

## **ELROY JOHN M. HAGEDORN, PETITIONER, VS. HOUSE OF REPRESENTATIVES OF THE PHILIPPINES, HON. FERDINAND MARTIN G. ROMUALDEZ, IN HIS CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIV...**

*G.R. No. 275800, April 22, 2025*

Ponente: HERNANDO, J.

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### **HERNANDO, J.:**

In the event of a vacancy in the House of Representatives that occurs at least one year before the expiration of the term of such seat, it is incumbent upon the Commission on Elections (COMELEC) to call for and hold a special election to fill such vacancy not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy. This mandatory and ministerial duty of the COMELEC to call and hold the special election emanates from Republic Act No. 6645,[1] as amended by Republic Act No. 7166,[2] and is no longer conditioned upon any certification or call from the House of Representatives.

This is a Petition for Mandamus[3] filed by petitioner Elroy John M. Hagedorn (Hagedorn), praying for this Court to issue a writ of mandamus to compel the House of Representatives to pass and issue a resolution certifying the existence of a vacancy in the Third Legislative District of the Province of Palawan and calling for a special election therein.

#### **The Antecedents**

In May 2022, Edward S. Hagedorn (Rep. Hagedorn) was elected as the Representative of the Third District of Palawan in the 2022 National and Local Elections. He served as the Representative of the Third District of Palawan in Congress from 2022 until his passing on October 3, 2023.[4]

On October 4, 2023, the Sangguniang Panlungsod of Puerto Princesa City issued a resolution requesting Hon. Ferdinand Martin G. Romualdez, the Speaker of the House of Representatives (Speaker Romualdez), to request the COMELEC to call for the conduct of a special election to fill the vacancy left by Rep. Hagedorn, and for Speaker Romualdez to serve as the temporary caretaker of the Third District of Palawan.[5]

Thereafter, the Municipality of Aborian, Palawan, passed Resolution No. 295 calling for the House of Representatives to pass and adopt a resolution certifying the existence of a permanent vacancy in the district, and for the COMELEC to hold a special election to fill up the said vacancy. The same municipality also issued Resolution No. 297 s. 2023, calling for Speaker Romualdez to appoint Representative Jose Chavez of the Second District of Palawan as temporary caretaker of the Third District.[6]

On November 8, 2023, the House of Representatives designated Speaker Romualdez as the legislative caretaker of the Third District of Palawan. To ensure continuous delivery of service to the constituents of the Third District, Speaker Romualdez established a District Caretaker Office headed by his Chief of Staff, Karl Legazpi.[7]

On February 16, 2024, Hagedorn wrote to Speaker Romualdez to request for support for the conduct of special elections.[8] The House of Representatives acknowledged said request through a Letter dated April 1, 2024, stating that his letter had been referred to the COMELEC for its appropriate action.[9]

Thereafter, the wife of Rep. Hagedorn and the constituents of the Third District of Palawan wrote several open letters to select members of the House of Representatives to reiterate their request for a special election to fill the vacancy left by Rep. Hagedorn.[10]

On March 20, 2024, Representative Eduardo Villanueva (Rep. Villanueva) filed House Resolution No. 1661, titled "A Resolution Certifying to the Existence of a Vacancy in the House of Representatives, Particularly the Representative for the Third (3<sup>rd</sup>) Legislative District of the Province of Palawan and Calling on the Commission on Elections (COMELEC) to Fill the Vacancy through a Special Elections." [11]

On May 6, 2024, Rep. Villanueva wrote to Speaker Romualdez to request for the conduct of elections to fill the vacancy left by Rep. Hagedorn. In reply, Secretary General Reginald S. Velasco (Secretary General Velasco) informed Rep. Villanueva through a June 10, 2024 Letter that pursuant to the Rules of the House of Representatives of the 19<sup>th</sup> Congress (Rules), House Resolution No. 1661 is being considered by the Committee on Suffrage and Electoral Reforms, and that under the same Rules, the Speaker of the House of Representatives cannot by [themselves] expedite the adoption of a resolution without the collective action of the other Members of the pertinent committee or the entire House.[12]

Meanwhile, on April 22, 2024, Hagedorn wrote to COMELEC Chairperson George Garcia, submitting copies of collected signatures within the Province of Palawan as proof of the people's will in calling for a special election for their district. In response, the COMELEC invoked Republic Act No. 6645 to state that before it can conduct a special election, the House of Representatives must first issue a resolution certifying the existence of the vacancy and calling for a special election, viz.:

Relative to this issue, please be guided that Republic Act No. 6645 states that:

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.

Hence, in order for the Commission on Elections to conduct a special election to fill the vacancy left by the late Palawan 3<sup>rd</sup> District representative Edward Hagedorn, the House of Representatives must pass a resolution certifying that there is indeed a vacancy and calling for the Commission to conduct a special election. Without the said resolution or any official communication from the House of Representatives, the Commission cannot, on its own, conduct the special election.

Pursuant to the above-mentioned law, the Commission will await the resolution from Congress or any official communication from the Speaker of the House of Representatives, in case of recess.[13] (Emphasis supplied)

The COMELEC likewise reiterated its position in its May 6, 2024 Letter.[14]

Sometime in June 2024, Hagedorn once again wrote to the COMELEC and Secretary General Velasco to request for a status report and for immediate action on House Resolution No. 1661.[15]

On July 4, 2024, the COMELEC informed Hagedorn that it had yet to receive any resolution or official communication from the House of Representatives certifying the existence of a vacancy for the said legislative district and ordering the COMELEC to conduct a special election.[16]

Similarly, Secretary General Velasco advised Hagedorn that he cannot accede to his request since "[u]nder the Constitution and the Rules of the House of Representatives, the Secretary General has no authority to immediately act on a pending House resolution as this prerogative exclusively belongs to the entire membership of the House of Representatives.[17]

As of the filing of this Petition, no further action had been taken by the House of Representatives or the COMELEC,[18] and House Resolution No. 1661 remains pending with the Committee on Suffrage and Electoral Reforms.[19]

Hence, this Petition. In compliance with the Court's October 8, 2024 Resolution, respondents through the Office of the Solicitor General (OSG) filed its Comment on November 7, 2024.[20]

Thereafter, petitioner filed a Reply and a corresponding Motion to Admit on December 5, 2024.[21]

#### The Issues

The Court is called upon to resolve the following issues:

a)

Whether the Court's exercise of judicial review is warranted in the case at bench; and

b)

Whether the House of Representatives may be compelled through a petition for mandamus to issue a resolution certifying to the existence of a vacancy in the House of Representatives.

#### Our Ruling

We begin with the procedural issues.

While the Petition for Mandamus is moot, the Court may decide this case to formulate controlling principles on the procedure and conditions for the conduct of a special election to fill vacancies in Congress

It is settled that for a court to exercise its power of judicial review, there must be an actual case or controversy, i.e., one involving a conflict of legal rights susceptible of judicial resolution and admitting of a specific relief through a decree conclusive in nature. The case must not be moot, or based on extra-legal or other similar considerations not cognizable by the courts.[22]

In relation to the foregoing, a moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.[23] A case becomes moot when there are no longer any adverse legal interests to speak of, nor any specific relief that petitioner may obtain.[24]

The present Petition for Mandamus is already moot, in light of the impending conduct of the May 15, 2025 elections in less than three weeks, where a new Representative for the Third District of Palawan will be elected. Moreover, it is noted that there are only two months left in the late Rep. Hagedorn's term, after which the new Representative for the Third District of Palawan will start their three-year term in the afternoon of June 30,

2025.[25] Even if the Court were to grant the Petition at this time and compel Congress to certify the vacancy, no real relief can be accorded to petitioner as it is no longer possible to hold the special election he seeks.

Courts generally decline jurisdiction over moot cases or dismiss it on the ground of mootness. However, the Court shall decide cases otherwise moot if any of the following exceptions are present: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[26] The third and fourth exceptions apply here.

In *Kilusang Mayo Uno v. Aquino III*,[27] We ruled that the third exception may be traced to the Court's power under the Constitution to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, and shall find application where there is a clear need to clarify principles and processes for the protection of rights,[28] such as the present Petition.

This case is one of first impression and provides an opportune occasion for the Court to shed light on the controlling procedure for the conduct of special elections to fill Congressional vacancies. History teaches that Congressional seats have indeed been left vacant numerous times prior to the expiration of their terms, whether through death, resignation by virtue of a Representative's appointment to a position in the Executive, or disqualification and expulsion from membership.[29] The Constitution recognizes that a vacancy in the membership of the House of Representatives may be created due to reasons such as the member's voluntary renunciation of the office,[30] the forfeiture of the member's seat due to the holding of another office or employment in government,[31] and expulsion of a member with the concurrence of two-thirds of all its members in the House of Representatives.[32] Members may also be disqualified from holding public office through the imposition of the penalty of perpetual or temporary special disqualification or perpetual or temporary absolute disqualification upon criminal conviction.[33]

And yet, while such vacancies are certain to occur in the future, uncertainty looms over the procedure and conditions to fill these vacancies through special elections. Verily, a definitive ruling from this Court is imperative to clarify the parameters for the conduct of special elections for vacant Congressional seats, to guide the Legislature, the COMELEC, and the public in the event of a repetition of the factual precedents that gave rise to this Petition.

In connection with the foregoing, the issues raised in the Petition fall under the fourth exception as it is capable of repetition yet evading review. As noted by Justice Caguioa, the fourth exception finds primary application in election cases, by virtue of the relatively brief three-year terms for most elected positions in the government.[34] Indeed, the Court has espoused the resolution of moot petitions on the merits when the petitions concerned tender substantial issues that would likely recur in subsequent elections.[35] While supervening events may render a case moot, this Court shall not hesitate to resolve the issues raised if necessary to prevent a repetition thereof and to enhance free, orderly, and peaceful elections.[36]

Similarly, the question on the correct procedure and conditions for the conduct of a special election for vacant Congressional seats is reasonably expected to arise in connection with every Congressional vacancy occurring at least one year before the expiration of the term of the vacant seat, and yet could easily be rendered moot given the relatively short duration between the occurrence of the vacancy, the expiration of the remaining term of such seat, and the conduct of the next general elections. In fine, considering the likely recurrence of the same issue as well as the need to formulate controlling principles to guide the bench, the bar, and the public, the Court deems it more prudent to take cognizance of this petition and resolve it on the issues raised.

Petitioner has locus standi to file the instant Petition for Mandamus

Preliminarily, petitioner asserts that as a taxpayer, a registered voter, concerned citizen and a longtime resident of the Third District of Palawan, he has a personal and material interest as to who represents the Third Legislative District of Palawan in the House of Representatives and thus has standing to file the Petition. In addition, he maintains that the issues raised are of transcendental importance and warrant a timely resolution from the Court.[37] He also invokes his right to suffrage under Article V, Section 1 of the Constitution, and asserts that this includes the right to vote in a special election conducted to fill in permanent vacancies in Congress, pursuant to Article VI, Sections 5(1) and 9 of the 1987 Constitution.[38]

However, respondents contend that petitioner lacks the requisite locus standi as he lacks a direct and personal interest such that he has suffered or will suffer an actual or threatened injury resulting from the absence of a special election filling the vacancy caused by Rep. Hagedorn's death, and that petitioner's alleged harm is not personal to him but is a generalized grievance shared by the constituents of the Third District of Palawan.[39] Respondents add that petitioner's status as a taxpayer does not confer standing because there is no allegation of illegal disbursement of public funds nor the existence of an unconstitutional tax measure, and as a voter, he has likewise failed to demonstrate an interest in the validity of an election law. Moreover, respondents maintain that the issue is not one of transcendental importance that warrants the Court's power of judicial review.[40]

The test of legal standing, or locus standi, is direct injury—whether the party has a personal and substantial interest such that the party has sustained or will sustain direct injury because of the challenged governmental act. Hence, a party will be allowed to litigate only when the party can demonstrate that: (1) the party 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.[41] The party's interest must also be material as distinguished from mere interest in the question involved, or a mere incidental interest.[42]

It will not suffice if the party claiming locus standi suffers only in some indefinite way; they must show that they have been or are about to be denied some right or privilege to which they are lawfully entitled, or that they are about to be subjected to some burdens or penalties by reason of the statute or act complained of.[43] The gist of the question of standing is "whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person is injuriously affected in any of [their] constitutional rights by the operation of statute or ordinance, [they have] no standing." [44]

Based on the foregoing, and as noted by Justice Caguioa in the deliberations, petitioner is clothed with legal standing to file this Petition for Mandamus for the conduct of a special election. Petitioner, in invoking his right to suffrage and his related right to vote for a duly elected representative of the Third District of Palawan in Congress, possesses the said personal stake in this case. As a voter and resident of the Third Legislative District of Palawan, he is directly affected by the fact that his interests as a voter and resident of the Third District is unrepresented by a duly elected representative in the House of Representatives because of Rep. Hagedorn's passing. He also stands to be directly affected by the non-holding of a special election for Rep. Hagedorn's replacement, which he traces to the House of Representatives' purported inaction to certify the vacancy and call for the election.

In *Robes v. COMELEC*, [45] the Court held that petitioner therein, who filed the suit as a resident, taxpayer, registered voter, and the incumbent representative of the lone legislative district of San Jose del Monte, had

shown a clear legal right to demand the election of two members who will represent the lone legislative district of San Jose del Monte to the Sangguniang Panlalawigan. We echo a portion of the Court's declaration in granting petitioner's suit:

The right of the people to choose those who will govern them is primordial, sacred, and the bedrock of the nation's constitutional democracy. The paramount importance given to the people's right of suffrage emanates from the constitutional declaration that sovereignty resides in the people and all government authority emanates from them. Preserving the sanctity of the right of suffrage ensures that the State derives its power from the consent of the governed.[46] (Citations omitted)

We disagree with respondents' claim that petitioner's purported legal interest is not personal to him and does not rise beyond the level of a generalized grievance shared by the constituents of the Third District of Palawan. While petitioner indeed shares his interest with the other constituents and residents of the Third District of Palawan, this does not make his interest or the right he invokes any less personal, direct, or concrete. The mere fact that one who comes to Court shares their personal and direct interest with a substantial number of people, who are themselves directly affected, does not necessarily render a petitioner's interest a "generalized grievance" or of such abstract and incidental nature that would divest them of legal standing.

It is conceded that in previous petitions calling for the conduct of special elections, the Court observed that petitioners did not have a direct and substantial interest as their asserted harm is a generalized grievance shared with a large class of citizens. For example, in *Lozada v. COMELEC*,<sup>[47]</sup> the petitioners sought to compel the COMELEC to call a special election for several vacancies in the Interim Batasan Pambansa. Petitioner Lozada claimed, among others, that he is a bonafide elector of Cebu City and a transient voter of Quezon City, who wishes to run for the position in the Batasan Pambansa. The Court ruled therein that Lozada does not have the requisite legal standing, as his asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, and his plea as a voter is which he shares with a large class of citizens:

As voters, neither have petitioners the requisite interest or personality to qualify them to maintain and prosecute the present petition...[i]n the case before Us, the alleged inaction of the COMELEC to call a special election to fill-up the existing vacancies in the Batasan Pambansa, standing alone, would adversely affect only the generalized interest of all citizens. Petitioners' standing to sue may not be predicated upon an interest of the kind alleged here, which is held in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. When the asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. As adverted to earlier, petitioners have not demonstrated any permissible personal stake, for, petitioner Lozada's interest as an alleged candidate and as a voter is not sufficient to confer standing. Petitioner Lozada does not only fail to inform the Court of the region he wants to be a candidate but makes indiscriminate demand that special election be called throughout the country. Even his plea as a voter is predicated on an interest held in common by all members of the public and does not demonstrate any injury specially directed to him in particular.[48] (Emphasis supplied, citations omitted)

Similarly, in *Tolentino v. COMELEC*,<sup>[49]</sup> a petition for prohibition was filed by petitioners, as voters and taxpayers, seeking to enjoin the COMELEC from proclaiming with finality the candidate for Senator receiving the 13<sup>th</sup> 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. The Court found therein that "[a]ppplied 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 May 14, 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." [50]

However, it is noted that the petitioners in *Lozada* and *Tolentino* failed to allege their personal stake in their suit, and that these cases involved national elections, which necessarily entails that any interest that will be alleged by a petitioner as a voter and citizen therein is shared with all Filipino citizens. This is in stark contrast to the case at bench, which involves the conduct of a special election for a Representative of a single legislative district. Petitioner's interest is concrete and unique to the residents and constituents of the Third District of Palawan, whose district has no duly elected representative in Congress.

In any event, even if We give credence to respondents' argument that petitioner's interest is a mere generalized grievance, the Court has previously granted legal standing to non-traditional suitors who raise constitutional issues of critical significance, subject to certain rules. These rules have been summarized in this wise:

Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance." This Court summarized the requirements for granting legal standing to "non-traditional suitors" in *Funa v. Villar*, thus:

1.)

For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

2.)

For voters, there must be a showing of obvious interest in the validity of the election law in question;

3.)

For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

4.)

For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators [...]

Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving [them] a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect [their] own interests." [51] (citation omitted)

It cannot be gainsaid that the issues before Us today are of constitutional significance deserving attention of the Court, as they require the interpretation of a constitutional provision and the laws that implement it. More importantly, they concern no less than the manner and conditions for the conduct of special elections, which is an exercise of direct sovereignty from which government authority emanates. Elections lie at the very heart of our democratic process because it is through voting that consent to the government is secured. [52] Indeed, the right to suffrage is so zealously guarded by our fundamental law that it devoted an entire article solely therefor. [53]

Verily, even assuming *arguendo* that petitioner does not stand to be directly affected by the challenged act, petitioner may still be accorded legal standing as a concerned citizen and a voter to file the instant Petition. As stated, concerned citizens may be accorded standing to sue when there must be a showing that the issues raised

are of transcendental importance which must be settled early.[54] In the same vein, and as in previous cases, the Court shall exercise its discretion to give due course to voters' suits involving the right of suffrage.[55]

Direct recourse to the Court may be allowed to resolve questions of law

At the outset, petitioner alleges that direct resort to the Court is justified as the foremost issue raised is purely legal, involves genuine issues of constitutionality, and requires utmost dispatch in view of the impending May 2025 Elections. He further asserts that the case before Us is one of first impression, of transcendental importance, dictated by public welfare and the advancement of public policy, and demanded by the broader interest of justice.[56] In contrast, respondents assert that the direct filing of the Petition contravenes the doctrine of hierarchy of courts. They claim that the Petition raises several factual matters, and direct resort to the Court may be allowed when the issues to be resolved are purely legal in nature.[57]

The Court has since elucidated in *Gios-Samar, Inc. v. Department of Transportation and Communications*[58] that direct recourse to the Supreme Court is proper only to resolve questions of law, notwithstanding the Court's original and concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals in the issuance of extraordinary writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus, and regardless of the invocation of paramount or transcendental importance of the action. The doctrine of hierarchy of courts recognizes that the Court is not a trier of facts, and the reception and evaluation of evidence in the first instance are the primary functions of the lower courts and regulatory agencies; the doctrine thus serves as a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental tasks assigned to it by the Constitution.[59]

The foremost issue in this case is purely legal, i.e., whether Congress may be compelled to issue a Resolution certifying the existence of a vacancy and calling for a special election for the vacant Congressional seat for the Third District of Palawan in order for the COMELEC to hold the special elections. Both parties do not dispute, and in fact recognize, the incontrovertible factual circumstances that are indispensable to the resolution of the legal issue before Us, namely: (a) that the Congressional seat for the Third District of Palawan is vacant on account of Rep. Hagedorn's death, (b) that Congress has yet to issue the subject resolution demanded by petitioner, and (c) that a special election has not yet been conducted to fill the vacancy left by Rep. Hagedorn.

Verily, the Court finds that direct recourse to the Court is proper.

We now rule on the merits.

Congress may not be compelled through a writ of mandamus to issue a resolution certifying the existence of a vacancy in the House of Representatives and calling for a special election

A writ of mandamus may issue in either of two situations: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.[60]

Verily, a writ of mandamus shall only issue when the petitioner has a clear legal right to the thing demanded and a corresponding imperative duty reposed on the respondent to perform the act required under the law. The writ of mandamus never issues in doubtful cases; it is simply a command to exercise a power already possessed and to

perform a duty already imposed.[61]

In praying for the issuance of the writ of mandamus against respondents, petitioner contends that it is the mandatory and ministerial duty of the House of Representatives to call for a special election to fill the vacant Congressional seat for the Third District of Palawan, pursuant to Article VI, Section 9 of the Constitution and Sections 1 and 2 of Republic Act No. 6645, as amended by Section 4 of Republic Act No. 7166.[62]

For its part, respondents contend that mandamus does not lie to compel the House of Representatives, a co-equal branch of government, to issue the resolution sought by petitioner. They assert that our Constitution and laws governing the filling of vacancies in the House of Representatives establish the discretionary nature of calling special elections, and does not in any way compel the House of Representatives to call for a special election or issue a resolution or certification of vacancy.[63] Moreover, respondents argue that in the event of a vacancy, the Speaker in their capacity as the administrative and political head of the House of Representatives, has the authority to designate a legislative caretaker to represent the vacant district for the remainder of the term, in the valid exercise of the Speaker's power to ensure continuity of legislative representation in the district.[64]

To determine whether the House of Representatives has the mandatory and ministerial duty to issue the required resolution as prayed for by petitioner, a discussion on the laws governing the conduct of special elections for Congressional vacancies is in order.

#### The laws governing the conduct of special elections for Congressional vacancies

The 1987 Constitution dedicates a provision for special elections in the event of Legislative vacancies for reasons other than expiration of term. Article VI, Section 9 of the 1987 Constitution reads:

SECTION 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.[65] (Emphasis supplied)

Similar provisions were also included in the 1935 and 1973 Constitutions. However, in a departure from the 1973 Constitution, which used the word "shall" and unmistakably mandates the conduct of a special election in the event a vacancy arises in the National Assembly at least a year before a regular election, the 1987 Constitution returns to the wording of the 1935 Constitution and utilizes the word "may" in connection with the conduct of special elections.[66]

In previous judicial pronouncements, the Court has explained that the use of the word "may" in a provision of law denotes discretion, as opposed to a mandatory effect. It signifies a mere possibility or an option, and the grantee of that opportunity is vested with a right or faculty which the grantee has the option to exercise.[67] Thus, as worded, the Constitution unmistakably vests Congress, in which legislative power resides, with the discretion to enact a law under which it may specify the manner and conditions for the conduct of the special elections, and whether to make the conduct of special elections mandatory.

On this note, "[i]t is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation." [68] Absent any ambiguity, the intent of the Constitution may be drawn primarily from the language of the document itself.[69] Where the words of the concerned provision are clear, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum* — from the words of a statute there should be no departure.[70]

Pursuant to Article VI, Section 9 of the Constitution, Congress enacted Republic Act No. 6645, titled An Act Prescribing the Manner of Filling A Vacancy in the Congress of the Philippines, which prescribed the procedure for special elections to fill vacant Congressional seats.

Sections 1 to 3 of Republic Act No. 6645 pertinently provide:

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.[71]

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)

As worded, Sections 1 and 2 thereof impose the following prerequisites that must be met before COMELEC shall perform its duty to hold a special election to fill vacancies in the House of Representatives caused by reasons other than expiration of term:

(a)

the occurrence of a vacancy at least one year before the next regular election for members of Congress; and

(b)

COMELEC's receipt of a resolution issued by the House of Representatives certifying to the existence of such vacancy and calling for a special election, or, in the event that Congress is in recess, an official communication from the House of Representatives on the existence of the vacancy and calling for a special election.

Hence, under Republic Act No. 6645, the COMELEC shall not hold a special election to fill the vacancy in the House of Representatives absent the issuance of the required resolution. It is further gleaned from the Congressional deliberations that Republic Act No. 6645, then House Bill No. 2696, was deliberately phrased to clothe the respective Houses in Congress with the exclusive prerogative to decide whether to issue a resolution certifying a vacancy and calling for special elections, thus:

MR. PALACOL. May I react on that, your Honor? Your Honor, you will please observe that it is the respective House that has the exclusive prerogative to make a resolution. In other words, if a vacancy occurs in the Senate and the Senators there feel that eighteen months is not sufficient, they may not pass a resolution. Likewise in the House. If the Members of this august Chamber feels that nine months is short, this House may not pass a resolution. We leave it to this discretion of either member of this Chamber.

MR. VALDEZ. I am highly educated with that statement, Mr. Speaker. In fact, that is what I was driving at. In

other words, is it within the discretion of both Houses?

MR. PALACOL. Not both Houses.

MR. VALDEZ. Yes, where the vacancy [sic] occur.

MR. PALACOL. It is the discretion of either House where the vacancy occurs. If the Senate feels that eighteen months, twenty months is enough then they may pass a resolution. It will be a simple resolution by either of the House directing the Comelec to call for a special election which shall not be earlier than thirty days nor more than ninety days.

In other words, your honor, we give both Houses that exclusive prerogative. It is for them to determine whether to call or not to call. To file a resolution or not to file a resolution.[72] (Emphasis supplied)

However, in 1991, Congress later amended Republic Act No. 6645 through the enactment of Republic Act No. 7166, Section 39 of which pertinently provides that all laws or any part thereof that are inconsistent with the latter statute are amended and repealed accordingly.[73]

For ease of reference, Sections 1 and 2 of Republic Act No. 6645, and Section 4 of Republic Act No. 7166 which amends the former, are reproduced below:

Republic Act No. 6645,  
Sections 1 and 2

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)

Republic Act No. 7166,  
Section 4, par. 2

SECTION 4. Postponement, Failure of Election and Special Elections. — . . . 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)

A comparison of the above provisions yields the conclusion that Congress, through Section 4 of Republic Act No.

7166, deemed it fit to amend the procedure for the conduct of special elections laid out in Republic Act No. 6645. In particular, the Court notes the following changes to the prerequisites for the conduct of a special election for a vacant seat in the House of Representatives:

(a)

The requirement for a certification from the House of Representatives certifying to the vacancy and calling for a special election has been removed, by virtue of the deletion of the phrase "upon receipt of a resolution of the Senate or the House of Representatives, as the case may be" or any words of similar import; and

(b)

The contemplated vacancy must now occur at least one year before the expiration of the term, in contrast to the old provision wherein the vacancy shall occur at least one year before the next regular election for members of Congress.

Consistent with the foregoing amendments, Republic Act No. 7166 provides that the period for the COMELEC to call for and conduct a special election begins from the occurrence of the vacancy, in contrast to Section 2 of the old law where the period for the COMELEC to conduct a special election begins from the date of the resolution or communication from Congress. In addition, while as worded, it is the House of Representatives who will "call" for the election based on the earlier law, the later law now expressly reposes the role of calling for a special election with the COMELEC.

On this score, the Court has previously noted that an amendment through the deletion of certain words or phrases in a statute implies that the legislature intended to change the meaning of the statute. This finds anchor in the presumption that the legislature would not have made the deletion if it did not intend a change in its meaning. Accordingly, the amended statute should be given a construction different from that previous to its amendment.[74]

Two cases may be cited to illustrate how amendment by deletion changes the import of a later statute. The first case, *Gloria v. Court of Appeals*,<sup>[75]</sup> teaches that the deletion of a phrase in the amendatory law covering the same subject as the previous law evinces a legislative intent to remove and discontinue a grant that was expressly provided for in an earlier law. The Court noted therein that the Civil Service Act of 1959 provided for the payment of salaries during an employee's suspension in the event the employee was exonerated. However, in the amendatory law, the phrase embodying the grant of salaries during the employee's suspension was deleted, and such deletion was carried over to the Civil Service Law. The Court concluded that the clear purpose of such amendment is the disallowance of the payment of salaries for the period of suspension.<sup>[76]</sup>

The deletion of a phrase in a later law may also be construed as an abandonment of a limitation or qualification previously imposed by an earlier law. In *Galman v. Pamaran*,<sup>[77]</sup> the question is whether the right to self-incrimination remains limited to criminal cases. The Court observed that while our organic laws previously used the wording "that no person shall be...compelled in a criminal case to be a witness against himself" in connection with the right against self-incrimination, the phrase "in a criminal case" or words of similar import were eventually deleted, as shown in Article VI, Section 20 of the 1973 Constitution. The Court observed that the deletion of the phrase "in a criminal case" connotes no other import except to make the right against self-incrimination also applicable to cases other than those criminal in nature.<sup>[78]</sup>

In fine, the plain language of Republic Act No. 7166, when juxtaposed against Republic Act No. 6645, shows that Congress amended the prerequisites and procedure for the conduct of a special election for its vacant seats. This includes the deletion of the certification requirement, the period by which a vacancy shall occur for a special

election to be mandatory, and the period by which the COMELEC must hold the special election. To Our mind, the deliberate replacement of the reckoning point for the conduct of the special election vis-à-vis the deletion of the certification requirement or any mention of the same in Republic Act No. 7166 demonstrates the Legislature's intent to abandon the certification requirement entirely.

The foregoing interpretation on the ramifications of Republic Act No. 7166 to the conduct of a special election is not novel. *Tolentino v. Commission on Elections*[79] has previously elucidated that it is now mandatory upon the COMELEC to hold a special election to fill a vacancy in Congress, provided the vacancy arises at least one year before the expiration of the term:

[I]n case a vacancy arises in Congress at least one year before the expiration of the term, Section 2 of [Republic Act] 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.[80]

In his Dissenting Opinion in *Tolentino*, Chief Justice Reynato S. Puno observed that the Senate cannot, by mere resolution, impose upon the COMELEC the procedure for the special election for a vacant senatorial seat since it is now the power and duty of the COMELEC, and not the Senate, to call and hold the election for vacancies in the Senate:

At any rate, reliance on [Republic Act] 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. [Republic Act] No. 6645 was amended in 1991 by [Republic Act] 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 [Republic Act] 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.[81] (Emphasis supplied)

In the same vein, it has likewise been posited that "it is Republic Act No. 7166, not Republic Act No. 6645, which is the prevailing law governing vacancies. This requires the holding of a special election by the [COMELEC] upon the occurrence of the vacancy and without the need for any prior notification from Congress." [82] However, the Court notes that the foregoing procedure does not apply to vacancies in party-list seats, which shall be filled in accordance with Republic Act No. 7941 and relevant COMELEC Resolutions.[83]

The COMELEC's mandate under Republic Act No. 7166 to hold the elections not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy is irreconcilable with the certification requirement in Republic Act No. 6645

Another point deliberated upon by the Court is whether Section 1 of Republic Act No. 6645 and Section 4 of Republic Act No. 7166 may be harmonized, instead of ruling that the latter completely repeals the former, so that the resolution issued by the concerned chamber of Congress will still be required, but that Republic Act No. 7166

shall govern as to when the special election must be held. On this score, it is conceded that Republic Act No. 7166's repealing clause did not expressly mention Republic Act No. 6645, and thus did not expressly repeal its pertinent provisions. Further, it is recognized that implied repeals are not lightly presumed. Every effort must be exerted to harmonize and give effect to all laws on the same subject.[84]

However, it is also settled that a later law may impliedly repeal an earlier law where provisions in both statutes on the same subject matter are in an irreconcilable conflict, such that one law cannot be enforced without nullifying the other.[85] When a later law is irreconcilably inconsistent with a prior law, the later law shall prevail.[86]

After a careful consideration of the rationale behind the certification from Congress and the ramifications should we retain the certification requirement in the procedure for the conduct of a special election, the Court concludes that the certification requirement of the earlier law should be deemed impliedly repealed, as it is plainly inconsistent with the mandatory directive in the later law that the election must be held by the COMELEC not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy. The certification requirement would not only hinder the COMELEC from performing its mandate in a timely fashion but would render Section 4 of Republic Act No. 7166 inoperable should Congress refuse or fail to timely issue the certification.

At the outset, it is vital to underscore that upon occurrence of the vacancy, the COMELEC's duty to call and hold the elections not earlier than 60 days but not later than 90 days from the occurrence of the vacancy is mandatory. The period allotted to the COMELEC for the call and conduct of elections, and all the preparations and logistics necessary therefor, would become even shorter if we interpret the law as requiring a certification from the House of Representatives. Assuming that Congress is in session, the House of Representatives has its own procedure and timeline for issuing resolutions. This includes submission of the resolution to the Secretary General, transmittal to the Committee on Rules, transmittal to the appropriate committee for review and reporting, as well as the first, second, and third readings.[87] Hence, it is entirely possible that the required interval for the COMELEC to conduct the elections would lapse if the COMELEC must await the House of Representatives' resolution to issue the certification before it can call and hold the elections, assuming that Congress is not yet in recess.

Further, it is crucial to note that the certification requirement was crafted specifically to vest both Houses of Congress with the exclusive discretion to decide whether a special election for the vacancy will be held. Should we retain the certification requirement, the concerned chamber of Congress may simply exercise their discretion and prevent the COMELEC from doing its duty under Republic Act No. 7166. This is plainly inconsistent with the COMELEC's mandate to hold the election upon occurrence of the vacancy at least one year before expiration of the term of the vacant seat. In other words, to retain the certification requirement will render Section 4 inoperable every time the House of Representatives, for some reason or another, decides to refrain from issuing the certification or fails to timely issue the resolution, which could not have been intended by Congress when it enacted Republic Act No. 7166.

In light of the foregoing, the certification requirement should be deemed abandoned and repudiated by Congress. It is presumed that the legislature intends to impart to the laws it enacts such a meaning as will render them operative and effective, and to prevent persons from circumventing or defeating them. In case of any doubt or obscurity, the statute should be construed to carry out its objective.[88] Illustrative of this principle is *Paras v. COMELEC*,[89] where the Court held that the phrase "regular local election" in Section 74 (b) of Republic Act No. 7160 must be construed to exclude the Sangguniang Kabataan (SK) elections.[90] To rule otherwise would entail that no recall elections would be held at all and which would not only unduly circumscribe the provision on recall, but would render Section 74 inutile and nugatory, viz.:

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the

context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The evident intent of Section 74 is to subject an elective local official to recall election once during his term of office. Paragraph (b) construed together with paragraph (a) merely designates the period when such elective local official may be subject of a recall election, that is, during the second year of his term of office. Thus, subscribing to petitioner's interpretation of the phrase regular local election to include the SK election will unduly circumscribe the novel provision of the Local Government Code on recall, a mode of removal of public officers by initiation of the people before the end of his term. And if the SK election which is set by [Republic Act] No. 7808 to be held every three years from May 1996 were to be deemed within the purview of the phrase "regular local election", as erroneously insisted by petitioner, then no recall election can be conducted rendering inutile the recall provision of the Local Government Code.

In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.[91] (Emphasis supplied, citations omitted)

In the same vein, it is submitted that any construction that would render the mandate in Republic Act No. 7166 difficult or impossible to perform for the COMELEC, such as retaining the certification requirement, should be avoided.

It may be contended that the inconsistency between the certification requirement and the COMELEC's mandate to hold the election will be resolved if the Court declares that Congress is required to issue the resolution in a timely fashion, so as to give the COMELEC ample time to hold the election within the timeframe required by Republic Act No. 7166. However, such a construction should not be lightly inferred or favored, as it would entail intrusion into the internal affairs of Congress, a co-equal branch of government. Nowhere in the language of Republic Act No. 6645 and Republic Act No. 7166 does it expressly or even impliedly provide that Congress may be compelled to issue a resolution to certify a vacancy and call for special election. This is even belied by the Congressional deliberations of Republic Act No. 6645, which highlight that the certification requirement was imposed precisely to vest Congress with the discretion on whether or not to call for a special election.

Moreover, as a rule, the courts shall not intervene in the internal affairs and procedures of a co-equal branch of government.[92] Between two acceptable constructions of the law, one which interferes with the proceedings of a co-equal branch of government, and another which respects such internal processes, the Court must choose the latter.

The power and duty to call for and hold a special election in case of a vacancy in the House of Representatives now resides with the COMELEC. As enforcer and administrator of election laws, it should be accorded wide latitude of discretion to ascertain the existence of a vacancy and all powers necessary in the performance of its mandate

It has likewise been raised in the deliberations that the resolution from the relevant chamber in Congress under Republic Act No. 6645 should be required, so that the COMELEC may be given official notice of the permanent vacancy in a chamber of Congress. However, rather than enabling the COMELEC in the performance of its duty, retaining the certification requirement would unduly straitjacket the COMELEC to the prescribed form of notice of a vacancy provided for in Republic Act No. 6645. As illustrated previously, if the COMELEC must wait for and exclusively rely on the certification to be issued by Congress in the specific form prescribed under Republic

Act No. 6645, the COMELEC would be fettered in its performance of its power and duty in timely calling for and holding the special election.

Time and again, the Court has highlighted the COMELEC's crucial role in the enforcement and administration of election laws. No less than the Constitution provides that the COMELEC shall "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall." [93] This is also in accord with the Omnibus Election Code, which stresses that in addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, including the power to promulgate rules and regulations implementing the provisions of the Omnibus Election Code or other laws. [94]

Moreover, where a general power is conferred or a duty is enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred. [95] In reposing the duty to call and hold the special elections with the COMELEC within a specific period, the COMELEC was impliedly reposed with the power and duty to determine the existence of a vacancy, and should be given wide latitude in executing this mandate.

In relation thereto, Section 35 of Republic Act No. 7166 [96] also empowers the COMELEC to issue rules and regulations to implement the said statute, which necessarily includes Section 4 thereof. Verily, Congress has already delegated to the COMELEC the power to issue rules and regulations to implement the law so that it may implement the broad policies laid down in the statute and to provide the details which the legislature may not have the opportunity or competence to provide.

In the case at bench, suffice it to state that a resolution from the relevant Chamber of Congress is not the only reasonable means available to the COMELEC to determine the existence of a vacancy. The COMELEC should be given a wide latitude of discretion to determine the existence of the vacancy and accordingly, the reasonable means to ascertain whether a vacancy exists—whether it be on the basis of official press releases or announcements from Congress, or a certification from the Speaker of the House of Representatives or the Secretary-General even when Congress is in session, without need of compelling Congress to go through the process of issuing a resolution. In the unlikely event that no press release or official announcement or certification is issued by Congress, and absent grave abuse of discretion, the COMELEC should not be prematurely prevented from determining an existing vacancy by duly investigating and verifying reliable news reports or communications, as the death, resignation, dismissal, or quo warranto of a member of Congress would more likely be widely publicized as matters of national interest.

A myriad of cases illustrate the Court's practice of giving the COMELEC a wide breadth in the execution and administration of election laws. To recall, the Court in *Tolentino v. COMELEC* [97] did not interfere in the COMELEC's exercise of its discretion to use certain means and methods to conduct the special election. In so finding, the Court stressed that the COMELEC is a constitutional body, which should not be hampered with restrictions, and must be duly accorded wide latitude of discretion in adopting its means to carry out its mandate of ensuring elections:

Evidently, COMELEC, in the exercise of its discretion to use means and methods to conduct the special election within the confines of [Republic Act] 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. 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 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.[98] (Emphasis supplied, citations omitted)

Indeed, the intent behind Article IX(c), Section 2(1) of the Constitution is to entrust the COMELEC with all the necessary and incidental powers for it to achieve the holding of free, orderly, honest, peaceful and credible elections. The Court has reiterated that "[i]n the matter of the administration of laws relative to the conduct of election . . . we must not by any excessive zeal take away from the [COMELEC] that initiative which by constitutional and legal mandates properly belongs to it." [99] Extra care must be taken in limiting the parameters of the COMELEC's broad powers, in deference to indisputable expertise in the field of election laws. The Court must give the COMELEC enough latitude in the exercise of its expertise, for to straight-jacket its discretion in the enforcement and administration of laws relating to the conduct of election, plebiscite or referendum may render it impotent.[100]

In fine, the COMELEC should be allowed to perform its duty to call and hold the special election within the given timeframe under Republic Act No. 7166, including the adoption of means or the issuance of rules and regulations to determine the existence of a vacancy. It should not be unduly constrained to await a certification from Congress—whether in the form of a resolution issued by the relevant chamber of Congress while in session, or a certification from the Speaker or the Senate President while Congress is in recess—before it may call and hold the special election. To limit the COMELEC to a resolution from Congress in determining the existence of a vacancy would be to curtail and render ineffectual its power and mandate to call for and hold the special elections within the allotted period.

Withal, the power and duty to call for and hold a special election in case of a vacancy in the House of Representatives now resides with the COMELEC, who must now call and hold the special election no later than 90 days from the occurrence of the vacancy, and without need of any positive act from Congress. This construction is in accord with the objective of Republic Act No. 7166, which was crafted to empower the COMELEC to be most effective in the performance of its sacred duty of ensuring the conduct of honest and free elections,[101] and Our judicial pronouncements that election laws should be construed liberally to give effect to the popular will.[102]

Incidentally, as petitioner's ultimate objective is the conduct of a special election to fill the vacancy for the Representative of the Third District of Palawan, and considering the said vacancy occurred more than a year before the expiration of Rep. Hagedorn's term, petitioner should have also impleaded the COMELEC as a respondent to this Petition, or filed the Petition for Mandamus with the COMELEC as the sole respondent, to compel the COMELEC to hold the special election in the manner prescribed under Republic Act No. 6645, as amended by Republic Act No. 7166.

It is settled that mandamus is a remedy to compel the performance of purely ministerial acts, and upon a clear legal imposition of a duty upon the office or officer sought to be compelled to act. Ministerial functions are those

which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done.[103] On this score, the COMELEC's duty to call and hold the special election within the prescribed period under Republic Act No. 6645, as amended by Republic Act No. 7166, upon occurrence of a vacancy at least one year before the expiration of the term of such seat, is a ministerial duty that may be the subject of a petition for mandamus.

There is no constitutional or legal imperative reposed on the House of Representatives to issue a resolution certifying to a vacancy among its members and calling for a special election to fill such vacancy

Absent such an imperative, and by virtue of the separation of powers, this Court shall not intrude on the internal affairs on a co-equal branch of government

Based on the foregoing legal framework, it is apparent that neither the Constitution nor the foregoing statutes impose a duty on the House of Representatives to call for a special election or issue a resolution or certification of vacancy. While the statutes use the word "shall" and thus operate to impose a duty that may be enforced,[104] the mandate to call and hold for a special election is unequivocally reposed only upon the COMELEC and strictly in the manner prescribed under Republic Act No. 6645, as amended by Republic Act No. 7166.

Absent a clear ministerial duty on the part of the House of Representatives to issue the resolution sought by petitioner, the Court has no authority to compel the House of Representatives to do so. By virtue of the principle of separation of powers, the courts cannot interfere with legislative discretion exercised within constitutional limits.[105] Neither may the courts intervene in the internal affairs and procedures of the legislature, as it is not within the province of the courts to direct Congress how to do its work.[106]

In a similar fashion, the Court has declined encroaching upon the discretion granted to both Houses of Congress in the formulation, adoption and promulgation of its own rules, subject only to the imperatives of quorum, voting and publication, and absent a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.[107]

Thus, the Court in *Calleja v. Executive Secretary*[108] upheld the internal rules of the House of Representatives which allowed virtual hearings relative to the quorum required for approval of bills. In so ruling, the Court recognized that our Constitution affords Congress with discretion in determining the appropriate rules in conducting its proceedings and stressed that absent any palpable grave abuse of discretion, it is beyond the scope of the Court's jurisdiction to scrutinize the internal procedures of Congress, which is a co-equal branch of government.[109]

Moreover, in *Abines v. Duque III*,[110] the Court declared that it cannot arrogate upon itself the power and responsibility of overseeing the entire government, and mandamus will not lie against both the Executive and the Legislative if it involves purely discretionary functions, in due deference to a co-equal branch of government. Indeed, the Court may grant mandamus to compel actions involving judgment and discretion only in highly exceptional cases, and even then, the Court can only order a party to act, but not to act one way or the other.[111]

By virtue of the absence of any clear legal duty reposed upon the House of Representatives to issue the resolution sought by petitioner, this Court shall not intrude on the legislature's internal affairs and compel the House of Representatives to disregard its own rules of procedure for the consideration and adoption of resolutions.[112] To rule otherwise would be antithetical to the principle of separation of powers, which serves as a fundamental tenet of our Constitution.

Pursuant to Republic Act No. 7166, a resolution from the House of Representatives is no longer required for the COMELEC's conduct of special elections to fill such vacancy

Petitioner asserts that to deny the petitioned writ of mandamus against the House of Representatives would be anathema to his constitutional rights of suffrage, liberty, and expression; would contravene the principle of proportional representation in Congress as embodied under Article VI, Section 5(1) of the Constitution; and would allow the House of Representatives to virtually suspend the right to elect a legislative representative into Congress.[113]

Petitioner's arguments fail to persuade, as these operate under the assumption that a resolution from the House of Representatives is still required before the COMELEC can hold the special election. However, as explained above, petitioner's interpretation of the procedure and conditions for the conduct of special elections no longer holds by virtue of the enactment of Republic Act No. 7166, which amended Republic Act No. 6645.

To recapitulate, when a vacancy in the House of Representatives arises at least one year prior to the expiration of the term for the vacated seat, the COMELEC must call and conduct a special election to fill the vacancy not earlier than 60 days nor longer than 90 days after the occurrence of such vacancy. A resolution from the House of Representatives certifying to the vacancy and calling for a special election is no longer required. This duty of the COMELEC to call and hold a special election is mandatory and ministerial.[114] In the exercise of this duty, the COMELEC is not beholden to any certification, call, or any positive act from the House of Representatives.

In fine, and considering the absence of both a clear legal right of petitioner to the relief sought and a corresponding legal duty on the House of Representatives to perform the act demanded, mandamus will not lie to compel the House of Representatives to issue a resolution certifying to the vacancy within it and calling for a special election.

A final note

It is settled that before the Court may exercise its power of judicial review on a constitutional question, it must be the very *lis mota* of the case, i.e., it is indispensable to the resolution of the case and cannot be raised collaterally. This requirement is anchored on two constitutional principles: the principle of deference, and the principle of reasonable caution in striking down an act by a co-equal political branch of government.[115]

As a collateral matter to his argument that the House of Representatives' non-issuance of the demanded resolution violated his right to suffrage and proportional representation, petitioner also asserts that this alleged violation is not cured by the appointment of a temporary caretaker to act as the representative of the Third District of Palawan, since such practice is unconstitutional and bereft of legal basis. However, having already resolved the controversy between the parties without tackling this constitutional question, the Court deems it prudent to exercise judicial restraint.

Indeed, the Court may refrain from exercising its power of judicial review and passing upon constitutional questions if there is some other ground on which its decision may be based, which this Court has already accomplished in this Decision.[116] It is not the habit of the Court to decide questions of a constitutional nature unless necessary to arrive at a decision. Moreover, the formulation of a ruling on a constitutional question shall be strictly confined to what is required by the facts of the case.[117]

ACCORDINGLY, the Petition for Mandamus is DISMISSED.

**SO ORDERED.**

Gesmundo, C.J., Leonen, S.A.J., Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, and Kho, Jr., JJ., concur.

Caguioa, J., see concurring and dissenting.

Singh,[\*] J., on leave.

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[\*] On leave.

[1] Republic Act No. 6645 (1988), An Act Prescribing the Manner of Filling A Vacancy in the Congress of the Philippines.

[2] Republic Act No. 7166 (1991), An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[3] Rollo, pp. 8-45.

[4] Id. at 14, 51-52.

[5] Id. at 15, 54-55.

[6] Id. at 15, 57-61.

[7] Id. at 15-16, 67, 73.

[8] Id. at 16, 71.

[9] Id. at 78.

[10] Id. at 17-18.

[11] Id. at 18.

[12] Id. at 707-708.

[13] Id. at 19, 662.

[14] Id. at 664-665.

[15] Id. at 20.

[16] Id. at 20-21.

[17] Id. at 21.

[18] Id. at 22.

[19] Id. at 708, 730.

[20] Id. at 704-725.

[21] Id. at 733-749.

[22] Information Technology Foundation of the Philippines v. Commission on Elections, 499 Phil. 281, 304-305 (2005) [Per J. Panganiban, En Banc].

[23] Albaña v. Commission on Elections, 478 Phil. 941, 949 (2004) [Per J. Callejo, Sr., En Banc].

- [24] *Liberal Party v. Commission on Elections*, 926 Phil. 405, 414 (2022) [Per J. Leonen, En Banc]. (Citation omitted)
- [25] CONST., art. VI, sec. 7 and sec. 8.
- [26] *Madrilejos v. Gatdula*, 863 Phil. 754, 785 (2019) [Per J. Jardeleza, En Banc].
- [27] *Kilusang Mayo Uno v. Aquino III*, 850 Phil. 1168 (2019) [Per J. Leonen, En Banc].
- [28] *Id.* at 1202.
- [29] See Juan Paolo M. Artiaga & Katrina Crista M. Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 892, 911-918 (2021).
- [30] CONST., art. VI, sec. 7.
- [31] CONST., art. VI, sec. 13.
- [32] CONST., art. VI, sec. 16 (3).
- [33] REV. PEN. CODE, arts. 30-33.
- [34] J. Caguioa, *Concurring and Dissenting Opinion*, p. 3.
- [35] *Marquez v. Commission on Elections*, 861 Phil. 667, 677-684 (2019) [Per J. Jardeleza, En Banc]. See *Ollesca v. Commission on Elections*, G.R. No. 258449, July 30, 2024 [Per J. Leonen, En Banc] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website; *Macalintal v. Commission on Elections*, G.R. Nos. 263590 & 263673, June 27, 2023 [Per J. Kho, Jr., En Banc] at 52-53. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website; *Cerajica v. Commission on Elections*, 749 Phil. 80, 86 (2014) [Per J. Perez, En Banc]; *Albana v. Commission on Elections*, 478 Phil. 941, 949 (2004) [Per J. Callejo, Sr., En Banc]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website; This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website;
- [36] *Cerafica v. Commission on Elections*, 749 Phil. 80, 86 (2014) [Per J. Perez, En Banc]; *Albaña v. Commission on Elections*, 478 Phil. 941, 949 (2004) [Per J. Callejo, Sr., En Banc].
- [37] *Rollo*, pp. 12-14.
- [38] *Id.* at 23-26.
- [39] *Id.* at 713-714.
- [40] *Id.* at 712-717.
- [41] *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004) [Per J. Carpio, En Banc].
- [42] *Partido Demokratiko Pilipino-Lakas ng Bayan v. Commission on Elections En Banc*, 912 Phil. 110, 116 (2021) [Per J. Lopez, M., En Banc].
- [43] *Zabal v. Duterte*, 846 Phil. 743, 790 (2019) [Per J. Del Castillo, En Banc]. (Citation omitted)
- [44] *Belgica v. Ochoa, Jr.*, 721 Phil. 416, 527 (2013) [Per J. Perlas-Bernabe, En Banc]. (Citations omitted)
- [45] G.R. No. 257427, June 13, 2023 [Per J. Dimaampao, En Banc].
- [46] *Id.* at 6. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[47] 205 Phil. 283 (1983) [Per J. De Castro, En Banc].

[48] Id. at 286-287.

[49] 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[50] Id. at 402.

[51] Villafuerte v. Securities and Exchange Commission, 921 Phil. 918, 927-928 (2022) [Per J. Hernando, En Banc].

[52] Vitangcol III v. Commission on Elections, G.R. Nos. 224027 & 224116, October 11, 2016 [Notice, En Banc].

[53] Palatino v. Commission on Elections, 623 Phil. 159, 164 (2009) [Per J. Carpio Morales, En Banc].

[54] Funa v. Manila Economic & Cultural Office, 726 Phil. 63, 83-84 (2014) [Per J. Perez, En Banc].

[55] Tolentino v. Commission on Elections, 465 Phil. 385, 402-403 (2004) [Per J. Carpio, En Banc]. (Citations omitted)

[56] Rollo, pp. 9-11.

[57] Id. at 709-712.

[58] 849 Phil. 120 (2019) [Per J. Jardeleza, En Banc].

[59] Id. at 131-132, 149-150.

[60] Lihaylihay v. Tan, 836 Phil. 400, 412 (2018) [Per J. Leonen, Third Division]

[61] Padilla v. Congress of the Philippines, 814 Phil. 344, 417 (2017) [Per J. Leonardo-De Castro, En Banc].

[62] Rollo, pp. 743-744.

[63] Id. at 717-719.

[64] Id. at 719-723.

[65] CONST., art. VI, sec. 9.

[66] CONST. (1973), art. VIII, sec. 5(2) reads:

SECTION 5....

(2)

In case a vacancy arises in the National Assembly one year or more before a regular election, the Commission on Elections shall call a special election to be held within sixty days after the vacancy occurs.

CONST. (1935), as amended, art. VI, sec. 8(2) reads:

SECTION 8.....

(2)

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.

See also Juan Paolo M. Artiaga & Katrina Crista M. Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 892, 903-905 (2021).

[67] *Republic v. Sereno*, 831 PHIL. 271, 409 (2018) [Per J. Tijam, En Banc].

[68] *Id.*

[69] *Macalintal v. Commission on Elections*, 453 PHIL. 586, 632-633 (2003) [Per J. Austria-Maitinez, En Banc].

[70] *Chavez v. Judicial and Bar Council*, 691 PHIL. 173, 199-200 (2012) [Per J. Mendoza, En Banc].

[71] Emphasis supplied.

[72] Juan Paolo M. Artiaga & Katrina Crista M. Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 892, 907-909 (2021), citing House of Representatives Plenary Hearing on the Consideration of House Bill No. 2696, November 10, 1987, pp. 69-72.

[73] Republic Act No. 7166, sec. 39 reads:

SECTION 39. Amending and Repealing Clause. — Section 107, 108 and 245 of the Omnibus Election Code are hereby repealed. Likewise, the inclusion in Section 262 of the Omnibus Election Code of the violations of Sections 105, 106, 107, 108, 109, 110, 111 and 112 as among election offenses is also hereby repealed. This repeal shall have retroactive effect.

Batas Pambansa Blg. 881, Republic Act No. 6646, Executive Order Nos. 144 and 157 and all other laws, orders, decrees, rules and regulations or other issuances, or any part thereof, inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

[74] *Gloria v. Court of Appeals*, 365 Phil. 744, 760 (1999) [Per J. Mendoza, En Banc].

[75] *Id.* at 744.

[76] *Id.* at 755-756.

[77] 222 Phil. 588 (1985) [Per J. Cuevas, En Banc].

[78] *Id.* at 618-619.

[79] 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[80] *Id.* at 405.

[81] J. Puno, Dissenting Opinion in *Tolentino v. Commission on Elections*, 465 Phil. 385, 476 (2004); see Juan Paolo M. Artiaga & Katrina Crista M. Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 935 (2021).

[82] Juan Paolo M. Artiaga & Katrina Crista M. Artiaga, *Unconstitutional House Caretaking*, 94 PHIL. L.J. 892, 909-910, 934 (2021).

[83] *Duty to Energize the Republic Through the Enlightenment of the Youth [Duterte Youth] Party-list v. Commission on Elections*, G.R. Nos. 261123 & 261876, August 20, 2024 [Per J. Rosario, En Banc] at 21-22. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website; Republic Act No. 7941 (1995), Party-List System Act, sec. 2.

[84] *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 758 PHIL. 724, 763-764 (2015)

[Per J. Leonardo-De Castro, En Banc].

[85] Commissioner of Internal Revenue v. Semirara Mining Corp, 844 PHIL. 755, 764 (2018) [Per J. Reyes, A., Jr., Second Division].

[86] Lambino v. Commission on Elections, 536 Phil. 1, 106 (2006) [Per J. Carpio, En Banc].

[87] See Rules of the House of Representatives (2023).

[88] U.S. v. Go Chico, 14 Phil. 128, 141 (1909) [Per J. Moreland, First Division].

[89] 332 Phil. 56 (1996) [Per J. Francisco, En Banc].

[90] Id. at 62-64.

[91] Id. at 63-64.

[92] Padilla v. Congress of the Philippines, 814 Phil. 344, 369 (2017) [Per J. Leonardo-De Castro, En Banc]; Philippine Coconut Producers Federation, Inc. v. Republic, 616 Phil. 94, 119 (2009) [Per J. Velasco, Jr., En Banc].

[93] CONST., art. IX (C), sec. 2(l).

[94] OMNIBUS ELECTION CODE, sec. 52(c).

[95] Valencia v. Court of Appeals, 449 Phil. 711, 727 (2003) [Per J. Bellosillo, Second Division].

[96] Republic Act No. 7166 (1991), sec. 35 states:

Sec. 35. Rules and Regulations. – The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

[97] 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[98] Id. at 415-416.

[99] Maruhom v. Commission on Elections, 387 Phil. 491, 506-507 (2000) [Per J. Ynares-Santiago, En Banc]. (Citation omitted)

[100] Buac v. Commission on Elections, 465 Phil. 800, 813 (2004) [Per J. Puno, En Banc].

[101] Abayon v. House of Representatives Electoral Tribunal, 785 Phil. 683, 702 (2016) [Per J. Mendoza, Special En Banc].

[102] Cumigad v. Commission on Elections, 547 Phil. 447, 461 (2007) [Per J. Carpio, En Banc].

[103] Robes v. Commission on Elections, 942 Phil. 219, 227 (2023).

[104] Partido Demokratiko Pilipino-Lakas ng Bayan v. Commission on Elections En Banc, 912 Phil. 110, 118 (2021) [Per J. Lopez, M., En Banc].

[105] Philippine Coconut Producers Federation, Inc. v. Republic, 616 Phil. 94, 119 (2009) [Per J. Velasco, Jr., En Banc].

[106] Padilla v. Congress of the Philippines, 814 Phil. 344, 369 (2017) [Per J. Leonardo-De Castro, En Banc].

[107] Spouses Dela Paz v. Senate Committee on Foreign Relations, 598 Phil. 981, 986 (2009) [Per J. Nachura, En Banc].

[108] 918-B Phil. 1 (2021) [Per J. Carandang, En Banc].

[109] Id. at 271-273.

[110] Abines v. Duque III, 929 Phil. 828 (2022) [Per J. Leonen, En Banc].

[111] Id. at 853.

[112] See Rules of the House of Representatives (2023), Rule X.

[113] Rollo, p. 745.

[114] A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done (Velasco v. Belmonte, Jr., 777 Phil. 169, 202 (2016) [Per J. Leonardo-De Castro, En Banc]).

[115] Parcon-Song v. Parcon, 876 Phil. 364, 398-401 (2020) [Per J. Leonen, En Banc].

[116] Gios-Samar, Inc. v. Department of Transportation and Communications, 849 Phil. 120, 184-185 (2019) [Per J. Jardeleza, En Banc].

[117] Id. at 184.

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## CONCURRING AND DISSENTING OPINION

### CAGUIOA, J.:

The ponencia dismisses the Petition for Mandamus, filed by petitioner Elroy John M. Hagedorn, which asks the Court to order the respondent House of Representatives (HoR) to issue a resolution certifying the existence of a permanent vacancy in the said chamber of Congress in light of the death of Edward S. Hagedorn, representative of the Third District of Palawan.

I agree with the dismissal of the petition, not because of the reasons stated in the ponencia, but on the ground of mootness—considering that a special election for the said vacancy could no longer be held at this time. I thus fully disagree with the ponencia's ruling that neither chamber of Congress is obliged to issue a resolution certifying to a permanent vacancy, should one arise, in order to trigger the duty of the Commission on Elections (COMELEC) to hold a special election.

The ponencia anchors its ruling on its finding that COMELEC has the power and duty to call for a special election in case of a permanent vacancy at the HoR without need of a resolution from the said chamber certifying the existence of the permanent vacancy. The ponencia cites Section 4 of Republic Act No. 7166,[1] which it views as having amended Section 1 of Republic Act No. 6645.[2] The relevant provisions of both laws are provided below:

Section 1, Republic Act No. 6645

Section 4, Republic Act No. 7166

SECTION 1. In case a vacancy arises in the Senate at least eighteen (18) months or in the House of Representatives at least (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. (Emphasis supplied)

SECTION 4. . . .

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 succeeding regular election. (Emphasis supplied)

Since Republic Act No. 7166 no longer mentions a resolution from the relevant chamber certifying the existence of a permanent vacancy, the ponencia dismisses the present petition for mandamus as it is of the view that neither chamber of Congress is required by law to issue anything for the COMELEC to call for a special election.

While the conclusion of the ponencia may, at first blush, appear to be supported by the letter of Section 4 of Republic Act No. 7166, it is relevant to ask how—under the ponencia's formulation—the COMELEC would have official notice of the permanent vacancy in a chamber of Congress. A permanent vacancy in a chamber of Congress may arise from various reasons, not just from death as in this case, but also from resignation, dismissal (by the relevant chamber), or quo warranto (by the electoral tribunal). Given these numerous ways by which a permanent vacancy may arise, the ponencia does not answer the question of how COMELEC would have official knowledge of the said vacancy. Even if the Court were to limit the discussions to permanent vacancies due to death, the ponencia still does not answer how COMELEC would have official notice of such death. If it is not the relevant chamber which has the duty to inform COMELEC, is it the heirs of the legislator or any of his or her constituents? May COMELEC rely on news reports, if any?

It is thus my considered view that the Resolution referred to in Section 1 of Republic Act No. 6645 remains required so that COMELEC would have notice of the permanent vacancy. The repealing clause of Republic Act No. 7166 does not mention Republic Act No. 6645 despite expressly mentioning other laws.[3] Thus, Section 1 of Republic Act No. 6645 and Section 4 of Republic Act No. 7166 could be harmonized—instead of ruling that the latter completely repeals the former—so that the Resolution will still be required but Republic Act No. 7166 governs as to when the special election must be held.

This formulation is not new and is in fact confirmed by past practice. When then Senator Teofisto Guingona, Jr. became Vice-President upon nomination by then President Gloria Macapagal-Arroyo and confirmation by Congress, the Senate immediately issued (on the same day) a resolution certifying to the existence of a vacancy, and calling on COMELEC to fill the vacancy through a special election.[4] It is worthy to note that Republic Act No. 7166 was enacted in 1991, while the events relating to the vacancy left by Senator Guingona happened years after, in 2001. Thus, even with Republic Act No. 7166 as the governing law on vacancies in Congress, the chambers still understood that it is their duty to certify that a permanent vacancy exists therein.

Having said that, I agree that a writ of mandamus cannot be issued in this case for being moot. The term of the position left by Edward S. Hagedorn will end in two months, and in fact, the next regular elections is scheduled in a month. As a special election for the position of representative of the Third District of Palawan is the ultimate objective of this litigation, and considering that the same is no longer possible, the present petition is thus already moot.

Still, the aforementioned discussions on the import of Republic Act No. 6645 and Republic Act No. 7166 could be laid down by the Court as the issue in this case is "capable of repetition yet evading review." Jurisprudence shows that the heart of this exception is that the "challenged action is in its duration too short to be fully litigated

prior to its cessation or expiration." [5] The said principle, allowing the Court to rule despite the mootness of the case, is primarily applied in election cases in the Philippines [6] in light of the three-year terms for most elected positions in the government. Considering the relatively short time periods available to litigate the issue presented in this case, the exception allows the Court to rule that, moving forward, the relevant chamber of Congress shall issue a resolution certifying to a permanent vacancy in such chamber, should one arise.

ACCORDINGLY, I vote to DISMISS the instant Petition for Mandamus.

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[1] Republic Act No. 7166 (1991), An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

[2] Republic Act No. 6645 (1988), An Act Prescribing the Manner of Filling a Vacancy in the Congress of the Philippines.

[3] Republic Act No. 7166 (1991), sec. 39 states:

SECTION 39. Amending and Repealing Clause. — Section 107, 108 and 245 of the Omnibus Election Code are hereby repealed. Likewise, the inclusion in Section 262 of the Omnibus Election Code of the violations of Sections 105, 106, 107, 108, 109, 110, 111 and 112 as among election offenses is also hereby repealed. This repeal shall have retroactive effect.

Batas Pambansa Blg. 881, Republic Act No. 6646, Executive Order Nos. 144 and 157 and all other laws, orders, decrees, rules and regulations or other issuances, or any part thereof, inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

[4] See *Tolentino v. Commission on Elections*, 465 Phil. 385 (2004) [Per J. Carpio, En Banc].

[5] See *Madrilejos v. Gatdula*, 863 Phil. 754, 788 (2019) [Per J. Jardeleza, En Banc].

[6] See *Alunan III v. Mirasol*, 342 Phil. 467 (1997) [Per J. Mendoza, En Banc], an election case, which is the Philippine case which imported the exception from the rulings of the Supreme Court of the United States. See also *Marquez v. Commission on Elections*, 861 Phil. 667 (2019) [Per J. Jardeleza, En Banc] and *Cardino v. Commission on Elections*, 806 Phil. 1053 (2017) [Per J. Leonardo-De Castro, En Banc].

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