; *Philippine Star Ngayon*, 13 February 2001, pp. 1, 4).

[34] *Florendo, Sr. vs. Buyser*, 129 Phil. 353 (1967); *Capalla v. Tabiana*, 63 Phil. 95 (1936); *Kiamzon v. Pugeda*, 54 Phil. 755 (1930); *Cailles v. Gomez*, 42 Phil. 852 (1924). *Batas Pambansa Blg. 881*, as amended, (Omnibus Election Code), on failure of elections (resulting to the annulment of elections), provides: “SEC. 6. Failure of election. — If, on account of force majeure, violence, terrorism, fraud, or other analogous causes the election in any polling place had not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or

suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by an interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date 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 of such postponement or suspension of the election or failure to elect”.

[35] *Alcala v. Commission on Elections*, 218 Phil. 322 (1984); *Villareal v. Fornier*, 84 Phil. 756 (1949); *Lucero v. De Guzman*, 45 Phil. 852 (1924).

[36] *Lino Luna vs. Rodriguez*, 39 Phil. 208 (1918).

[37] Transcript of Session Proceedings of the Philippine Senate, 8 February 2001, pp. 49-54. (Emphasis supplied)

[38] E.g. *Cauton v. COMELEC*, 126 Phil. 291 (1967).

[39] *Puñgutan v. Abubakar*, 150 Phil. 1 (1972) citing *Sumulong v. Commission on Elections*, 73 Phil. 237 (1941).

DISSENTING OPINION

PUNO, J.:

The case at bar transcends the political fortunes of respondent Senator Gregorio B. Honasan. At issue is the right of the people to elect their representatives on the basis and only on the basis of an informed judgment. The issue strikes at the heart of democracy and representative government for without this right, the sovereignty of the people is a mere chimera and the rule of the majority will be no more than mobocracy. To clarify and sharpen the issue, I shall first unfurl the facts.

I. Facts

The facts are undisputed. In February 2001, a Senate seat for a term expiring on June 30, 2004 was vacated with the appointment of then Senator Teofisto Guingona, Jr. as Vice-President of the Philippines. The Senate adopted Resolution No. 84 certifying “the existence of a vacancy in the Senate and calling the Commission on Elections (COMELEC) to fill up such vacancy through election to be held simultaneously with the regular election on May 14, 2001, and the senatorial candidate garnering the thirteenth (13th) highest number of votes shall serve only for the unexpired term of former Senator Teofisto T. Guingona, Jr.” In the deliberations of the Senate on the resolution, the body agreed that the procedure it adopted for determining the winner in the special election was for the “guidance” and “implementation” of the COMELEC. The COMELEC had no discretion to alter the procedure.

Nobody filed a certificate of candidacy to fill the position of senator to serve the unexpired three-year term in the special election. All the senatorial candidates filed the certificates of candidacy for the twelve regular Senate seats to be vacated on June 30, 2001 with a six-year term expiring on June 30, 2007. COMELEC distributed nationwide official documents such as the Voter Information Sheet, List of Candidates and Sample Ballot. The List of Candidates did not indicate a separate list of candidates for the special election. The Sample Ballot and the official ballots did not provide two different categories of Senate seats to be voted, namely the twelve regular six-year term seats and the single three-year term seat. Nor did the ballots provide a separate space for the candidate to be voted in the special election and instead provided thirteen spaces for thirteen senatorial seats.

Without any COMELEC resolution or notice on the time, place and manner of conduct of the special election, the special election for senator was held on the scheduled May 14, 2001 regular elections. A single canvass of votes

for a single list of senatorial candidates was done. On June 5, 2001, respondent COMELEC promulgated COMELEC Resolution No. NBC01-005, the dispositive portion of which reads, viz:

NOW, THEREFORE, by virtue of the powers vested in it under the Constitution, Omnibus Election Code and other election laws, the Commission on Elections sitting En Banc as the National Board of Canvassers hereby proclaims the above-named thirteen (13) candidates as the duly elected Senators of the Philippines in the May 14, 2001 elections. Based on the Certificates of Canvass finally tabulated, the first twelve (12) Senators shall serve for a term of six (6) years and the thirteenth (13[th]) Senator shall serve the unexpired term of three (3) years of Senator Teofisto T. Guingona, Jr., who was appointed Vice-President of the Philippines pursuant to Section 9, Article VII of the Constitution, in relation to Section 9, Article VI thereof, as implemented under Republic Act No. 6645. (emphasis supplied)

On June 21, 2001, petitioners filed with the Court their petition for prohibition to stop respondent COMELEC from proclaiming any senatorial candidate in the May 14, 2001 election as having been elected for the lone senate seat for a three-year term. Copies of the petition were served on respondent COMELEC twice, first on June 20, 2001 by registered mail, and second on June 21, 2001, by personal delivery of petitioner Mojica. On June 26, 2001 the Court issued a Resolution requiring respondent COMELEC to comment within ten days from notice. Even before filing its comment, respondent COMELEC issued Resolution No. NBC-01-006 on July 20, 2001, the dispositive portion of which reads, viz:

NOW, THEREFORE, by virtue of the powers vested in it under the Constitution, Omnibus Election Code and other election laws, the Commission on Elections sitting as the National Board of Canvassers hereby DECLARES official and final the above ranking of the proclaimed 13 Senators of the Philippines in relation to NBC Resolution No. 01-005 promulgated June 5, 2001.

Resolution No. NBC-01-006 indicates the following ranking of the 13 Senators with the corresponding votes they garnered as of June 20, 2001:

1. De Castro, Noli L. - 16,237,386
2. Flavier, Juan M. - 11,735,897
3. Osmeña, Sergio II R. - 11,593,389
4. Drilon, Franklin M. - 11,301,700
5. Arroyo, Joker P. - 11,262,402
6. Magsaysay, Ramon Jr. B. - 11,250,677
7. Villar, Manuel Jr. B. - 11,187,375
8. Pangilinan, Francis N. - 10,971,896
9. Angara, Edgardo J. - 10,805,177
10. Lacson, Panfilo M. - 10,535,559
11. Ejercito-Estrada, Luisa P. - 10,524,130
12. Recto, Ralph - 10,498,940
13. Honasan, Gregorio - 10,454,527

On the day of its promulgation, respondent COMELEC forwarded Resolution No. NBC-01-006 to the President of the Senate. On July 23, 2001, the thirteen senators, inclusive of respondents Honasan and Recto, took their

oaths of office before the Senate President.

With the turn of events after the filing of the petition on June 20, 2001, the Court ordered petitioners on March 5, 2002 and September 17, 2002 to amend their petition. In their amended petition, petitioners assailed the manner by which the special election was conducted citing as precedents the 1951 and 1955 special senatorial elections for a two-year term which were held simultaneously with the regular general elections for senators with six year terms, viz:

(a) A vacancy in the Senate was created by the election of Senator Fernando Lopez as Vice-President in the 1949 elections. A special election was held in November 1951 to elect his successor to the vacated Senate position for a term to expire on 30 December 1953. Said special election was held simultaneously with the regular election of 1951. A separate space in the official ballot was provided for Senatorial candidates for the two year term; moreover, the candidates for the single Senate term for two years filed certificates of candidacy separate and distinct from those certificates of candidacy filed by the group of Senatorial candidates for the six year term.

(...the votes for the twenty (20) candidates who filed certificates of candidacy for the eight Senate seats with six year terms were tallied and canvassed separately from the votes for the five candidates who filed certificates of candidacy for the single Senate seat with a two year term...)

xxx xxx xxx

(b) Again, a vacancy was created in the Senate by the election of then Senator Carlos P. Garcia to the Vice Presidency in the 1953 presidential elections. A special election was held in November 1955 to elect his successor to the vacated Senatorial position for a two year term expiring on 30 December 1957.

Said special election for one senator to fill the vacancy left by the Honorable Carlos Garcia was held in November 1955 simultaneously with the regular election for eight Senate seats with a six year term. Here, separate spaces were provided for in the official ballot for the single Senate seat for the two year term as differentiated from the eight Senate seats with six year terms. The results as recorded by Senate official files show that votes for the candidates for the Senate seat with a two-year term were separately tallied from the votes for the candidates for the eight Senate seats with six-year term...[1] (emphases supplied)

Petitioners thus pray that the Court declare the following:

(a)

that no special election was conducted by respondent COMELEC for the single Senate seat with a three year term in the 14 May 2001 election.

(b)

null and void respondent COMELEC's Resolutions No. NBC01-005 dated 5 June 2001 and NBC01-006 dated 20 July 2001 for having been promulgated without any legal authority at all insofar as said resolutions proclaim the Senatorial candidate who obtained the thirteenth highest number of votes canvassed during the 14 May 2001 election as a duly elected Senator.[2]

Respondents filed their respective comments averring the following procedural flaws: (1) the Court has no jurisdiction over the petition for quo warranto; (2) the petition is moot; and (3) the petitioners have no standing to litigate. On the merits, they all defend the validity of the special election on the ground that the COMELEC had discretion to determine the manner by which the special election should be conducted and that the electorate was aware of the method the COMELEC had adopted. Moreover, they dismiss the deviations from the election laws

with respect to the filing of certificates of candidacy for the special elections and the failure to provide in the official ballot a space for the special election vote separate from the twelve spaces for the regular senatorial election votes as inconsequential. They claim that these laws are merely directory after the election.

II. Issues

The issues for resolution are procedural and substantive. I shall limit my humble opinion to the substantive issue of whether a special election for the single Senate seat with a three-year term was validly held simultaneous with the general elections on May 14, 2001.

III. Laws on the Calling of Special Elections

Section 9, Article VI of the 1987 Constitution provides for the filling of a vacancy in the Senate and House of Representatives, viz:

Sec. 9. In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

Congress passed R.A. No. 6645, "An Act Prescribing the Manner of Filling a Vacancy in the Congress of the Philippines," to implement this constitutional provision. The law provides, viz:

SECTION 1. In case a vacancy arises in the Senate at least eighteen (18) months or in the House of Representatives at least one (1) year before the next regular election for Members of Congress, the Commission on Elections, upon receipt of a resolution of the Senate or the House of Representatives, as the case may be, certifying to the existence of such vacancy and calling for a special election, shall hold a special election to fill such vacancy. If the Congress is in recess, an official communication on the existence of the vacancy and call for a special election by the President of the Senate or by the Speaker of the House of Representatives, as the case may be, shall be sufficient for such purpose. The Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

SECTION 2. The Commission on Elections shall fix the date of the special election, which shall not be earlier than forty-five (45) days nor later than ninety (90) days from the date of such resolution or communication, stating among other things, the office or offices to be voted for: Provided, however, That if within the said period a general election is scheduled to be held, the special election shall be held simultaneously with such general election.

SECTION 3. The Commission on Elections shall send copies of the resolution, in number sufficient for due distribution and publication, to the Provincial or City Treasurer of each province or city concerned, who in turn shall publish it in their respective localities by posting at least three copies thereof in as many conspicuous places in each of their election precincts, and a copy in each of the polling places and public markets, and in the municipal buildings. (emphasis supplied)

R.A. No. 6645 was amended in 1991 by R.A. No. 7166 which provides in Section 4, viz:

SECTION 4. Postponement, Failure of Election and Special Election. - The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6, and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members...

In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) days after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election. (emphases supplied)

IV. Democracy and Republicanism

The shortest distance between two points is a straight line. In this case of first impression, however, the distance between existing jurisprudence and the resolution of the issue presented to the Court cannot be negotiated through a straight and direct line of reasoning. Rather, it is necessary to journey through a meandering path and unearth the root principles of democracy, republicanism, elections, suffrage, and freedom of information and discourse in an open society. As a first step in this indispensable journey, we should traverse the democratic and republican landscape to appreciate the importance of informed judgment in elections.

A. Evolution of Democracy from Plato to Locke

to Jefferson and Contemporary United States of America

In the ancient days, democracy was dismissed by thoughtful thinkers. Plato deprecated democracy as rule by the masses. He warned that if all the people were allowed to rule, those of low quality would dominate the state by mere numerical superiority. He feared that the more numerous masses would govern with meanness and bring about a “tyranny of the majority.” Plato predicted that democracies would be short-lived as the mob would inevitably surrender its power to a single tyrant, and put an end to popular government. Less jaundiced than Plato was Aristotle’s view towards democracy. Aristotle agreed that under certain conditions, the will of the many could be equal to or even wiser than the judgment of the few. When the many governed for the good of all, Aristotle admitted that democracy is a good form of government. But still and all, Aristotle preferred a rule of the upper class as against the rule of the lower class. He believed that the upper class could best govern for they represent people of the greatest refinement and quality.

In the Middle Ages, Europe plunged when the Roman Empire perished. Europe re-emerged from this catastrophe largely through reliance on the scientific method which ultimately ushered the Industrial Revolution. Material success became the engine which drove the people to search for solutions to their social, political and economic problems. Using the scythe of science and reason, the thinkers of the time entertained an exaggerated notion of individualism. They bannered the idea that all people were equal; no one had a greater right to rule than another. Dynastical monarchy was taboo. As all were essentially equal, no one enjoyed the moral right to govern another without the consent of the governed. The people therefore were the source of legitimate legal and political authority. This theory of popular sovereignty revived an interest in democracy in the seventeenth century. 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.[3]

Among the great political philosophers who spurred the evolution of democratic thought was John Locke (1632-1704). In 1688, the English revolted against the “Catholic tyranny” of James II, causing him to flee to France. This Glorious Revolution, called such because it was almost bloodless, put to rest the long struggle between King and Parliament in England. The revolution reshaped the English government and ultimately brought about democracy in England.

John Locke provided the philosophical phalanx to the Glorious Revolution. For this purpose, he wrote his Second Treatise of Government, his work with the most political impact. In his monumental treatise, Locke asserted that the basis of political society is a contract whereby individuals consent to be bound by the laws of a common authority known as civil government. The objective of this social contract is the protection of the individual’s natural rights to life, liberty and property which are inviolable and enjoyed by them in the state of nature before the formation of all social and political arrangements.[4] Locke thus argues that legitimate political power amounts to a form of trust, a contract among members of society anchored on their own consent, and seeks to

preserve their lives, liberty and property. This trust or social contract makes government legitimate and clearly defines the functions of government as concerned, above all, with the preservation of the rights of the governed.

Even then, Locke believed that the people should be governed by a parliament elected by citizens who owned property. Although he argued that the people were sovereign, he submitted that they should not rule directly. Members of parliament represent their constituents and should vote as their constituents wanted. The government's sole reason for being was to serve the individual by protecting his rights and liberties. Although Locke's ideas were liberal, they fell short of the ideals of democracy. He spoke of a "middle-class revolution" at a time when the British government was controlled by the aristocracy. While he claimed that all people were equally possessed of natural rights, he advocated that political power be devolved only to embrace the middle class by giving Parliament, which was controlled through the House of Commons, the right to limit the monarchical power. He denied political power to the poor; they were bereft of the right to elect members of Parliament.

Locke influenced Thomas Jefferson, the eminent statesman and philosopher of the (American) revolution and of the first constitutional order which free men were permitted to establish."^[5] But although Jefferson espoused Locke's version of the social contract and natural law, he had respect for the common people and participatory government. Jefferson believed that the people, including the ordinary folk, were the only competent guardians of their own liberties, and should thus control their government. Discussing the role of the people in a republic, Jefferson wrote to Madison from France in 1787 that "they are the only sure reliance for the preservation of our liberties."^[6]

The wave of liberalism from Europe notwithstanding, a much more conservative, less democratic, and more paternalistic system of government was originally adopted in the United States. The nation's founders created a government in which power was much more centralized than it had been under the Articles of Confederation and they severely restricted popular control over the government.^[7] Many of the delegates to the Constitutional Convention of 1787 adhered to Alexander Hamilton's view that democracy was little more than legitimized mob rule, a constant threat to personal security, liberty and property. Thus, the framers sought to establish a constitutional republic, in which public policy would be made by elected representatives but individual rights were protected from the tyranny of transient majorities. With its several elitist elements and many limitations on majority rule, the framers' Constitution had undemocratic strands.

The next two centuries, however, saw the further democratization of the federal Constitution.^[8] The Bill of Rights was added to the American Constitution and since its passage, America had gone through a series of liberalizing eras that slowly relaxed the restraints imposed on the people by the new political order. The changing social and economic milieu mothered by industrialization required political democratization.^[9] In 1787, property qualifications for voting existed and suffrage was granted only to white males. At the onset of Jacksonian democracy in the 1830s, property requirements quickly diminished and virtually became a thing of the past by the time of the Civil War. In 1870, the Fifteenth Amendment theoretically extended the franchise to African-Americans, although it took another century of struggle for the Amendment to become a reality. In 1920, the Nineteenth Amendment removed sex as a qualification for voting. The Progressive Era also saw the Seventeenth Amendment of the Constitution to provide for direct election of United States senators^[10] and established procedures for initiative, referendum and recall (otherwise known as direct democracy) in many states.^[11] Poll taxes were abolished as prerequisites for voting in federal elections through the Twenty-Fourth Amendment in 1964. Finally, the voting age was lowered to eighteen with the ratification of the Twenty-Sixth Amendment in 1971.^[12]

B. Constitutional History of Democracy

and Republicanism in the Philippines

The Malolos Constitution was promulgated on January 21, 1899 by the short-lived Revolutionary Government headed by Emilio Aguinaldo after the Declaration of Independence from Spain on June 12, 1898. Article 4 of the Constitution declared the Philippines a Republic, viz:

Art. 4. The government of the Republic is popular, representative, alternative, and responsible and is exercised by three distinct powers, which are denominated legislative, executive and judicial...

Shortly after the promulgation of the Malolos Constitution, the Philippines fell under American rule. The Americans adopted the policy of gradually increasing the autonomy of the Filipinos before granting their independence.[13] In 1934, the U.S. Congress passed the Tydings-McDuffie Law “xxx the last of the constitutional landmarks studding the period of constitutional development of the Filipino people under the American regime before the final grant of Philippine independence.”[14] Under this law, the American government authorized the Filipino people to draft a constitution in 1934 with the requirement that the “constitution formulated and drafted shall be republican in form.” In conformity with this requirement,[15] Article II, Section 1 of the 1935 Philippine Constitution was adopted, viz:

Sec. 1. The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them.

The delegates to the Constitutional Convention understood this form of government to be that defined by James Madison, viz:

We may define a republic to be a government which derives all its power directly or indirectly from the great body of the people; and is administered by persons holding offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. It is sufficient for such government that the person administering it be appointed either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified.[16] (emphases supplied)

The 1973 Constitution adopted verbatim Article II, Section 1 of the 1935 Constitution. So did the 1987 Constitution. The delegates to the 1986 Constitutional Commission well understood the meaning of a republican government. They adopted the explanation by Jose P. Laurel in his book, *Bread and Freedom, The Essentials of Popular Government*, viz:

When we refer to popular government or republican government or representative government, we refer to some system of popular representation where the powers of government are entrusted to those representatives chosen directly or indirectly by the people in their sovereign capacity.[17] (emphasis supplied)

An outstanding feature of the 1987 Constitution is the expansion of the democratic space giving the people greater power to exercise their sovereignty. Thus, under the 1987 Constitution, the people can directly exercise their sovereign authority through the following modes, namely: (1) elections; (2) plebiscite; (3) initiative; (4) recall; and (5) referendum. Through elections, the people choose the representatives to whom they will entrust the exercise of powers of government.[18] In a plebiscite, the people ratify any amendment to or revision of the Constitution and may introduce amendments to the constitution.[19] Indeed, the Constitution mandates Congress to “provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any law or part thereof passed by the Congress or local legislative body. . .” It also directs Congress to “enact a local government code which shall provide for effective mechanisms of recall, initiative, and referendum.”[20] Pursuant to this mandate, Congress enacted the Local Government Code of 1991 which defines local initiative as the “legal process whereby the registered voters of a

local government unit may directly propose, enact, or amend any ordinance through an election called for the purpose.” Recall is a method of removing a local official from office before the expiration of his term because of loss of confidence.[21] In a referendum, the people can approve or reject a law or an issue of national importance.[22] Section 126 of the Local Government Code of 1991 defines a local referendum as “the legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the sanggunian.”

These Constitutional provisions on recall, initiative, and referendum institutionalized the people’s might made palpable in the 1986 People Power Revolution.[23] To capture the spirit of People Power and to make it a principle upon which Philippine society may be founded, the Constitutional Commission enunciated as a first principle in the Declaration of Principles and State Policies under Section 1, Article II of the 1987 Constitution that the Philippines is not only a republican but also a democratic state.

The following excerpts from the Records of the Constitutional Commission show the intent of the Commissioners in emphasizing “democratic” in Section 1, Article II, in light of the provisions of the Constitution on initiative, recall, referendum and people’s organizations:

MR. SUAREZ. . . . May I call attention to Section 1. I wonder who among the members of the committee would like to clarify this question regarding the use of the word “democratic” in addition to the word “republican.” Can the honorable members of the committee give us the reason or reasons for introducing this additional expression? Would the committee not be satisfied with the use of the word “republican”? What prompted it to include the word “democratic”?

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MR. NOLLEDO. Madam President, I think as a lawyer, the Commissioner knows that one of the manifestations of republicanism is the existence of the Bill of Rights and periodic elections, which already indicates that we are a democratic state. Therefore, the addition of “democratic” is what we call “pardonable redundancy” the purpose being to emphasize that our country is republican and democratic at the same time. . . . In the 1935 and 1973 Constitutions, “democratic” does not appear. I hope the Commissioner has no objection to that word.

MR. SUAREZ. No, I would not die for that. If it is redundant in character but it is for emphasis of the people’s rights, I would have no objection. I am only trying to clarify the matter.[24] (emphasis supplied)

In other portions of the Records, Commissioner Nollado explains the significance of the word “democratic”, viz:

MR. NOLLEDO. I am putting the word “democratic” because of the provisions that we are now adopting which are covering consultations with the people. For example, we have provisions on recall, initiative, the right of the people even to participate in lawmaking and other instances that recognize the validity of interference by the people through people’s organizations . . . [25]

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MR. OPLE. The Committee added the word “democratic” to “republican,” and, therefore, the first sentence states: “The Philippines is a republican and democratic state.”

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?

MR. NOLLEDO. Madam President, that question has been asked several times, but being the proponent of this amendment, I would like the Commissioner to know that “democratic” was added because of the need to

emphasize people 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."

MR. OPLE. I thank the Commissioner. That is a very clear answer and I think it does meet a need. . .

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MR. NOLLEDO. According to Commissioner Rosario Braid, "democracy" here is understood as participatory democracy.[26] (emphasis supplied)

The following exchange between Commissioners Sarmiento and Azcuna is of the same import:

MR. SARMIENTO. When we speak of republican democratic state, are we referring to representative democracy?

MR. AZCUNA. That is right.

MR. SARMIENTO. So, why do we not retain the old formulation under the 1973 and 1935 Constitutions which used the words "republican state" because "republican state" would refer to a democratic state where people choose their representatives?

MR. AZCUNA. We wanted to emphasize the participation of the people in government.

MR. SARMIENTO. But even in the concept "republican state," we are stressing the participation of the people. . . So the word "republican" will suffice to cover popular representation.

MR. AZCUNA. Yes, the Commissioner is right. However, the committee felt that in view of the introduction of the aspects of direct democracy such as initiative, referendum or recall, it was necessary to emphasize the democratic portion of republicanism, of representative democracy as well. So, we want to add the word "democratic" to emphasize that in this new Constitution there are instances where the people would act directly, and not through their representatives.[27] (emphasis supplied)

V. Elections and the Right to Vote

A. Theory

The electoral process is one of the linchpins of a democratic and republican framework because it is through the act of voting that government by consent is secured.[28] Through the ballot, people express their will on the defining issues of the day and they are able to choose their leaders[29] in accordance with the fundamental principle of representative democracy that the people should elect whom they please to govern them.[30] Voting has an important instrumental value in preserving the viability of constitutional democracy.[31] It has traditionally been taken as a prime indicator of democratic participation.[32]

The right to vote or of suffrage is "an important political right appertaining to citizenship. Each individual qualified to vote is a partake of popular sovereignty." [33] In *People v. Corral*, [34] we held that "(t)he modern conception of suffrage is that voting is a function of government. The right to vote is not a natural right but it is a right created by law. Suffrage is a privilege granted by the State to such persons as are most likely to exercise it for the public good." The 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 constitution.[35] In *Geronimo v. Ramos, et al.*, [36] we held that the 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.[37] The U.S. Supreme Court recognized in *Yick Wo v. Hopkins*[38] that voting is a “fundamental political right, because [it is] preservative of all rights.” In *Wesberry v. Sanders*,[39] the U.S. Supreme Court held that “no 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.” Voting makes government more responsive to community and individual needs and desires. Especially for those who feel disempowered and marginalized or that government is not responsive to them, meaningful access to the ballot box can be one of the few counterbalances in their arsenal.[40]

Thus, elections are substantially regulated for them to be fair and honest, for order rather than chaos to accompany the democratic processes.[41] This Court has consistently ruled from as early as the oft-cited 1914 case of *Gardiner v. Romulo*[42] that the purpose of election laws is to safeguard the will of the people, the purity of elections being one of the most important and fundamental requisites of popular government. We have consistently made it clear that we frown upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[43] 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.[44] As the right to vote in a free and unimpaired manner is preservative of other basic civil and political rights, Chief Justice Warren, speaking for the U.S. Supreme Court in *Reynolds v. Sims*[45] cautioned that any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. It was to promote free, orderly and honest elections and to preserve the sanctity of the right to vote that the Commission on Elections was created.[46] The 1987 Constitution mandates the COMELEC to ensure “free, orderly, honest, peaceful, and credible elections.”[47]

B. History of Suffrage in the Philippines

In primitive times, the choice of who will govern the people was not based on democratic principles. Even then, birth or strength was not the only basis for choosing the chief of the tribe. When an old chief has failed his office or committed wrong or has aged and can no longer function, the members of the tribe could replace him and choose another leader.[48] Among the Muslims, a council or *ruma bechara* chooses the sultan. An old sultan may appoint his successor, but his decision is not absolute. Among the criteria for choosing a sultan were age, blood, wealth, fidelity to Islamic faith and exemplary character or personality.[49] In times of crises, the community may choose its leader voluntarily, irrespective of social status. By consensus of the community, a serf or slave may be voted the chief on account of his ability.

As far back as the Spanish regime, the Filipinos did not have a general right of suffrage.[50] It was only in the Malolos Constitution of 1899 that the right of suffrage was recognized;[51] it was a by-product of the Filipinos’ struggle against the Spanish colonial government and an offshoot of Western liberal ideas on civil government and individual rights.[52] The life of the Malolos Constitution was, however, cut short by the onset of the American regime in the Philippines. But the right of suffrage was reiterated in the Philippine Bill of 1902.[53] The first general elections were held in 1907[54] under the first Philippine Election Law, Act No. 1582, which took effect on January 15, 1907. This law was elitist and discriminatory against women. The right of suffrage was carried into the Jones Law of 1916.[55] Whereas previously, the right was granted only by the Philippine Legislature and thus subject to its control, the 1935 Constitution elevated suffrage to a constitutional right.[56] It also provided for a plebiscite on the issue of whether the right of suffrage should be extended to women. On April 30, 1937, the plebiscite was held and the people voted affirmatively. In the 1973 Constitution,[57] suffrage was recognized not only as a right, but was imposed as a duty to broaden the electoral base and make democracy a reality through increased popular participation in government. The voting age was lowered, the literacy

requirement abolished, and absentee voting was legalized. [58] The 1987 Constitution likewise enshrines the right of suffrage in Article V, but unlike the 1973 Constitution, it is now no longer imposed as a duty.[59] The 1948 Universal Declaration of Human Rights[60] and the 1976 Covenant on Civil and Political Rights[61] also protect the right of suffrage.

VI. Voter Information:

Prerequisite to a Meaningful Vote in a Genuinely Free,

Orderly and Honest Elections in a Working Democracy

A. Democracy, information and discourse on public matters

1. U.S. jurisdiction

For the right of suffrage to have a value, the electorate must be informed about public matters so that when they speak through the ballot, the knowledgeable voice and not the ignorant noise of the majority would prevail. Jefferson admonished Americans to be informed rather than enslaved by ignorance, saying that “(i)f a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be.”[62] Jefferson emphasized the importance of discourse in a democracy, viz:

In every country where man is free to think and to speak, differences of opinion arise from difference of perception, and the imperfection of reason; but these differences when permitted, as in this happy country, to purify themselves by discussion, are but as passing clouds overspreading our land transiently and leaving our horizon more bright and serene.[63]

Other noted political philosophers like John Stuart Mill conceived of the “marketplace of ideas” as a necessary means of testing the validity of ideas, viz:

(N)o one’s opinions deserve the name of knowledge, except so far as he has either had forced upon him by others, or gone through of himself, the same mental process which could have been required of him in carrying on an active controversy with opponents.[64]

In the same vein, political philosopher Alexander Meiklejohn, in his article “Free Speech Is An Absolute,” stressed that, “(s)elf-government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express.”[65] To vote intelligently, citizens need information about their government.[66] Even during the diaper days of U.S. democracy, the Framers of the U.S. Constitution postulated that self-governing people should be well-informed about the workings of government to make intelligent political choices. In discussing the First Amendment, James Madison said: “The right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right....”[67] Thus, the United States, a representative democracy, has generally subscribed to the notion that public information and participation are requirements for a representative democracy where the electorate make informed choices. The First Amendment to the U.S. Constitution, which establishes freedom of the press and speech supports this proposition. The First Amendment’s jealous protection of free expression is largely based on the ideas that free and open debate will generate truth and that only an informed electorate can create an effective democracy.[68]

The First Amendment reflects the Framers’ belief that public participation in government is inherently positive. An informed citizenry is a prerequisite to meaningful participation in government. Thus, the U.S. Congress embraced this principle more concretely with the passage of the Freedom of Information Act of 1966 (FOIA).[69] The law enhanced public access to and understanding of the operation of federal agencies with respect to both the

information held by them and the formulation of public policy.[70] In the leading case on the FOIA, *Environmental Protection Agency v. Mink*,[71] Justice Douglas, in his dissent, emphasized that the philosophy of the statute is the citizens' right to be informed about "what their government is up to." [72] In *Department of Air Force v. Rose*,[73] the U.S. Supreme Court acknowledged that the basic purpose of the FOIA is "to open agency action to the light of public scrutiny. These rulings were reiterated in the 1994 case of *Department of Defense, et al. v. Federal Labor Relations Authority, et al.*[74] Be that as it may, the U.S. Supreme Court characterized this freedom of information as a statutory and not a constitutional right in *Houchins v. KQED, Inc., et al.*,[75] viz: "there is no constitutional right to have access to particular government information, or to require openness from the bureaucracy. . . . The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act." [76] Neither the courts nor Congress has recognized an affirmative constitutional obligation to disclose information concerning governmental affairs; the U.S. Constitution itself contains no language from which the duty could be readily inferred.[77] Nevertheless, the U.S. federal government, the fifty states and the District of Columbia have shown their commitment to public access to government-held information. All have statutes that allow varying degrees of access to government records.[78]

While the right of access to government information or the "right to know" is characterized as a statutory right, the right to receive information[79] was first identified by the U.S. Supreme Court as a constitutional right in the 1936 case of *Grosjean v. American Press Company*. [80] The Court also stated that the First Amendment protects the natural right of members of an organized society, united for their common good, to impart and acquire information about their common interests. Citing Judge Cooley, the Court held that free and general discussion of public matters is essential to prepare the people for an intelligent exercise of their rights as citizens.[81] The Court also noted that an informed public opinion is the most potent of all restraints upon misgovernment. Many consider *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*[82] the seminal "right to receive" case.[83] In this 1976 decision, the Court struck down a Virginia statute forbidding pharmacists from advertising the prices of prescription drugs. Writing for the majority, Justice Blackmun held that the free flow of information about commercial matters was necessary to ensure informed public decision-making. He reasoned that the protection of the First Amendment extends not only to the speaker, but to the recipient of the communication. Although the case dealt with commercial speech, the majority opinion made it clear that the constitutional protection for receipt of information would apply with even more force when more directly related to self-government and public policy.[84]

In 1982, the U.S. Supreme Court highlighted the connection between self-government and the right to receive information in *Board of Education v. Pico*. [85] This case involved a school board-ordered removal of books from secondary school libraries after the board classified the book as "anti-American, anti-Christian, anti-Semitic, and just plain filthy".[86] Justice Brennan, writing for a three-justice plurality, emphasized the First Amendment's role in assuring widespread dissemination of ideas and information. Citing *Griswold v. Connecticut*, [87] the Court held that "(t)he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge." The Court noted that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom." It then cited Madison's admonition that, "(a) popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." [88]

The U.S. Supreme Court has reiterated, in various contexts, the idea that "the Constitution protects the right to receive information and ideas." [89] *Kleindienst v. Mandel* [90] acknowledged a First Amendment right to receive information but deferring to Congress' plenary power to exclude aliens. *Lamont v. Postmaster General* [91] invalidated a statutory requirement that foreign mailings of "communist political propaganda" be delivered only

upon request by the addressee. *Martin v. City of Struthers*[92] invalidated a municipal ordinance forbidding door-to-door distribution of handbills as violative if the First Amendment rights of both the recipients and the distributors.[93]

Whether the “right to know” is based on a statutory right provided by the FOIA or a constitutional right covered by the First Amendment, the underlying premise is that an informed people is necessary for a sensible exercise of the freedom of speech, which in turn, is necessary to a meaningful exercise of the right to vote in a working democracy. In 1927, Justice Louis Brandeis gave the principle behind the First Amendment its classic formulation, viz:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.[94]

The U.S. Supreme Court also held in *Stromberg v. California*[95] that the First Amendment provides “the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means...”[96] The Amendment is “the repository of...self-governing powers”[97] as it provides a peaceful means for political and social change through public discussion. In *Mills v. State of Alabama*,[98] it ruled that there may be differences about interpretations of the First Amendment, but there is practically universal agreement that a major purpose of the Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, all such matters relating to political processes.[99] Justice William J. Brennan summarized the principle succinctly in his opinion for the Court in *Garrison v. Louisiana*, viz: “...speech concerning public affairs is more than self-expression; it is the essence of self-government. (emphasis supplied)”[100]2. Philippine jurisdiction

The electorate’s right to information on public matters occupies a higher legal tier in the Philippines compared to the United States. While the right to information in U.S. jurisdiction is merely a statutory right, it enjoys constitutional status in Philippine jurisdiction. The 1987 Constitution not only enlarged the democratic space with provisions on the electorate’s direct exercise of sovereignty, but also highlighted the right of the people to information on matters of public interest as a predicate to good governance and a working democracy. The Bill of Rights sanctifies the right of the people to information under Section 7, Article III of the 1987 Constitution, viz:

Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. (emphasis supplied)

This provision on the right to information sans the phrase “as well as to government research data” made its maiden appearance in the Bill of Rights of the 1973 Constitution. The original draft of the provision presented to the 1971 Constitutional Convention merely said that access to official records and the right to information “shall be afforded the citizens as may be provided by law.” Delegate De la Serna pointed out, however, that the provision did not grant a self-executory right to citizens. He thus proposed the rewording of the provision to grant the right but subject to statutory limitations.[101] The 1973 Constitution thus provided in Section 6, Article IV, viz:

Sec. 6. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law.

The change in phraseology was important as in the pre-1973 case of *Subido v. Ozaeta*,[102] this Court held that freedom of information or freedom to obtain information for publication is not guaranteed by the constitution. In that case, the issue before the Court was whether the press and the public had a constitutional right to demand the examination of the public land records. The Court ruled in the negative but held that the press had a statutory right to examine the records of the Register of Deeds because the interest of the press was real and adequate.

As worded in the 1973 and 1987 Constitution, the right to information is self-executory. It is a public right where the real parties in interest are the people. Thus, every citizen has “standing” to challenge any violation of the right and may seek its enforcement.[103] The right to information, free speech and press and of assembly and petition and association which are all enshrined in the Bill of Rights are cognate rights for they all commonly rest on the premise that ultimately it is an informed and critical public opinion which alone can protect and uphold the values of democratic government.[104]

In “splendid symmetry”[105] with the right to information in the Bill of Rights are other provisions of the 1987 Constitution highlighting the principle of transparency in government. Included among the State Policies under Article II of the 1987 Constitution is the following provision, viz:

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest. (emphasis supplied)

Related to the above provision is Section 21 of Article XI, National Economy and Patrimony, which provides, viz:

Sec. 21. Foreign loans may be incurred in accordance with law and the regulation of the monetary authority. Information on foreign laws obtained or guaranteed by the Government shall be made available to the public. (emphasis supplied)

The indispensability of access to information involving public interest and government transparency in Philippine democracy is clearly recognized in the deliberations of the 1987 Constitutional Commission, viz:

MR. OPLE. Mr. Presiding Officer, this amendment is proposed jointly by Commissioners Ople, Rama, Trenas, Romulo, Regalado and Rosario Braid. It reads as follows: “SECTION 24. THE STATE SHALL ADOPT AND IMPLEMENT A POLICY OF FULL PUBLIC DISCLOSURE OF ALL ITS TRANSACTIONS SUBJECT TO REASONABLE SAFEGUARDS ON NATIONAL INTEREST AS MAY BE PROVIDED BY LAW.”

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In the United States, President Aquino has made much of the point that the government should be open and accessible to the public. This amendment is by way of providing an umbrella statement in the Declaration of Principles for all these safeguards for an open and honest government distributed all over the draft Constitution. It establishes a concrete, ethical principle for the conduct of public affairs in a genuinely open

democracy, with the people's right to know as the centerpiece.[106] (emphasis supplied)

Commissioners Bernas and Rama made the following observations on the principle of government transparency and the public's right to information:

FR. BERNAS. Just one observation, Mr. Presiding Officer. I want to comment that Section 6 (referring to Section 7, Article III on the right to information) talks about the right of the people to information, and corresponding to every right is a duty. In this particular case, corresponding to this right of the people is precisely the duty of the State to make available whatever information there may be needed that is of public concern. Section 6 is very broadly stated so that it covers anything that is of public concern. It would seem also that the advantage of Section 6 is that it challenges citizens to be active in seeking information rather than being dependent on whatever the State may release to them.

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MR. RAMA. There is a difference between the provisions under the Declaration of Principles and the provision under the Bill of Rights. The basic difference is that the Bill of Rights contemplates coalition (sic) (collision?) between the rights of the citizens and the State. Therefore, it is the right of the citizen to demand information. While under the Declaration of Principles, the State must have a policy, even without being demanded, by the citizens, without being sued by the citizen, to disclose information and transactions. So there is a basic difference here because of the very nature of the Bill of Rights and the nature of the Declaration of Principles.[107] (emphases supplied)

The importance of information in a democratic framework is also recognized in Section 24, Article II, viz:

Sec. 24. The State recognizes the vital role of communication and information in nation-building. (emphasis supplied).

Section 10 of Article XVI, General Provisions is a related provision. It states, viz:

Sec. 10. The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press. (emphasis supplied)

The sponsorship speech of Commissioner Braid expounds on the rationale of these provisions on information and communication, viz:

MS. ROSARIO BRAID. We cannot talk of the functions of communication unless we have a philosophy of communication, unless we have a vision of society. Here we have a preferred vision where opportunities are provided for participation by as many people, where there is unity even in cultural diversity, for there is freedom to have options in a pluralistic society. Communication and information provide the leverage for power. They enable the people to act, to make decisions, to share consciousness in the mobilization of the nation.[108] (emphasis supplied)

In *Valmonte v. Belmonte*,^[109] the Court had occasion to rule on the right to information of a lawyer, members of the media and plain citizens who sought from the Government Service Insurance System a "list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."^[110] In upholding the petitioners' right, the Court explained the rationale of the right to information in a democracy, viz:

This is not the first time that the Court is confronted with a controversy directly involving the constitutional right to information. In *Tañada v. Tuvera*, G.R. No. 63915, April 2, 1985, 136 SCRA 27 (involving the need

for adequate notice to the public of the various laws which are to regulate the actions and conduct of citizens) and in the recent case of *Legaspi v. Civil Service Commission*, G.R. No. 72119, May 29, 1987, 150 SCRA 530 (involving the concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles), the Court upheld the people's constitutional right to be informed of matters of public interest and ordered the government agencies concerned to act as prayed for by the petitioners.

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An informed citizenry with access to the diverse currents in political, moral and artistic thought and data relative to them, and the free exchange of ideas and discussion of issues thereon is vital to the democratic government envisioned under our Constitution. The cornerstone of this republican system of government is delegation of power by the people to the State. In this system, governmental agencies and institutions operate within the limits of the authority conferred by the people. Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom the power had been delegated...

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...The right of access to information ensures that these freedoms are not rendered nugatory by the government's monopolizing pertinent information. For an essential element of these freedoms is to keep open in continuing dialogue or process of communication between the government, and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in a discussion are aware of the issues and have access to information relating thereto can such bear fruit.

The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech and of the press. Far from it. The right to information goes hand-in-hand with the constitutional policies of full public disclosure (footnote omitted) and honesty in the public service (footnote omitted). It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.[111] (emphases supplied)

The Court made a similar ruling in *Gonzales v. Narvasa*[112] which involved the petitioner's request addressed to respondent Executive Secretary Ronaldo B. Zamora for the "names of the executive officials holding multiple positions in government, copies of their appointments, and a list of the recipients of luxury vehicles seized by the Bureau of Customs and turned over to Malacañang." [113] The respondent was ordered to furnish the petitioner the information requested. The Court held, viz:

Under both the 1973 (footnote omitted) and 1987 Constitution, this (the right to information) is a self-executory provision which can be invoked by any citizen before the courts...

Elaborating on the significance of the right to information, the Court said in *Baldoza v. Dimaano* (71 SCRA 14 [1976]...) that "[t]he incorporation of this right in the Constitution is a recognition of the fundamental role of free exchange of information in a democracy. There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times." [114] (emphases supplied)

The importance of an informed citizenry in a working democracy was again emphasized in *Chavez v. Public Estates Authority and Amari Coastal Bay Development Corporation*[115] where we held, viz:

The State policy of full transparency in all transactions involving public interest reinforces the people's right to information on matters of public concern.

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These twin provisions (on right to information under Section 7, Article III and the policy of full public disclosure under Section 28, Article II) of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are essential to the exercise of freedom of expression. If the government does not disclose its official acts, transactions and decisions to citizens, whatever citizens may say, even if expressed without any restraint, will be speculative and amount to nothing. These twin provisions are also essential to hold public officials "at all times x x x accountable to the people," (footnote omitted) for unless citizens have the proper information, they cannot hold public officials accountable for anything. Armed with the right information, citizens can participate in public discussions leading to the formulation of government policies and their effective implementation. An informed citizenry is essential to the existence and proper functioning of any democracy.[116] (emphases supplied)

B. Elections and the voters' right to information on the elections

1. U.S. Jurisdiction

An informed citizenry's opinions and preferences have the most impact and are most clearly expressed in elections which lie at the foundation of a representative democracy. The electorate's true will, however, can only be intelligently expressed if they are well informed about the time, place, manner of conduct of the elections and the candidates therein. Without this information, democracy will be a mere shibboleth for voters will not be able to express their true will through the ballot.

In *Duquette v. Merrill*,^[117] which the ponencia cites by reference to 26 American Jurisprudence 2d §292,^[118] a vacancy in the office of County Treasurer in York County occurred on July 24, 1944 upon the death of the incumbent Maynard A. Hobbs. The vacancy was filled in accordance with the law providing that the governor may appoint a resident of the county who shall be treasurer until the 1st day of January following the next biennial election, at which said election a treasurer shall be chosen for the remainder of the term, if any. The next biennial election was held on September 11, 1944. In the June 1944 primary election (prior to the death of Hobbs) where nominations of candidates for the upcoming biennial elections were made, there was no nomination for the office of County Treasurer as Hobbs' term was yet to expire on January 1947. Neither was a special primary election ordered by proclamation of the Governor after Hobbs' death. Nor were other legal modes of nominating candidates such as through nomination of a political party, convention of delegates or appropriate caucus resorted to. Consequently, in the official ballot of the September 11, 1944 election, there was no provision made for the selection of a County Treasurer to fill the vacancy for the unexpired term. The name of the office did not appear on the ballot. Petitioner Duquette, however, claims that he was elected County Treasurer in the special election because in the City of Biddeford, the largest city in York County, 1,309 voters either wrote in the title of the office and his name thereunder, or used a "sticker" of the same import and voted for him. At the September 11, 1944 biennial election, there were approximately 22,000 ballots cast, but none included the name of the petitioner except for the 1,309 in Biddeford. In holding that the special election was void, the Maine Supreme Judicial Court made the following pronouncements, the first paragraph of which was cited by the ponencia in the case at bar, viz:

Although there is not unanimity of judicial opinion as to the requirement of official notice, if the vacancy is to be filled at the time of a general election, yet it appears to be almost universally held that if the great body of the electors are misled by the want of such notice and are instead led to believe that no such election is in fact to be held, an attempted choice by a small percentage of the voters is void. *Wilson v. Brown*, 109 Ky 229, 139

Ky 397, 58 SW 595; Wooton v. Wheeler, 149 Ky 62, 147 SW 914; Secord v. Foutch, 44 Mich 89, 6 NW 110; Bolton v. Good, 41 NJL 296 (other citations omitted).

Notice to the electors that a vacancy exists and that an election is to be held to fill it for the unexpired term, is essential to give validity to the meeting of an electoral body to discharge that particular duty, and is also an essential and characteristic element of a popular election. Public policy requires that it should be given in such form as to reach the body of the electorate. Here there had been no nominations to fill the vacancy, either by the holding of a special primary election, or by nomination by county political conventions or party committees. The designation of the office to be filled was not upon the official ballot. As before noted, except for the vacancy, it would have no place there, as the term of office of the incumbent, if living, would not expire until January 1, 1947.[119] (emphases supplied)

As early as the 1897 case of *People ex rel. Dix v. Kerwin*,^[120] the requirement of notice in an election has been recognized, viz:

... We are not prepared to hold that this statute (requiring the giving of notice) is, under all circumstances and at all times, so far mandatory that a failure to observe its requirements will defeat an election otherwise regularly holden. There are many cases which hold that elections regularly held and persons regularly voted for on nominations made where there has been failure to observe some specific statutory requirement will not thereby be necessarily defeated and the direction may, because of the excusing circumstances, be held directory rather than mandatory. We do not believe the circumstances of the present case, as they are now exhibited, bring it all within this rule. The theory of elections is that there shall be due notice given to the voters, and that they must be advised either by a direct notice published by the clerk, as provided by statute, or by proceedings taken by the voters and the people generally in such a way as that it may be fairly inferred that it was generally and thoroughly well understood that a particular office was to be filled at the election, so that the voters should act understandingly and intelligently in casting their ballots.

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Since there was no notice published according to the statute, we may not assume that the nomination was regularly made, or that the voters were duly notified that the office was to be filled at that general election, nine days afterwards. It has been generally held that some notice, regular in its form, and pursuant to the requirements of law, must be given as a safeguard to popular elections, that the people may be informed for what officers they are to vote. Of course, it might easily be true, as has already been suggested, that, if nominations had been made for an office, certificates regularly filed, and tickets regularly printed, even though the clerk had failed to publish his notice, there would be no presumption that the body of the voters were uninformed as to their rights and as to the positions which were to be filled. *People v. Porter*, 6 Cal. 26; *Secord v. Foutch*, 44 Mich 89, 6 N.W. 110; *Adsit v. Osmun*, 84 Mich. 420, 48 N.W. 31; *Allen v. Glynn*, 17 Colo. 338, 29 Pac. 670; *Stephens v. People*, 89 111. 337.[121](emphases supplied)

Similarly, in *Griffith v. Mercer County Court, et al.*,^[122] it was held, viz:

There is a clear distinction between the case of a vacancy which is to be filled at a special election to be held at a time and place to be appointed by some officer or tribunal, authorized by statute to call it, and a case where the statute itself provides for filling a vacancy at the next general election after it occurs. In such case nearly all the authorities hold that if the body of electors do in fact know the vacancy exists, and candidates are regularly nominated by the various political parties to fill it, and the candidates receive most of the votes cast, such election is valid, even though no notice thereof was published in a manner provided by the statute. It would be hypertechnical and unreasonable to hold that a failure to comply literally with the statute in such case would avoid the election.[123] (emphasis supplied)

In *Duquette*, *Kerwin* and *Griffith*, as in a great majority of cases on the state level, the mere fact that the election to fill a vacancy occasioned by death, resignation, removal, or the like is held at the time of a general election in

accordance with a constitutional or statutory provision, is not regarded as sufficient in itself to validate the election if no notice of the election was given; it has been held that in such a case, it must be shown that a sufficient part of the electors have actual notice that the vacancy is to be filled. The fact that a great percentage of voters cast their votes despite the failure of giving proper notice of the elections appears to be the most decisive single factor to hold that sufficient actual notice was given.[124] These doctrines were reiterated in *Lisle, et al. v. C.L. Schooler*[125] where it was held that mere allegation that “many” voters were informed that a special election to fill a vacancy was being held was unsatisfactory proof of sufficient notice.

2. Philippine jurisdiction

In our jurisdiction, it is also the rule that the exercise of the right of suffrage should be an enlightened one, hence, based on relevant facts, data and information. It is for this reason that the choice of representatives in a democracy cannot be based on lottery or any form of chance. The choice must be based on enlightened judgment for democracy cannot endure the rule and reign of ignorance. This principle was stressed by the Court in *Tolentino v. Commission on Elections*.[126] The issue before the Court was whether the Constitutional Convention of 1971 had the power to call for a plebiscite for the ratification by the people of a partial constitutional amendment. The amendment was the proposal to lower the voting age to 18 but with the caveat that “(t)his partial amendment, which refers only to age qualification for the exercise of suffrage shall be without prejudice to other amendments that will be proposed in the future by the 1971 Constitutional Convention on other portions of the amended Section or on other portions of the entire Constitution.” The Court ruled in the negative, emphasizing the necessity for the voter to be afforded sufficient time and information to appraise the amendment, viz:

. . . No one knows what changes in the fundamental principles of the constitution the Convention will be minded to approve. To be more specific, we do not have any means of foreseeing whether the right to vote would be of any significant value at all. Who can say whether or not later on the Convention may decide to provide for varying types of voters for each level of the political units it may divide the country into. The root of the difficulty in other words, lies in that the Convention is precisely on the verge of introducing substantial changes, if not radical ones, in almost every part and aspect of the existing social and political order enshrined in the present Constitution. How can a voter in the proposed plebiscite intelligently determine the effect of the reduction of the voting age upon the different institutions which the Convention may establish and of which presently he is not given any idea?

We are certain no one can deny that in order that a plebiscite for the ratification of an amendment to the Constitution may be validly held, it must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole. In the present state of things, where the Convention has hardly started considering the merits of hundreds, if not thousands, of proposals to amend the existing Constitution, to present to the people any single proposal or a few of them cannot comply with this requirement.[127] (emphasis supplied)

The need for the voter to be informed about matters which have a bearing on his vote was again emphasized by the Court in *UNIDO v. Commission on Elections*.[128] This case involved the amendments to the 1973 Constitution proposed by the Batasang Pambansa in 1981. The Court reiterated that the more people are adequately informed about the proposed amendments, their exact meaning, implications and nuances, the better. We held, viz:

To begin with, we cannot agree with the restrictive literal interpretation the Solicitor General would want to give to the “free, orderly and honest elections” clause of Section 5, Article XI-C above-quoted. Government Counsel posits that the said clause refers exclusively to the manner in which the elections are conducted, that is to say, with the manner in which the voters are supposed to be allowed to vote. Perhaps, such a theory may

hold insofar as ordinary elections of officials are concerned. But the Court views the provision as applicable also to plebiscites, particularly one relative to constitutional amendments. Be it borne in mind that it has been one of the most steadfast rulings of this Court in connection with such plebiscites that it is indispensable that they be properly characterized to be fair submission - by which is meant that the voters must of necessity have had adequate opportunity, in the light of conventional wisdom, to cast their votes with sufficient understanding of what they are voting on. We are of the firm conviction that the charter's reference to honest elections connotes fair submission in a plebiscite. (emphasis supplied)

Similarly, the Court ruled in *Sanidad v. COMELEC*[129] that plebiscite issues are matters of public concern and importance. The people's right to be informed and to be able to freely and intelligently make a decision would be better served by access to an unabridged discussion of the issues, including the forum.

It cannot be overemphasized that an informed electorate is necessary for a truly free, fair and intelligent election. The voting age was lowered from 21 years to 18 years because the youth of 18 to 21 years did not differ in political maturity,[130] implying that political maturity or the capacity to discern political information is necessary for the exercise of suffrage. It is for this obvious reason that minors and the insane are not allowed to vote. Likewise, the literacy test for the right to vote was abolished because as explained by the Committee on Suffrage and Electoral Reforms of the 1971 Constitutional Convention, "the requirement to read and write was written into our constitution at a time when the only medium of information was the printed word and even the public meetings were not as large and successful because of the absence of amplifying equipment. It is a fact that today the vast majority of the population learn about national matters much more from the audio-visual media, namely, radio and television, and public meetings have become much more effective since the advent of amplifying equipment." Again, the necessity of information relevant to an election is highlighted. Similarly, in the 1986 Constitutional Commission, Commissioner Bernas, in justifying enfranchisement of the illiterates, spoke of their access to information relevant to elections, viz:

If we look at...the communication situation in the Philippines now, the means of communication that has the farthest reach is AM radio. People get their information not from reading newspapers but from AM radio - farmers while plowing, and vendors while selling things listen to the radio. Without knowing how to read and write, they are adequately informed about many things happening in the country.[131]

Several election cases, albeit not involving an issue similar to the case at bar, affirm the necessity of an informed electorate in holding free, intelligent and clean elections. In *Blo Umpar Adiong v. Commission on Elections*[132] where this Court nullified a portion of a COMELEC Resolution prohibiting the posting of candidates' decals and stickers on "mobile" places and limiting their location to authorized posting areas, we held, viz:

We have adopted the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials. (*New York Times Co. v. Sullivan*, 376 U.S. 254, 11 L.Ed. 686 [1964]...) Too many restrictions will deny to people the robust, uninhibited, and wide open debate, the generating of interest essential if our elections will truly be free, clean and honest.

We have also ruled that the 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. (*Mutuc v. Commission on Elections*, 36 SCRA 228 [1970]).

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When faced with border line situations where freedom to speak by a candidate or party and freedom to know on the part of the electorate are invoked against actions intended for maintaining clean and free elections, the police, local officials and COMELEC should lean in favor of freedom. For in the ultimate analysis, the

freedom of the citizen and the State's power to regulate are not antagonistic. There can be no free and honest elections if in the efforts to maintain them, the freedom to speak and the right to know are unduly curtailed.

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...we have to consider the fact that in the posting of decals and stickers on cars and other moving vehicles, the candidate needs the consent of the owner of the vehicle. In such a case, the prohibition would not only deprive the owner who consents to such posting of the decals and stickers the use of his property but more important, in the process, it would deprive the citizen of his right to free speech and information:

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. (*Martin v. City of Struthers, Ohio*, 319 U.S. 141; 87 L. ed. 1313 [1943]).[133]

To facilitate the people's right to information on election matters, this Court, in *Telecommunications and Broadcast Attorneys of the Philippines, Inc., et al. v. COMELEC*[134] upheld the validity of COMELEC's procurement of print space and airtime for allocation to candidates, viz:

With the prohibition on media advertising by candidates themselves, the COMELEC Time and COMELEC Space are about the only means through which candidates can advertise their qualifications and programs of government. More than merely depriving candidates of time for their ads, the failure of broadcast stations to provide airtime unless paid by the government would clearly deprive the people of their right to know. Art. III, § 7 of the Constitution provides that 'the right of the people to information on matters of public concern shall be recognized...' [135] (emphasis supplied)

The importance of the people's acquisition of information can be gleaned from several provisions of the Constitution under Article IX (C), The Commission on Elections. Section 4 provides that the COMELEC is given the power to "supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges or concession granted by the Government... Such supervision or regulation shall aim to ensure equal opportunity, time, and space and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful and credible elections. Section 6 provides that, "(a) free and open party system shall be allowed to evolve according to the free choice of the people". Section 2(5) of the same article requires political parties, organizations and coalitions to present their platform or program of government before these can be registered. In the robust and wide open debate of the electorate, these programs of government are important matters for discussion.

The deliberations of the Constitutional Commission on whether voting of Congressmen should be by district or province also evince a clear concern for intelligent voting, viz:

SR. TAN. Mr. Presiding Officer, I think one of the drawbacks of our political system, especially in the campaign, is that many of us vote by personality rather than by issue. So I am inclined to believe that in the elections by district, that would be lessened because we get to know the persons running more intimately. So we know their motivation, their excesses, their weaknesses and there would be less chance for the people to vote by personality. I was wondering whether the Commission shares the same observation.

MR. DAVIDE. Mr. Presiding Officer, if it would be by province, the vote would no longer be personalities but more on issues, because the relationship is not really very personal. Whereas, if it would be by district, the vote on personality would be most impressive and dominant.

SR. TAN. I cannot quite believe that. It would be like a superstar running around.

MR. DAVIDE. For instance, we have a district consisting of two municipalities. The vote would be more on personalities. It is a question of attachment; you are the godson or the sponsor of a baptism, like that. But if you will be voted by province, it's your merit that will be counted by all others outside your own area. In short, the more capable you are, the more chance you have of winning provincewide.[136]

Several provisions of our election laws also manifest a clear intent to facilitate the voters' acquisition of information pertaining to elections to the end that their vote would truly reflect their will. Section 52(j) of Article VII of B.P. Blg. 881 or the Omnibus Election Code gives the COMELEC the following power and duty:

(j) Carry out a continuing and systematic campaign through newspapers of general circulation, radios and other media forms to educate the public and fully inform the electorate about election laws, procedures, decisions, and other matters relative to the work and duties of the Commission and the necessity of clean, free, orderly and honest electoral processes. (Sec. 185(k), 1978 EC)

(k) Enlist non-partisan groups or organizations of citizens from the civic, youth, professional, educational, business or labor sectors known for their probity, impartiality and integrity...Such groups or organizations...shall perform the following specific functions and duties:

A. Before Election Day:

- Undertake an information campaign on salient features of this Code and help in the dissemination of the orders, decisions and resolutions of the Commission relative to the forthcoming election. (emphasis supplied)

Section 87 of Article X of B.P. Blg. 881 also provides, viz:

Section 87. xxx

Public Forum. - The Commission shall encourage non-political, non-partisan private or civic organizations to initiate and hold in every city and municipality, public for at which all registered candidates for the same office may simultaneously and personally participate to present, explain, and/or debate on their campaign platforms and programs and other like issues... (emphasis supplied)

Section 93 of the same Article provides, viz:

Section 93. Comelec information bulletin. - The Commission shall cause the printing, and supervise the dissemination of bulletins to be known as "Comelec Bulletin" which shall be of such size as to adequately contain the picture, bio-data and program of government of every candidate. Said bulletin shall be disseminated to the voters or displayed in such places as to give due prominence thereto. (emphasis supplied)

Of the same import is Section 25 of R.A. No. 8436, "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 Elections and Subsequent Electoral Exercises" which provides, viz:

Section 25. Voters' Education. - The Commission together with and in support of accredited citizens' arms shall carry out a continuing and systematic campaign through newspapers of general circulation, radio and other media forms, as well as through seminars, symposia, fora and other nontraditional means to educate the public and fully inform the electorate about the automated election system and inculcate values on honest, peaceful and orderly elections. (emphasis supplied)

Similarly, R.A. No. 9006, "An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful and Credible Elections through Fair Election Practices," approved a few months before the May 2001 elections or on February 12, 2001 provides in Section 6.4, viz:

Sec. 6.4. xxx xxx xxx

In all instances, the COMELEC shall supervise the use and employment of press, radio and television facilities

insofar as the placement of political advertisements is concerned to ensure that candidates are given equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in the Omnibus Election Code and Republic Act No. 7166 on election spending. (emphasis supplied)

The Omnibus Election Code also provides for procedures and requirements that make the election process clear and orderly to avoid voter confusion. Article IX of the Code provides, viz:

Section 73. Certificate of candidacy.- No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

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No person shall be eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them...

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Certificates of Candidacy; Certified List of Candidates. -...

...the Commission shall cause to be printed certified lists of candidates containing the names of all registered candidates for each office to be voted for in each province, city or municipality immediately followed by the nickname or stage name of each candidate duly registered in his certificate of candidacy and his political affiliation, if any. Said list shall be posted inside each voting booth during the voting period.

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The names of all registered candidates immediately followed by the nickname or stage name shall also be printed in the election returns and tally sheets (R.A. No. 6646, Sec. 4)

Section. 74. Contents of certificate of candidacy. The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office;...

Article XVI, Section 181, also provides, viz:

Section 181. Official ballots. -

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(b) The official ballot shall also contain the names of all the officers to be voted for in the election, allowing opposite the name of each office, sufficient space or spaces with horizontal lines where the voter may write the name or names of individual candidates voted for by him.

In the case of special elections, the need for notice and information is unmistakable under Section 7 of the Omnibus Election Code of the Philippines, as amended by R.A. No. 7166, which provides, viz:

Sec. 7. Call for special election. - In case a permanent vacancy shall occur in the Senate or House of Representatives at least one (1) year before the expiration of the term, the Commission shall call and hold a special election to fill the vacancy not earlier than sixty (60) days nor longer than ninety (90) after the occurrence of the vacancy. However, in case of such vacancy in the Senate, the special election shall be held simultaneously with the succeeding regular election. (R.A. No. 7166, Sec. 4)

The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6, and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election. (R.A. No. 7166, Sec. 4)

The Commission shall send sufficient copies of its resolution for the holding of the election to its provincial election supervisors and election registrars for dissemination, who shall post copies thereof in at least three conspicuous places preferably where public meetings are held in each city or municipality affected. (1978 EC, Sec. 8) (emphasis supplied)

In *Hassan v. COMELEC, et al.*,^[137] we ruled that constituents could not be charged with notice of a second special elections held only two days after the failure of the special election. This case involved the May 8, 1995 regular local elections in Madalum, Lanao del Sur. Due to the threats of violence and terrorism in the area, there was a failure of election in six out of twenty-four precincts in Madalum. A special elections was set on May 27, 1995 but the Board of Election Inspectors failed to report for duty due to the threats of violence. The Monitoring Supervising Team of the COMELEC reset the special elections to May 29, 1995 in a school 15 kilometers away from the designated polling places. In ruling that the May 29 special elections was invalid, the Court ruled, viz:

We cannot agree with the COMELEC that petitioner, his followers or the constituents must be charged with notice of the special elections to be held because of the failure of the two (2) previous elections. To require the voters to come to the polls on such short notice was highly impracticable. In a place marred by violence, it was necessary for the voters to be given sufficient time to be notified of the changes and prepare themselves for the eventuality.

It is essential to the validity of the election that the voters have notice in some form, either actual or constructive of the time, place and purpose thereof. (*Furste v. Gray*, 240 Ky 604, 42 SW 2d 889; *State ex. rel. Stipp v. Colliver* (MO) 243 SW 2d 344.) The time for holding it must be authoritatively designated in advance. The requirement of notice even becomes stricter in cases of special elections where it was called by some authority after the happening of a condition precedent, or at least there must be a substantial compliance therewith so that it may fairly and reasonably be said that the purpose of the statute has been carried into effect. (*State ex. rel. Stipp v. Colliver*, supra). The sufficiency of notice is determined on whether the voters generally have knowledge of the time, place and purpose of the elections so as to give them full opportunity to attend the polls and express their will or on the other hand, whether the omission resulted in depriving a sufficient number of the qualified electors of the opportunity of exercising their franchise so as to change the result of the election. (*Housing Authority of County of Kings v. Peden*, 212 Cal App 2d 276, 28 Cal Rptr, other citations omitted)

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...even in highly urbanized areas, the dissemination of notices poses to be a problem. In the absence of proof that actual notice of the special elections has reached a great number of voters, we are constrained to consider the May 29 elections as invalid...(emphases supplied)

Although this case did not involve a special election held simultaneously with a general election by mandate of law as in the case bar, the doctrine that can be derived from this case is that the electorate must be informed of the special election as proved by official or actual notice.

VII. Application of the Principles of Democracy, Republicanism

Freedom of Information and Discourse to the Case at Bar

The 1987 Constitution, with its declaration that the Philippines is not only a republican but also a democratic state, and its various provisions broadening the space for direct democracy unmistakably show the framers' intent to give the Filipino people a greater say in government. The heart of democracy lies in the majoritarian rule but the majoritarian rule is not a mere game of dominant numbers. The majority can rule and rule effectively only if its judgment is an informed one. With an informed electorate, a healthy collision of ideas is assured that will generate sparks to fan the flames of democracy. Rule by the ignorant majority is a sham democracy - a mobocracy

-for in the words of Jefferson, a nation cannot be both free and ignorant. If there is anything that democracy cannot survive, it is the virus of ignorance.

Elections serve as a crevice in the democratic field where voters, for themselves and the public good, plant the seeds of their ideals and freedoms. Yick Wo is emphatic that voting is a fundamental right that preserves and cultivates all other rights. In a republic undergirded by a social contract, the threshold consent of equal people to form a government that will rule them is renewed in every election where people exercise their fundamental right to vote to the end that their chosen representatives will protect their natural rights to life, liberty and property. It is this sacred contract which makes legitimate the government's exercise of its powers and the chosen representatives' performance of their duties and functions. The electoral exercise should be nothing less than a pure moment of informed judgment where the electorate speaks its mind on the issues of the day and choose the men and women of the hour who are seeking their mandate.

The importance of information and discourse cannot be overemphasized in a democratic and republican setting. Our constitutional provisions and cases highlighting the people's right to information and the duty of the State to provide information unmistakably recognize the indispensable need of properly informing the citizenry so they can genuinely participate in and contribute to a functioning democracy. As elections lie at the foundation of representative democracy, there should be no quarrel over the proposition that electoral information should also be disseminated to the electorate as a predicate to an informed judgment.

The ponencia concedes that a survey of COMELEC's resolutions relating to the conduct of the May 14, 2001 elections would reveal that they "contain nothing which would amount to a compliance, either strict or substantial, with the requirements in Section 2 of R.A. No. 6645, as amended." Nowhere in its resolutions or even its press releases did COMELEC state that it would hold a special election for a single Senate seat with a three-year term simultaneously with the regular elections on May 14, 2001. Nor did COMELEC give official notice of the manner by which the special election would be conducted, i.e., that the senatorial candidate receiving the 13th highest number of votes in the election would be declared winner in the special election. Still, the ponencia upheld the holding of the May 14, 2001 special election despite "the lack of 'call' for such election and ... lack of notice as to the office to be filled and the manner by which the winner in the special election is to be determined."

With all due respect, I cannot subscribe to the ponencia's position for it leaves the purity of elections and the ascertainment of the will of the electorate to chance, conjecture and speculation. Considering that elections lie at the heart of the democratic process because it is through the act of voting that consent to government is secured, I choose to take a position that would ensure, to the greatest extent possible, an electorate that is informed, a vote that is not devalued by ignorance and an election where the consent of the governed is clear and unequivocal.

The ponencia justifies its position on the lack of call or notice of the time and place of the special election by holding that the law charges voters with knowledge of R.A. No. 7166 which provides that in case of a vacancy in the Senate, the special election to fill such vacancy shall be held simultaneously with the next succeeding election, that is, the May 14, 2001 election. The ponencia's argument is that the provisions of R.A. No. 7166 stating that the special election would be held simultaneously with the regular election operated as a call for the election so that the absence of a call by the COMELEC did not taint the validity of the special election. With due respect, this is not the intention of R.A. No. 7166 for despite its paragraph 1, Section 7 that "in case of such vacancy in the Senate, the special election shall be held simultaneously with the succeeding regular election", the law nevertheless required in paragraph 3 of the same section that "(t)he Commission shall send sufficient copies of its resolution for the holding of the election to its provincial election supervisors and election registrars for dissemination, who shall post copies thereof in at least three conspicuous places preferably where public meetings

are held in each city or municipality affected.”

The Duquette case cited by the ponencia does not lend support to its thesis that statutory notice suffices. In Duquette, it was held that in the absence of an official notice of the special election mandated by law to be held simultaneously with the general election, there should be actual notice of the electorate. Actual notice may be proved by the voting of a significant percentage of the electorate for the position in the special election or by other acts which manifest awareness of the holding of a special election such as nomination of candidates. In the case at bar, however, the number of votes cast for the special election cannot be determined as the ballot did not indicate separately the votes for the special election. In fact, whether or not the electorate had notice of the special election, a candidate would just the same fall as the 13th placer because more than twelve candidates ran for the regular senatorial elections. Nobody was nominated to vie specifically for the senatorial seat in the special election nor was there a certificate of candidacy filed for that position. In the absence of official notice of the time, place and manner of conduct of the special election, actual notice is a matter of proof. Respondents and the ponencia cannot point to any proof of actual notice.

With respect to the lack of notice of the manner by which the special election would be conducted, i.e., that the 13th placer would be declared winner in the special election, there can be no debate that statutory notice will not operate as notice to the electorate as there is no law providing that a special election held simultaneously with a general election could be conducted in the manner adopted by the Senate and the COMELEC. Instead, the ponencia buttresses its holding by stating that the petitioner has not claimed nor proved that the failure of notice misled a sufficient number of voters as would change the result of the special senatorial election. It relies on “actual notice from many sources, such as media reports of the enactment of R.A. No. 6645 and election propaganda during the campaign” but without even identifying these media reports and election propaganda. Suffice to state that before the ponencia can require proof that a sufficient number of voters was misled during the May 14, 2001 elections, it must first be shown that in the absence of official notice of the procedure for the special election, there was nevertheless actual notice of the electorate so that the special election could be presumed to be valid. Only then will the duty arise to show proof that a sufficient number of voters was misled to rebut the presumption of validity.

I respectfully submit that the electorate should have been informed of the time, place and manner of conduct of the May 14, 2001 special election for the single senatorial seat for the unexpired term of former Senator Teofisto Guingona, Jr. Tolentino, UNIDO, Blo Umpar Adiong and Hassan all deepened the doctrine that a meaningful exercise of the right of suffrage in a genuinely free, orderly and honest election is predicated upon an electorate informed on the issues of the day, the programs of government laid out before them, the candidates running in the election and the time, place and manner of conduct of the election. It is for this reason that the Omnibus Election Code is studded with processes, procedures and requirements that ensure voter information.

Bince and Benito further teach us that free and intelligent vote is not enough; correct ascertainment of the will of the people is equally necessary. The procedure adopted in the case at bar for holding the May 14, 2001 special senatorial election utterly failed to ascertain the people’s choice in the special election. Section 2 of R.A. No. 7166 provides that the “special election shall be held simultaneously with such general election.” It does not contemplate, however, the integration of the special senatorial election into the regular senatorial election whereby candidates who filed certificates of candidacy for the regular elections also automatically stand as candidates in the special election. The Omnibus Election Code is crystal clear that a candidate can run for only one position in an election. Consequently, there were no candidates in the special election to vote for. Separate sets of candidates for the special election and the regular elections are decisive of the election results. Each independent-minded voter could have a variety of reasons for choosing a candidate to serve for only the unexpired

term of three years instead of the regular term of six years or not choosing a candidate at all. A voter might choose a neophyte to serve the three-year term as a shorter trial period. Another might be minded to choose an old timer to compel him to hasten the completion of his projects in a shorter period of three years. Still another might want to afford a second term who has not performed too satisfactorily a second chance to prove himself but not for too long a period of six years. In not allowing the voter to separately indicate the candidate he voted for the three-year senatorial term, the voter was deprived of his right to make an informed judgment based on his own reasons and valuations. Consequently, his true will in the special election was not ascertained. As a particle of sovereignty, it is the thinking voter who must determine who should win in the special election and not the unthinking machine that will mechanically ascertain the 13th placer in the general election by mathematical computations.

The models to follow in the conduct of special elections mandated by law to be held simultaneously with a general elections are the special elections of November 13, 1951 and November 8, 1955 to fill the seats vacated by then Senators Fernando Lopez and Carlos P. Garcia, respectively. In these special senatorial elections, election activities prior (i.e., filing of certificate of candidacies), during (i.e., the act of voting for a special election candidate distinct from the candidates for the regular election) and after the election (i.e., tallying and canvassing of results) were conducted simultaneously with, but distinctly from the regular senatorial elections. This procedure minimized voter confusion and allowed the voter to freely and accurately speak his mind and have his will truly ascertained. Regrettably, this objective appears to have been lost in the calling of the May 14, 2001 special election as can be gleaned from the Senate deliberations on the resolution calling for that election, viz:

S[ENATOR] T[ATAD]. Mr. President, in this resolution, we are leaving the mechanics to the Commission on Elections. But personally, I would like to suggest that probably, the candidate obtaining the 13th largest number of votes be declared as elected to fill up the unexpired term of Senator Guingona.

S[ENATOR] O[SMEÑA]. (J). Is there a law that would allow the Comelec to conduct such an election? Is it not the case that the vacancy is for a specific office? I am really at a loss. I am rising here because I think it is something that we should consider. I do not know if we can...No, this is not a Concurrent Resolution.

S[ENATOR] T[ATAD]. May we solicit the legal wisdom of the Senate President.

T[HE] P[RESIDENT]. May I share this information that under Republic Act No. 6645, what is needed is a resolution of this Chamber calling attention to the need for the holding of a special election to fill up the vacancy created, in this particular case, by the appointment of our colleague, Senator Guingona, as Vice President.

It can be managed in the Commission on Elections so that a slot for the particular candidate to fill up would be that reserved for Mr. Guingona's unexpired term. In other words, it can be arranged in such a manner.

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S[ENATOR] R[OCO]. Mr. President.

T[HE] P[RESIDENT]. Sen Raul S. Roco is recognized.

S[ENATOR] R[OCO]. May we suggest, subject to a one-minute caucus, wordings to the effect that in the simultaneous elections, the 13th placer be therefore deemed to be the special election for this purpose. So we just nominate 13 and it is good for our colleagues. It is better for the candidates. It is also less expensive because the ballot will be printed and there will be less disenfranchisement.

T[HE] P[RESIDENT]. That is right.

S[ENATOR] R[OCO]. If we can just deem it therefore under this resolution to be such a special election,

maybe, we satisfy the requirement of the law.

T[HE] P[RESIDENT]. Yes. In other words, this shall be a guidance for the Comelec.

S[ENATOR] R[OCO]. Yes.

T[HE] P[RESIDENT]. - to implement.

S[ENATOR] R[OCO]. Yes. The Comelec will not have the flexibility.

T[HE] P[RESIDENT]. That is right.

S[ENATOR] R[OCO]. We will already consider the 13[th] placer of the forthcoming elections that will be held simultaneously a? a special election under this law as we understand it.

T[HE] P[RESIDENT]. Yes. That will be a good compromise, Senator Roco.

S[ENATOR] R[OCO]. Yes. So if the sponsor can introduce that later, maybe it will be better, Mr. President.

T[HE] P[RESIDENT]. What does the sponsor say?

S[ENATOR] T[ATAD]. Mr. President, that is a most satisfactory proposal because I do not believe that there will be anyone running specifically -

T[HE] P[RESIDENT]. Correct.

S[ENATOR] T[ATAD]. - to fill up this position for three years and campaigning nationwide.

T[HE] P[RESIDENT]. Actually, I think what is going to happen is the 13[th] candidate will be running with specific groups.

S[ENATOR] T[ATAD]. Yes. Whoever gets No. 13.

T[HE] P[RESIDENT]. I think we can specifically define that as the intent of this resolution.

S[ENATOR] T[ATAD]. Subject to style, we accept that amendment and if there will be no other amendment, I move for the adoption of this resolution.

ADOPTION OF S. RES. NO. 934

If there are not other proposed amendments, I move that we adopt this resolution.

T[HE] P[RESIDENT]. There is a motion to adopt this resolution. Is there any objection? [Silence] There being none, the motion is approved.[138] (emphases supplied)

The Senate's observation that the procedure for the special election that it adopted would be less costly for the government as the ballots need not be printed again to separately indicate the candidate voted for the special election does not also lend justification for the manner of conduct of the May 14, 2001 special election. We cannot bargain the electorate's fundamental right to vote intelligently with the coin of convenience. Even with the Senate stance, the regular ballot had to be modified to include a thirteenth space in the list of senatorial seats to be voted for. At any rate, reliance on R.A. No. 6645 is erroneous. This law provides that when a vacancy arises in the Senate, the Senate, by resolution, certifies to the existence of the vacancy and calls for a special election. Upon receipt of the resolution, the COMELEC holds the special election. R.A. No. 6645 was amended in 1991 by R.A. No. 7166. The latter law provides that when a permanent vacancy occurs in the Senate at least one year before the expiration of the term, "the Commission (on Elections) shall call and hold a special election to fill the vacancy..." Since under R.A. No. 7166, it is the power and duty of the COMELEC, and not the Senate, to call and hold the election, the Senate cannot, by mere resolution, impose upon the COMELEC the procedure for the special

election that it intended such that “Comelec will not have the flexibility” to deviate therefrom. As a constitutional body created to ensure “free, orderly, honest, peaceful, and credible elections”, it was the duty of the COMELEC to give to the electorate notice of the time, place and manner of conduct of the special elections and to adopt only those mechanisms and procedures that would ascertain the true will of the people.

In sum, I submit that the ruling of the ponencia would result not just to a step back in an age of information, but would constitute a fall in the nation’s rise to democracy begun as early as the Malolos Constitution and begun anew in the 1987 Constitution after the 1986 People Power Revolution. Informing the electorate on the issues and conduct of an election is a prerequisite to a “free, orderly, honest, peaceful, and credible elections.” Free elections does not only mean that the voter is not physically restrained from going to the polling booth, but also that the voter is unrestrained by the bondage of ignorance. We should be resolute in affirming the right of the electorate to proper information. The Court should not forfeit its role as gatekeeper of our democratic government run by an informed majority. Let us not open the door to ignorance.

I vote to grant the petition.

[1] Rollo, pp. 93-96; Amended Petition, pp. 8-11.

[2] Rollo, pp. 100-101; Amended Petition, pp. 15-16.

[3] Baradat, L. Political Ideologies: Their Origins and Impact (Sixth Ed., 1997), pp. 65-67.

[4] Jones. T., Modern Political Thinkers and Ideas (2002), p. 23.

[5] Patterson. C., The Constitutional Principles of Thomas Jefferson (1953), pp. 27 and 49.

[6] Baradat L. Political Ideologies: Their Origins and Impact (Sixth Ed., 1997), pp. 101-104.

[7] Id. pp. 101-104.

[8] Stephens. O. and Scheb. J. II, American Constitutional Law, 2[nd] ed. (1999), p. 817.

[9] Baradat. L., supra, pp. 101 -104.

[10] Stephens. O. and Scheb, J. II, supra, p. 817.

[11] Baradat. L., supra, pp. 101-104.

[12] Stephens, O. and Scheb, J. II, supra, p. 817.

[13] Aruego, The Framing of the Philippine Constitution (1949), p. 1.

[14] Id. p. 7.

[15] Bernas. J., The 1987 Constitution of the Republic of the Philippines: A Commentary (2003), p. 57.

[16] Aruego, supra, p. 132.

[17] 4 Records of the Constitutional Commission pp. 580-581.

[18] Cooley. A Treatise on the Constitutional Limitations, vol. II (1927), p. 1350.

[19] Section 2. Article XII of the 1987 Constitution provides in relevant part, viz:

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district

must be represented by at least three per centum of the registered voters therein.

[20] Section 3, Article X of the 1987 Constitution provides, viz:

Sec. 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, elections, 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.

[21] Section 69 of the Local Government Code of 1991 provides, viz:

Section 69. By Whom Exercised. The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to recall belongs.

[22] Section 25, Article XVIII of the 1987 Constitution provides, viz:

After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or” facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting state.

[23] *Garcia v. COMELEC, et al.*, 227 SCRA 100 (1993).

[24] 4 Records of the Constitutional Commission, p. 680.

[25] *Id.* p. 735.

[26] *Id.* p. 752.

[27] *Id.*, p. 769.

[28] Bogdanor, V. and Butler, D., *Democracy and Elections: Electoral Systems and their Political Consequences* (1983), p. 1. See also Dissenting Opinion of Justice Bernardo Pardo in *Akbayan-Youth, et al. v COMELEC*, 355 SCRA 318 (2001), p. 359.

[29] Baradat, L., *supra*, p. 134.

[30] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

[31] Stephens, O. and Scheb, J. II, *supra*, p. 816.

[32] Beetham, ed., *Defining and Measuring Democracy* (1994), p. 48.

[33] *Santos v. Paredes, et al* (1937).

[34] 62 Phil. 945, 948 (1972).

[35] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

[36] 136 SCRA 435 (1985).

[37] Id. p. 446(1985).

[38] 118 U.S. 356 (1886).

[39] 376 U.S. 1 (1964).

[40] Rodriguez, V., “Section 5 of the Voting Rights Act of 1965 After Boerne: The Beginning of the End of Preclearance?”. California Law Review (May 2003) 769, 824.

[41] Anderson, et al. v. Celebrezze, Jr., 460 U S. 780 (1983), 788, citing Storer v. Brown, 415 U.S. 724 (1974).

[42] 26 Phil. 521 (1914).

[43] Rodriguez v. Commission on Elections, et al., 119 SCRA 465 (1982). See also Benito v. Comelcc, G.R. No. 106053, August 17, 1994 and Bince, Jr. v. COMELEC, et al., 242 SCRA 273.

[44] Anderson v. Celebrezze, Jr., supra, p. 788.

[45] 377 U.S. 533, 562 (1964).

[46] Cauton v. COMELEC, 19 SCRA 911 (1967).

[47] Section 2(4), Article IX of the 1987 Constitution.

[48] Quisumbing, L., “Elections and Suffrage From Ritual Regicide to Human Rights?” 58 Philippine Law Journal 28 (1983), citing Jocano, Phil. Prehistory (1975). ch. 8, “Community Organization.” Cf. Merriam, Political Power (1934), ch. 3. “Law among the Outlaws.”

[49] Quisumbing, L., supra, citing Interview with J. Kiram, Boulevardier, Jan. 1983 issue.

[50] Bernas, J., supra, p. 631.

[51] The Malolos Constitution provides in relevant part, viz:

Art. 4. The government of the Republic is popular, representative, alternative, and responsible and is exercised by three distinct powers, which are denominated legislative, executive and judicial...

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Art. 33. The legislative power shall be exercised by an Assembly of representatives of the nation ...

Art. 34. The members of the Assembly shall represent the entire nation, and not exclusively those who elect them...

Art. 35. No representative shall be subjected to any imperative mandate of his electors.

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Art. 58. The President of the Republic shall be elected by an absolute majority of votes by the Assembly and the representatives specially meeting in a constitutive assembly.

[52] Pangilinan, M.F., “The Changing Meaning of Suffrage”, 57 Philippine Law Journal 136 (1982).

[53] The Philippine Bill of 1902, entitled “An Act to Temporarily Provide for the Administration of the Affairs of

Civil Government of the Philippine Islands and for Other Purposes,” provides in sections 6 and 7 for the taking of census of all inhabitants when general insurrection has ceased; and, two years from the date of the census, the calling of general elections for the members of the Philippine Assembly.

[54] Bernas, J., *supra*, p. 631.

[55] The Jones Law provides in section 8 that general legislative power except as otherwise provided, is granted to the Philippine Legislature. Section 15 provided for the qualification of electors in the elections of the senators and representatives to the Philippine Legislature.

[56] Section 1, Article V of the 1935 Constitution provides in relevant part, viz:

Section 1. Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law ...

[57] Section 4, Article V of the 1973 Constitution provides, viz:

Section 4. It shall be the obligation of every citizen qualified to vote to register and cast his vote.

Section 1, Article V of the 1973 Constitution provides, viz:

Section 1. Suffrage shall be exercised by all citizens of the Philippines not otherwise disqualified by law...

[58] Bernas, J., *supra*, p. 631.

[59] Section 1, article V of the 1987 Constitution provides in relevant part, viz:

Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law...

[60] Article 21 of the Universal Declaration of Human Rights provides, viz:

- Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;
- Everyone has the right of equal access to public service in his country;
- The will of the people shall be the basis of the authority of government; this 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.

[61] Article 25 of the Covenant of Civil and Political Rights provides, viz:

Every citizen shall have the right and opportunity without any of the distinctions mentioned in Art. 2 (race, color, sex, language, religion, opinion, property, birth, etc.) and without reasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in his country.

[62] Levinson, J., “An Informed Electorate: Requiring Broadcasters to Provide Free Airtime to Candidates for Public Office.” *Boston University Law Review* (January 1992). p. 143. citing Letter from Thomas Jefferson to Colonel Charles Yancey (Jan. 6, 1816), in 10 *The Writings of Thomas Jefferson* 4 (Paul L. Ford ed., 1899), cited in *Library of Congress, Respectfully Quoted* 97 (Suzy Platt ed., 1989).

[63] Gatewood, C., “Click Here: Web Links, Trademarks and the First Amendment,” 5 *Richmond Journal of Law*

and Technology 12 (Spring 1999), pp. 9-10, citing Thomas Jefferson, Letter to Benjamin Waring, 1801, in 10 The Writing of Thomas Jefferson, Memorial Edition 235 (1904).

[64] Id., p. 11, citing John Stuart Mill, On Liberty 82 (Legal Classics Library ed., Legal Classics 1992) (1859).

[65] Id, p. 13, citing Alexander Meiklejohn, Free Speech Is An Absolute, 1961 Sup. Ct. Rev. 245, 255.

[66] Bunker. M., Splichal, S., Chamberlin, B., Perry, L., supra, p. 548, citing Meiklejohn, A., Free Speech and its Relation to Self-Government 6 (1948).

[67] Id., p. 545, citing Writings of James Madison 398 (1806), reprinted in Note, Access to Official Information: A Neglected Constitutional Right, 27 Ind. L.J. 209, 212 (1952).

[68] Gatewood, C., supra, p. 9.

[69] Wilcox, W.. "Access to Environmental Information in the United States and the United Kingdom," 23 Loyola of Los Angeles International & Comparative Law Review (March 2001) 121, 124-125.

[70] Ducat. C., Constitutional Interpretation: Rights of the Individual, vol. II (2000), p. 1030.

[71] 410 U.S. 73 (1973).

[72] Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749 (1989), 772-773.

[73] 425 U.S. 352, 372(1976).

[74] 127 L. Ed. 2d 325 (1994).

[75] 438 U.S. 1 (1978).

[76] 438 U.S. 1 (1978), 14, citing Pell v. Procunier, 417 U.S. 817 (1974) and Stewart, "Or of the Press," 26 Hastings LJ 631, 636 (1975).

[77] Note. "The Rights of the Public and the Press to Gather Information," 87 Harvard Law Review 1505 (May, 1974), 1512.

[78] Bunker, ML, Splichal, S., Chamberlin, B., Perry, L., supra, p. 543.

[79] Id., p. 548.

[80] 297 U.S. 233 (1935).

[81] 297 U.S. 233 (1935), 249. citing 2 Cooley, Const. Lim. 8[th] ed. p. 886.

[82] 425 U.S. 748 (1976).

[83] Bunker. M, Splichal, S., Chamberlin, B., Perry, L., supra, p. 549.

[84] 425 U.S. 748, 765, n. 19 (1976).

[85] 457 U.S. 853 (1982).

[86] Id. p. 857.

[87] 381 U.S. 479 (1965).

[88] 457 U.S. 853, 867 (1982). citing 9 Writings of James Madison 103 (G. Hunt ed. 1910).

[89] Bunker, M., Splichal, S., Chamberlin, B., Perry, L., *supra*, p. 549.

[90] 408 U.S. 753, 762-45 (1972).

[91] 381 U.S. 301 (1965).

[92] 319 U.S. 141 (1943).

[93] Information is vital not only in the area of political participation in a democracy, but also in the field of economic participation. It is often said that the American economy has been shifting from one based on industrial development to one based on the creation and dissemination of information. (Sunstein, C., “Informational Regulation and Informational Standing: Akins and Beyond,” 147 University of Pennsylvania Law Review [January 1999], 613, citing David Osborne & Ted Gaebler. Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector 15-16 [1992] [describing the failure of government bureaucracy to adjust to the new “knowledge-based economy”]). In the last forty years, statutes have been designed to ensure disclosure of information and this mandatory disclosure has increasingly become a pervasive and important regulatory tool. Informational regulation such as requiring companies to disclose information about toxic releases, contents of food and drinks and workplace injuries has become one of the most striking developments in the last generation of American law. The government also attempts to control its own agents through compulsory production and disclosure of information such as through the National Environmental Policy Act of 1969, the Freedom of Information Act and the Federal Election Campaign Act which enhance public monitoring of government decisions, with special attention being given to particular issues such as insufficient environmental concern, unlawful behavior during campaigns, and official corruption. (Sunstein, C., Informational Regulation and Informational Standing: Akins and Beyond, 147 University of Pennsylvania Law Review [January 1999], 613, 614).

[94] *Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring).

[95] 283 U.S. 359, 369 (1931).

[96] *Stromberg v. California*, 283 U.S. 359, 369 (1931).

[97] Bunker, M., Splichal, S., Chamberlin, B., Perry, L., *supra*, p. 546, citing Brennan, W., Jr., “The Supreme Court and the Mieklejohn Interpretation of the First Amendment”, 79 *Hard. L. Rev.* 1, 11 (1965)

[98] 384 U.S. 214 (1966).

[99] *Id.* pp. 218-219.

[100] 379 U.S. 64 (1964), 74-75.

[101] Bernas, J., *supra*, p. 370.

[102] 80 *Phil.* 383 (1948).

[103] Bernas, J., *supra*, p. 371.

[104] *Id.* p. 376.

[105] Commissioner Blas Ople, 5 Records of the Constitutional Commission, p. 26.

[106] 5 Records of the Constitutional Commission, p. 24.

[107] Id. p. 26.

[108] Id. p. 83.

[109] 170 SCRA 256 (1989).

[110] Id.

[111] 170 SCRA 256, 264-266 (1989).

[112] 337 SCRA 733 (2000).

[113] Id., p. 745 (2000).

[114] Id, pp. 746-747 (2000).

[115] G.R. No. 133250, July 9, 2002.

[116] Id., p. 15.

[117] 158 ALR 1181 (1945).

[118] Footnote 32 of the ponencia.

[119] 158 ALR 1183-84 (1945). See also *Wilson v. Brown*, 58 S.W. 595 (1900) and *State ex rel. Bryant v. Maxwell*, 189 Tenn. 187, 224 S.W.2d 833 (1949).

[120] 10 Colo App 472, 51 P 530 (1897).

[121] Id, pp. 531-532(1897).

[122] 80 W Va 410, 92 SE 676 (1917).

[123] Id. p. 679.

[124] Annotation, Notice of election to fill vacancy in office at general election, 158 ALR 1189-91 (1945).

[125] 288 S.W. 2d 652 (1956).

[126] 41 SCRA 702 (1971).

[127] *Tolentino v. Commission on Elections, et al.*, 41 SCRA 702 (1971).

[128] 104 SCRA 17 (1981).

[129] 181 SCRA 529 (1990).

[130] Bernas, J., *supra*, p. 636.

[131] 2 Records of the Constitutional Commission, p. 16.

[132] 207 SCRA 712 (1992).

[133] 207 SCRA 712, 716-717, 721 (1992). See also *ABS-CBN Broadcasting Corporation v. COMELEC*, 323 SCRA 811 (2000).

[134] 289 SCRA 337 (1998).

[135] *Id.* pp. 361-362.

[136] 5 Records of the Constitutional Commission, p. 675.

[137] 264 SCRA 125 (1996).

[138] Transcript of Session Proceedings of the Philippine Senate, February 8, 2001, pp. 51-54.

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