Republic of the Philippines
Supreme Court
Manila

EN BANC

NORMAN CORDERO MARQUEZ, Petitioner, -versus- **COMMISSION ON ELECTIONS,** Respondent.	**G.R. No. 244274** Present: BERSAMIN, ***CJ.***, CARPIO, PERALTA, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, A. REYES, JR., GESMUNDO, J. REYES, JR., HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, and ZALAMEDA, ***JJ.*** Promulgated: September 3, 2019

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DECISION

JARDELEZA, *J.*:

The question presented is whether the Commission on Elections (COMELEC) may use lack of proof of financial capacity to sustain the financial rigors of waging a nationwide campaign, by itself, as a ground to declare an aspirant for senator a nuisance candidate. We hold that the COMELEC may not.

On October 15, 2018, petitioner Norman Cordero Marquez (Marquez) filed his Certificate of Candidacy (CoC) for the position of senator in the May 13, 2019 national and local elections. He is a resident of Mountain Province, a real estate broker, and an independent candidate.[1]

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[1] *Rollo*, p. 59.

On October 22, 2018, the COMELEC Law Department, *motu proprio*, filed a petition[2] to declare Marquez a nuisance candidate. The Law Department argued that: (1) Marquez was "virtually unknown to the entire country except maybe in the locality where he resides;"[3] and (2) though a real estate broker, he, absent clear proof of financial capability, "will not be able to sustain the financial rigors of a nationwide campaign."[4]

Marquez countered that he: is the co-founder and sole administrator of Baguio Animal Welfare (BAW), an animal advocacy group, and is thus, known in various social media and websites;[5] is a member of relevant task forces and advisory committees;[6] is in regular consultations with government offices to discuss animal welfare issues and concerns;[7] has been interviewed in television and radio shows;[8] has travelled all over to promote his advocacy;[9] and has received donations and contributions from supporters.[10]

He argues that the COMELEC should not discount "the potential for vastly untapped sector of animal lovers, raisers and handlers, and the existing local and foreign benefactors and donors who are willing and capable to (*sic*) subsidize the expenses of a social-media-enhanced national campaign."[11]

The COMELEC First Division on December 6, 2018, cancelled Marquez' CoC,[12] citing this Court's ruling in *Martinez III v. House of Representatives Electoral Tribunal and Benhur L. Salimbangon* (*Martinez III*)[13] that "[i]n elections for national positions x x x the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign."[14] The amounts set forth in Section 13 of Republic Act No. (RA) 7166[15] "would at least require [Marquez] to prove that he can mount a viable nationwide campaign" and "x x x running as an independent further decreases a candidate's chances with even more limited resources at his disposal."[16]

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2 *Id.* at 31-42.
3 *Id.* at 36.
4 *Id.*
5 *Rollo*, p. 45.
6 *Id.* at 46
7 *Id.*
8 *Rollo*, p. 48.
9 *Id.* at 49-50.
10 *Id.* at 52.
11 *Id.* at 53.
12 *Id.* at 58-62.
13 G.R. No. 189034, January 12, 2010, 610 SCRA 53.
14 *Rollo*, p. 58.
15 An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.
16 *Rollo*, p. 61.

Marquez filed a motion for reconsideration[17] which the COMELEC *En Banc* denied on January 23, 2019.[18] Hence, this petition.[19]

The main issue presented is whether the COMELEC committed grave abuse of discretion in declaring Marquez a nuisance candidate for his failure to prove his financial capability to mount a nationwide campaign.

Marquez maintains that he has a *bona fide* intention to run for office and can sustain a nationwide campaign "given the campaign-enhanced support from existing and expanded donors base, locally and internationally, and the overwhelming hospitality and endorsement of pet organizations and animal-based livelihood groups all over the Philippines."[20] Section 13 of RA 7166 "represent(s) expense ceilings but not necessarily the actual expenses that a candidate must spend out of his personal resources."[21]

More so, "the power of social media has emerged as a potent, yet cost effective, element in the candidate's ability to wage a nationwide campaign."[22] Given the advent of social media and "the spirit of the new-generation-internet-based campaigns," Marquez maintains he is capable of launching a "revolutionary" and "unprecedented internet-powered online campaign, coupled with host-dependent campaign sorties, on a nationwide scope" that will not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other Senatorial candidates."[23]

He prays that a writ of injunction and temporary restraining order (TRO) be issued to prevent the COMELEC from deleting his name in the final list of senatorial candidates in the printed ballots and to enjoin COMELEC to include his name in all the certified list of senatorial candidates issued for public information until after the Court shall have resolved the petition.[24]

The Office of the Solicitor General (OSG), representing the COMELEC, seeks the dismissal of the petition because the issues raised involve errors of judgment not reviewable through a special civil action for *certiorari* under Rule 65 of the Rules of Court.[25] Marquez essentially questions the COMELEC's appreciation of facts that led to its determination of the issue of whether he should be declared a nuisance candidate.[26]

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17 *Id.* at 64-75.
18 *Id.* at 79-83.
19 *Id.* at 3-28.
20 *Id.* at 6.
21 *Id.* at 17.
22 *Id.* at 23.
23 *Id.*
24 *Rollo*, pp. 24-25.
25 *Id.* at 105-108.
26 *Id.*

The OSG rejects Marquez' argument that "the principles enunciated by this Court in *Pamatong v. COMELEC*[27] (*Pamatong*) and *Martinez III* have been rendered irrelevant in light of the emerging power of social media."[28]

The OSG also argues that the COMELEC acted within its jurisdiction. Section 69 of *Batas Pambansa Bilang* (BP) 881, also known as the Omnibus Election Code (OEC) is a valid limitation on the privilege to seek elective office. Citing *Pamatong* and *Martinez III*, the OSG argues that the State has a compelling interest to ensure that its electoral exercises are rational, objective and orderly. Thus, the COMELEC may exercise its authority to eliminate candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. The OSG also noted that, the Court already applied COMELEC Resolution No. 6452 dated December 10, 2003 in appreciating the instances where the COMELEC may *motu proprio* refuse to give due course to or cancel a CoC. Among those instances listed are some of the requirements that Marquez claims ought to have been incorporated in the election rules and regulations. He thus cannot claim that there are no rules incorporating the standards applied by the COMELEC in finding him a nuisance candidate.[29]

Marquez also failed to prove that he is financially capable of waging a nationwide campaign for the 2019 elections. He did not substantiate his claim of capability to utilize the social media to launch an effective campaign. His allegation that statistics are in his favor to win the election was unsubstantiated. Thus, his claim that his campaign would not require the "unwarranted exorbitant costs associated with the traditional cash-dependent campaigns of the other senatorial candidates" has no leg to stand on.[30]

Consequently, the OSG opposes Marquez' prayer for the issuance of a writ of injunction and TRO.

We grant the petition.

I

The Court is well aware that the May 13, 2019 national and local elections have concluded, with the proclamation of the top 12 candidates receiving the highest number of votes as senators-elect. This development would ordinarily result in the dismissal of the case on the ground of mootness. Since a judgment in one party's (*i.e.*, Marquez) favor will not serve any useful

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27 G.R. No. 161872, April 13, 2004, 427 SCRA 96.
28 *Rollo*, p. 111.
29 *Id.* at 108-113.
30 *Id.* at 113-116.

purpose nor have any practical legal effect because, in the nature of things, it cannot be enforced,[31] the Court would normally decline jurisdiction over it.[32]

The Court's power to adjudicate is limited to actual, ongoing controversies. Paragraph 2, Section 1, Article VIII of the 1987 Constitution provides that "judicial power includes the duty of the courts of justice **to settle actual controversies** involving rights which are legally demandable and enforceable x x x." Thus, and as a general rule, this Court will not decide moot questions, or abstract propositions, or declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it.[33]

Such rule, however, admits of exceptions. A court will decide a case which is otherwise moot and academic if it finds that: (a) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review.[34]

We find that the fourth exception obtains in this case.

At this point, tracing the history of the capable of repetition yet evading review exception to the doctrine on mootness is in order.

The United States (U.S.) Supreme Court first laid down the exception in 1911, in *Southern Pacific Terminal Company v. Interstate Commerce Commission*.[35] In that case, the Interstate Commerce Commission ordered appellants to cease and desist from granting a shipper undue preference over wharfage charges. The questioned Order, which was effective for about two years expired while the case inched its way up the appellate process, and before a decision could be rendered by the U.S. Supreme Court. The Court refused to dismiss the appeal as moot, holding:

> x x x The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress.[36]

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[31] *Huibonhoa v. Guisande*, G.R. No. 197474, January 10, 2019; *Timbol v. Commission on Elections*, G.R. No. 206004, February 24, 2015, 751 SCRA 456, 462, citing *COCOFED-Philippine Coconut Producers Federation, Inc. v. Commission on Elections*, G.R. No. 207026, August 6, 2013, 703 SCRA 165, 175.

[32] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia, (Philippines)*, G.R. No. 209271, July 26, 2016, 798 SCRA 250, 270.

[33] *Id.* at 270, citing *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010, 629 SCRA 530, 533.

[34] *Id.* at 270-271.

[35] 219 U.S. 498 (1911).

[36] *Id.* at 515.

The exception would find application in the 1969 election case of *Moore v. Ogilvie*.[37] Petitioners were independent candidates from Illinois for the offices of electors for President and Vice President of the U.S., for the 1968 election. They questioned an Illinois statute which required candidates for the post of such electors to be nominated by means of signatures of at least 25,000 qualified voters, provided the 25,000 signatures include the signatures of 200 qualified voters spread from each of at least 50 counties. While petitioners filed petitions containing 26,500 signatures of qualified voters, they failed to satisfy the proviso.

Although the 1968 election was over by the time the case reached the U.S. Supreme Court for decision, the Court did not dismiss the case as moot, ruling that "the burden which x x x allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review.""[38]

Similarly, the U.S. Supreme Court in 1973 applied the exception in *Roe v. Wade*.[39] There, a pregnant woman in 1970 filed a petition challenging the anti-abortion statutes of Texas and Georgia. The case was not decided until 1973 when petitioner was no longer pregnant. Despite being mooted, the U.S. Supreme Court ruled on the merits of the petition, explaining:

> The usual rule in federal cases is that an actual controversy must exist at stages of appellate or *certiorari* review, and not simply at the date the action is initiated.
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> **But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied.** Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review."[40] (Citations omitted; emphasis supplied.)

By 1975, the U.S. Supreme Court would lay down two elements required to be present in a case before the exception applies. In *Weinstein v. Bradford*,[41] the Court, explaining its ruling in *Sosna v. Iowa*,[42] clarified that in the absence of a class action, the "capable of repetition yet evading review"

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37 394 U.S. 814 (1969).
38 *Id.* at 816.
39 410 U.S. 113 (1973).
40 *Id.* at 125.
41 423 U.S. 147 (1975).
42 419 U.S. 393 (1975).

doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.[43]

In Our jurisdiction, the Court would first apply the exception in *Alunan III v. Mirasol*,[44] an election case. There, petitioners assailed a Department of Interior and Local Government (DILG) Resolution exempting the City of Manila from holding elections for the *Sangguniang Kabataan* (SK) on December 4, 1992. Petitioners argued that the elections previously held on May 26, 1990 were to be considered the first under the Local Government Code. The Court was then confronted with the issue of whether the COMELEC can validly vest in the DILG control and supervision of the SK Elections. While the second elections were already held on May 13, 1996, during the pendency of the petition, the Court ruled that the controversy raised is capable of repetition yet evading review because the same issue is "**likely to arise in connection with every SK election and yet, the question may not be decided before the date of such elections.**"[45]

The Court would then apply the exception in the subsequent cases of *Sanlakas v. Executive Secretary*,[46] *David v. Macapagal-Arroyo*,[47] *Belgica v.*

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[43] *Weinstein v. Bradford*, *supra* note 41 at 149; see also *Lewis v. Continental Bank Corporation*, 494 U.S. 472, 475 (1990).

[44] G.R. No. 108399, July 31, 1997, 276 SCRA 501.

[45] *Id.* at 501-502. Emphasis supplied.

[46] G.R. No. 159085, February 3, 2004, 421 SCRA 656. Several petitions were filed before this Court challenging the validity of Proclamation No. 427 and General Order No. 4 which were issued on July 27, 2003 in the wake of the Oakwood occupation by some three hundred junior officers and enlisted men of the Armed Forces of the Philippines (AFP). Through these issuances, the President declared a state of rebellion, and directed the AFP and the Philippine National Police to suppress rebellion, respectively. While the Court ruled that the issuance of Proclamation No. 435, which declared that the state of rebellion ceased to exist, has rendered the case moot, it nevertheless found the controversy capable of repetition yet evading review. We emphasized that the Court was previously precluded from ruling on a similar question in *Lacson v. Perez* (G.R. No. 147780, May 10, 2001, 357 SCRA 756), *i.e.*, the validity of President Gloria Macapagal-Arroyo's declaration of a state of rebellion thru Proclamation No. 38, due to the lifting of the declaration of a "state of rebellion" in Metro Manila on May 6, 2001. The Court explained:

> Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, "an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons' assaulted and attempted to break into Malacañang." Petitions were filed before this Court assailing the validity of the President's declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases precluded this Court from addressing the constitutionality of the declaration.
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> To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding. (*Id.* at 664-665.)

[47] G.R. No. 171396, May 3, 2006, 489 SCRA 160. Petitioners challenged the constitutionality of Presidential Proclamation No. 1017 and General Order No. 5 issued by the President, which declared a state of national emergency, in order to defeat a plot to unseat or assassinate President Arroyo, on or about February 24, 2006, hatched by military officers, leftist insurgents of the New People's Army (NPA), and members of the political opposition. While President Arroyo subsequently lifted Proclamation No. 1017 by issuing Presidential Proclamation No. 1021 on March 3, 2006, or after just one week, the Court held that it did not decline jurisdiction as the controversy is capable of repetition yet evading review. Justice Brion, referring to *David v. Macapagal-Arroyo*, in his Concurring and Dissenting Opinion in the *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)* (G.R. No. 183591, October 14, 2008, 568 SCRA 402), explained that while David lacked an extended explanation on the exception to mootness, the Court's action in *David* and *Sanlakas* are

Ochoa[48] and in the more recent case of *Philippine Association of Detective and Protective Agency Operators (PADPAO) v. COMELEC.*[49]

Here, it was only on January 23, 2019 that the COMELEC *En Banc* rendered its assailed ruling and ultimately decided that Marquez is a nuisance candidate. After receiving a copy of the Resolution[50] on January 28, 2019, he filed this petition on February 14, 2019. Meanwhile, the COMELEC finalized the list of senatorial candidates on January 31, 2019[51] started printing ballots for national candidates on February 9, 2019[52] and completing the printing of the same on April 26, 2019.[53] Given this chronology of events, this Court was little wont to issue a TRO, as the same would only delay the conduct of the May 13, 2019 elections.

Moreover, given that the COMELEC appears to be applying the same rule with respect to other aspiring candidates,[54] there is reason to believe that the same issue would likely arise in future elections. Thus, the Court deems it

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essentially correct because of the history of the emergencies that had attended the administration of President Macapagal-Arroyo since she assumed office. Consequently, by the time David was decided, the Court's basis and course of action in the said cases had already been clearly laid.

[48] G.R. No. 208566, November 19, 2013, 710 SCRA 1. Petitioners assailed the constitutionality of the Executive Department's lump-sum, discretionary funds under the 2013 General Appropriations Act, known as the Priority Development Assistance Fund (PDAF). While the Executive Department asserted that it undertook to reform, and President Benigno Simeon S. Aquino III declared that he had already abolished, the PDAF, the Court ruled that these events did not render the case moot and academic. It recognized that the preparation and passage of the national budget is, by constitutional imprimatur, a matter of annual occurrence. Furthermore, the evolution of the ubiquitous Pork Barrel System, through its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar." Thus, the Court ruled that the issues underlying the manner in which certain public funds are spent, if not resolved at the most opportune time, are capable of repetition yet evading review.

[49] G.R. No. 223505, October 3, 2017, 841 SCRA 524. Similar to *Alunan*, the Court's opportunity to grant practical relief was limited by the shortness of the election period. In this case, petitioner assailed the validity of Section 2(e), Rule III of COMELEC Resolution No. 10015 which required private security agencies to comply with requirements and conditions prior to obtaining authority to bear, carry and transport firearms outside their place of work or business and in public places, during the election period. The Court resolved the challenge against the COMELEC Resolution, thus:

> The election period in 2016 was from January 10 until June 8, 2016, or a total of only 150 days. The petition was filed only on April 8, 2016. **There was thus not enough time for the resolution of the controversy. Moreover, the COMELEC has consistently issued rules and regulations on the Gun Ban for previous elections in accordance with RA 7166**: Resolution No. 8714 for the 2010 elections, Resolution No. 9561-A for the 2013 elections, and the assailed Resolution No. 10015 for the 2016 elections. Thus, **the COMELEC is expected to promulgate similar rules in the next elections. Prudence accordingly dictates that the Court exercise its power of judicial review to finally settle this controversy**. (Emphasis supplied.) (*Id.* at 542-543.)

See also *Cardino v. Commission on Elections* (G.R. No. 216637, March 7, 2017, 819 SCRA 586), where this Court deemed it appropriate to resolve the issue on the merits despite the expiration of the contested term of office, considering that litigation on the question of eligibility of one of the parties is capable of repetition in that it is likely to recur if she would again run for public office.

[50] *Rollo*, pp. 79-83.

[51] See https://news.abs-cbn.com/news/01/31/09/comelec-names-63-candidates-for-2019-senatorial-elections, last accessed on August 19, 2019.

[52] See https://news.mb.com.ph/2019/02/09/comelec-starts-printing-64-m-ballots-for-may-polls/, last accessed on August 19, 2019.

[53] See https://www.rappler.com/nation/politics/elections/2019/229065-comelec-finishes-ballot-printing, last accessed on August 19, 2019.

[54] There is at least one case pending before the Court involving essentially the same issue (cancellation by the COMELEC of an aspirant's CoC on the ground of lack of proof of financial capacity to wage a nationwide campaign), albeit filed by a different party. (See *Angelo Castro De Alban v. COMELEC, et al.* [*De Alban v. COMELEC, et al.*], G.R. No. 243968, currently pending with the First Division.)

proper to exercise its power of judicial review to rule with finality on whether lack of proof of financial capacity is a valid ground to declare an aspirant a nuisance candidate.[55]

II

We find that the COMELEC committed grave abuse of discretion in declaring Marquez a nuisance candidate on the ground of failure to prove financial capacity to sustain the financial rigors of waging a nationwide campaign. There is grave abuse of discretion: (1) when an act is done contrary to the Constitution, the law or jurisprudence; or (2) when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.[56] Both elements appear to be present in this case.

A

We already declared in *Maquera v. Borra (Maquera)*,[57] that the right to vote *and to be voted for* shall not be made to depend upon the wealth of the candidate. We held that the State cannot require candidacy for a public office to be conditioned on the ability to file a surety bond equivalent to the one-year salary of the position sought. This is a constitutionally impermissible property qualification. *Maquera's* rationale applies with equal cogency in this case. The COMELEC cannot condition a person's privilege to be voted upon as senator on his or her financial capacity to wage a nationwide campaign. Quite obviously, the financial capacity requirement is a property requirement.

In *Maquera*, We declared RA 4421 as unconstitutional insofar as it required "all candidates for national, provincial, city and municipal offices" to "post a surety bond equivalent to the one-year salary or emoluments of the position to which he is a candidate x x x." The Court ruled that the law had the following effects: (1) preventing or disqualifying candidates from running although they possess the qualifications prescribed by the Constitution or law because they cannot pay the premium; and (2) imposing property qualifications in order that a person could run for public office and that the people could validly vote for him. Former Chief Justice Cesar Bengzon, in his Concurring Opinion, explained why both effects are constitutionally impermissible:

> The Constitution, in providing for the qualification of Congressmen, sets forth only age, citizenship, voting and residence qualifications. No property qualification of any kind is thereunder required. Since the effect of Republic Act 4421 is to require of candidates for Congress a substantial property qualification, and to disqualify those who do not

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55 See also *Alunan III v. Mirasol*, *supra* note 44.

56 *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, January 13, 2004, 419 SCRA 141, 148, citing *Republic v. Cocofed*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 493, and *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18, 79.

57 G.R. No. L-24761, September 7, 1965, 15 SCRA 7.

> meet the same, it goes against the provision of the Constitution which, in line with its democratic character, requires no property qualification for the right to hold said public office.
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> Freedom of the voters to exercise the elective franchise at a general election implies the right to freely choose from all qualified candidates for public office. The imposition of unwarranted restrictions and hindrances precluding qualified candidates from running is, therefore, violative of the constitutional guaranty of freedom in the exercise of elective franchise. It seriously interferes with the right of the electorate to choose freely from among those eligible to office whomever they may desire.
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> x x x x
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> Nuisance candidates, as an evil to be remedied, do not justify the adoption of measures that would bar poor candidates from running for office. Republic Act 4421 in fact enables rich candidates, whether nuisance or not, to present themselves for election. Consequently, it cannot be sustained as a valid regulation of elections to secure the expression of the popular will.[58]

The COMELEC gravely abused its discretion when it declared Marquez a nuisance candidate *on the ground of lack of proof of his financial capacity to wage a nationwide campaign*. By so doing, the COMELEC has effectively imposed a "property qualifications are inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same x x x"[59] already and clearly proscribed under Our ruling in *Maquera*.

B

While Section 26, Article II of the 1987 Constitution provides that "[t]he State shall guarantee equal access to opportunities for public service," it is equally undisputed that there is no constitutional right to run for public office. It is, rather, a privilege subject to limitations imposed by law.[60] Thus, in *Pamatong*, We explained the rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for public office:

> x x x The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the

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58 *Id.* at 14-15.

59 *Id.* at 9.

60 *Timbol v. Commission on Elections*, G.R. No. 206004, February 24, 2015, 751 SCRA 456, 464, citing *Pamatong v. Commission on Elections*, *supra* note 27.

> opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions.[61]

To effectuate this State interest, the Congress in Section 69 of BP 881, provided the grounds by which a candidate may be considered a nuisance candidate, to wit:

> Sec. 69. *Nuisance candidates.* – The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

Section 1, Rule 24 of COMELEC Resolution No. 9523, which governed the May 13, 2019 elections and virtually an exact copy of Section 69 of the OEC, similarly provides:

> Rule 24 – Proceedings Against Nuisance Candidates
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> Sec. 1. *Grounds.* – Any candidate for any elective office who filed his certificate of candidacy to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or who by other acts or circumstances is clearly demonstrated to have no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, thus preventing a faithful determination of the true will of the electorate, may be declared a nuisance candidate, and his certificate of candidacy may be denied due course or may be cancelled.

It is allegedly pursuant to these provisions that the COMELEC declared Marquez a nuisance candidate. A cursory examination of the text of Section 69 and Section 1, Rule 24 of COMELEC Resolution No. 9523 would, however, show that both are silent as to the requirement of proof of financial capacity before an aspirant may be allowed to run in the national elections. There is utterly no textual support for the claim.

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[61] *Pamatong v. Comelec*, *supra* note 27 at 97.

C

Neither can the COMELEC seek succor behind the provisions of Section 13 of RA 7166, which it interpreted as imposing a financial capacity requirement (or proof thereof) on those seeking to run for national office.[62] The Section provides:

> Sec.13. *Authorized Expenses of Candidates and Political Parties.* – The agreement amount that a candidate or registered political party may spend for election campaign shall be as follows:
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> (a) For candidates. – Ten pesos (₱10.00) for President and Vice-President; and for other candidates Three Pesos (₱3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (₱5.00) for every such voter; and
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> (b) For political parties. – Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.
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> Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

Section 13 of RA 7166 merely sets the current allowable limit on expenses of candidates and political parties for election campaign.[63] It does not (whether by intention or operation) require a financial requirement for those seeking to run for public office, such that failure to prove capacity to meet the allowable expense limits would constitute ground to declare one a nuisance candidate.

The COMELEC's invocation of Section 13, without making explicit, by rule, the minimum amount that meets the financial capacity requirement, is constitutionally anathema because it violates the equal protection rights of Marquez and all of the other candidates it disqualified on this ground. Since the COMELEC did not require **all** candidates for senator to declare the amount of money they had, and were committed, to fund their campaign (whether evidenced by bank certification, guarantee or standby-letter of credit, for instance), one wonders how the COMELEC chose who to target for disqualification. By its public pronouncements, the COMELEC disqualified

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62 *Rollo*, pp. 60-61.

63 *Ejercito v. Commission on Elections*, G.R. No. 212398, November 25, 2014, 742 SCRA 210, 216.

70 senatorial candidates.[64] Comparing the COMELEC Legal Department's *motu proprio* motion to cancel in this case with the one it employed in *De Alban v. COMELEC, et al.*,[65] it seems the Legal Department employed a cookie-cutter motion, generally alleging lack of financial capacity in a transparent attempt to shift the burden of proof upon the candidate, without setting forth by rule the acceptable minimum financial capacity. This process puts an unfair and impermissible burden upon the candidate.

D

The COMELEC cannot conflate the *bona fide* intention to run with a financial capacity requirement.

A candidate's financial capacity to sustain the rigors of waging a nationwide campaign does not *necessarily* equate to a *bona fide* intention to run for public office. The COMELEC's burden is thus to show a reasonable correlation between proof of a *bona fide* intention to run, on the one hand, and proof of financial capacity to wage a nationwide campaign on the other. This is the import of the U.S. Supreme Court ruling in *Bullock v. Carter*.[66]

While the U.S. Supreme Court recognized that a State has a legitimate interest in regulating the number of candidates on the ballot,[67] it ruled that the State cannot achieve its objectives by totally arbitrary means and that the criterion for differing treatment must bear some relevance to the object of legislation:

> There is no escape from the conclusion that the imposition of filing fees ranging as high as $8,900 tends to limit the number of candidates entering the primaries. However, even under conventional standards of review, a State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation. To say that the filing fee requirement tends to limit the ballot to the more serious candidates is not enough. There may well be some rational relationship between a candidate's willingness to pay a filing fee and the seriousness with which he takes his candidacy, but the candidates in this case affirmatively alleged that they were unable, not simply unwilling, to pay the assessed fees, and there was no contrary evidence. It is uncontested that the

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[64] See https://cnnphilippines.com/news/2019/01/07/comelec-disqualifies-senatorial-aspirants.html; see also https://newsinfo.inquirer.net/1070498/comelec-disqualifies-70-senatorial-aspirants-from-midterm-polls. Both last accessed on August 19, 2019.

[65] *De Alban v. COMELEC, et al.*, *rollo*, G.R. No. 243968, pp. 41-48.

[66] 405 U.S. 134 (1972). Here, the U.S. Supreme Court declared as unconstitutional the Texas law which provided that a candidate must pay a filing fee as a condition to having his name placed on the ballot in the primary election. The three appellees met all the qualifications to be a candidate in the Democratic primaries in different counties but were unable to pay the assessments required of candidates in their respective counties.

[67] These include interests to prevent the clogging of its election machinery, avoid voter confusion, assure that the winner is the choice of a majority, or at least a strong plurality, and to protect the integrity of the political processes from frivolous or fraudulent candidacies.

> filing fees exclude legitimate as well as frivolous candidates. And even assuming that every person paying the large fees required by Texas law takes his own candidacy seriously, that does not make him a "serious candidate" in the popular sense. If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal; other means to protect those valid interests are available.[68] (Citations omitted.)

Similarly, in *Lubin v. Panish*,[69] the U.S. Supreme Court rejected the capability of a candidate to pay a filing fee as a test of genuineness of a candidacy:

> **Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office.** A large filing fee may serve the legitimate function of keeping ballots manageable but, standing alone, it is not a certain test of whether the candidacy is serious or spurious. A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check. Merchants and other entrepreneurs have been known to run for public office simply to make their names known to the public. We have also noted that prohibitive filing fees, such as those in *Bullock*, can effectively exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running. Even in this day of high-budget political campaigns some candidates have demonstrated that direct contact with thousands of voters by "walking tours" is a route to success. **Whatever may be the political mood at any given time, our tradition has been one of hospitality toward all candidates without regard to their economic status.**
>
> The absence of any alternative means of gaining access to the ballot inevitably renders the California system exclusionary as to some aspirants. As we have noted, the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office. Thus, California has chosen to achieve the important and legitimate interest of maintaining the integrity of elections by means which can operate to exclude some potentially serious candidates from the ballot without providing them with any alternative means of coming before the voters. Selection of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means is not reasonably necessary to the accomplishment of the State's legitimate election interests. Accordingly, we hold that in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay.

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68 *Bullock v. Carter*, *supra* note 66 at 145-146.

69 415 U.S. 709 (1974).

> In so holding, we note that **there are obvious and well-known means of testing the "seriousness" of a candidacy which do not measure the probability of attracting significant voter support solely by the neutral fact of payment of a filing fee. States may, for example, impose on minor political parties the precondition of demonstrating the existence of some reasonable quantum of voter support by requiring such parties to file petitions for a place on the ballot signed by a percentage of those who voted in a prior election. Similarly, a candidate who establishes that he cannot pay the filing fee required for a place on the primary ballot may be required to demonstrate the "seriousness" of his candidacy by persuading a substantial number of voters to sign a petition in his behalf**. The point, of course, is that ballot access must be genuinely open to all, subject to reasonable requirements. California's present system has not met this standard.[70] (Citations omitted; emphasis supplied.)

E

The COMELEC's reliance on *Pamatong* and *Martinez III* to support the cancellation of Marquez' CoC on the ground of his failure to prove his financial capacity is also misplaced.

For one, there is nothing in this Court's Resolution in *Pamatong* which suggests that the Court permitted the cancellation of Pamatong's CoC on the ground that he had no financial capacity to sustain the financial rigors of waging a nationwide campaign. At most, the Court, quoting *Jenness v. Fortson*,[71] only required that the candidate show "**a significant modicum of support** before his or her name is printed on the ballot."[72]

Martinez III, on the other hand, involved a controversy between two candidates with similar names vying for the same position which, for the Court, caused confusion among the voters.[73]

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[70] *Id.* at 717-718. See also *American Party of Texas v. White, Secretary of Texas*, 415 U.S. 767 (1974), where the U.S. Supreme Court ruled that requiring independent candidates to evidence a "significant modicum of support," *i.e.*, through signatures of a particular percentage of voters, is not unconstitutional.

[71] 403 U.S. 431 (1971). Significantly, in *Jenness v. Fortson*, the significant modicum of support referred to did **not** involve a candidate's **financial** capacity but rather the support of registered voters as indicated by their signatures in a nominating petition. (Emphasis supplied.)

[72] *Id.* at 442. Emphasis supplied.

[73] *Martinez III v. House of Representatives Electoral Tribunal*, *supra* note 13 at 53. The Court said:

> In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.
>
> x x x x
>
> Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in

It was only in view of the "dirty" practice by unscrupulous politicians of fielding nuisance candidates with the same surnames as leading contenders that the Court proceeded to consider the personal circumstances, including the financial capability, of the nuisance candidate Edelito C. Martinez *vis-à-vis* his opponent Celestino A. Martinez.[74]

In contrast, Marquez here was disqualified not on the basis of the similarity of his name with another senatorial candidate, a ground explicitly provided for in Section 69 of the OEC, but for the *sole* reason that he failed to show proof of his financial capacity to wage a nationwide campaign. This, however, has already been proscribed following Our ruling in *Maquera*.

Considering the foregoing, the Court finds it unnecessary, if not premature, to resolve the issues raised regarding social media.

It bears reiterating that the Court acknowledges the COMELEC's legitimate objective in weeding out candidates who have not evinced a *bona fide* intention to run for office from the electoral process. Any measure designed to accomplish the said objective should, however, not be arbitrary and oppressive and should not contravene the Republican system ordained in our Constitution. Unfortunately, the COMELEC's preferred standard falls short of what is constitutionally permissible.

WHEREFORE, the petition is **GRANTED**. The Resolution dated January 23, 2019 of the COMELEC *En Banc* is **REVERSED** and **SET ASIDE**.

No costs.

SO ORDERED.

Pamatong. A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that **the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least 18 parts of the country**. x x x (Emphasis supplied.)

[74] *Id.* at 73-75.

What needs to be stressed at this point is the apparent failure of the HRET to give weight to relevant circumstances that make the will of the electorate determinable, following the precedent in *Bautista*. These can be gleaned from the findings of the Commission on the personal circumstances of Edilito C. Martinez clearly indicating lack of serious intent to run for the position for which he filed his certificate of candidacy, foremost of which is his sudden absence after such filing. In contrast to petitioner who is a well-known politician, a former municipal mayor for three (3) terms and a strong contender for the position of Representative of the Fourth Legislative District of Cebu (then occupied by his mother), it seems too obvious that Edilito C. Martinez was far from the voters' consciousness as he did not even campaign nor formally launch his candidacy. x x x

x x x The evidence clearly shows that Edilito C. Martinez, who did not even bother to file an answer and simply disappeared after filing his certificate of candidacy, was an unknown in politics within the district, a "habal-habal" driver who had neither the financial resources nor political support to sustain his candidacy. The similarity of his surname with that of petitioner was meant to cause confusion among the voters and spoil petitioner's chances of winning the congressional race for the Fourth Legislative District of Cebu.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

I concur. See separate opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

LUCAS P. BERSAMIN
Chief Justice