

# Consequences of Disclosure: The Case of *Bantay-Republic Act No. 7941 and Rosales v. Commission on Elections*

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## I. INTRODUCTION

*An election cannot give a country a firm sense of direction if it has two or more national parties which merely have different names, but are as alike in their principles and aims as two peas in the same pod.*

- Franklin D. Roosevelt

In the Philippines, the conduct of national elections has regularly paved the way for various political and legal battles. During the midterm elections last 14 May 2007, the country was witness to a climate of controversy, as it dealt with electoral issues that challenged every voter's ability to make an informed choice. The recurring presence of numerous campaign ploys — ranging from nuisance candidates to unfair campaign practices — has once again put the enfranchised citizen to a test of balancing principles and values

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against personal interests and immediate needs. While there are constant efforts to maintain the national elections as operative acts of a democratic institution, there remains the reality that the Philippine electorate still needs to go beyond the faces of power, popularity, and affiliation.

This electoral reality has manifested itself in the race under the party-list system of representation. Under the present Constitution, registered national, regional, and sectoral parties or organizations shall be elected as members of the House of Representatives through a party-list system.<sup>1</sup> As embodied in Republic Act No. 7941,<sup>2</sup> otherwise known as the Party-List System Act, the party-list system of representation affords a seat in the House of Representatives to marginalized groups and organizations who garner at least two percent of the total number of votes cast for the party-lists.<sup>3</sup> The aim of this system is to ensure optimal representation of the marginalized sectors in Philippine society in order to encourage a more democratic participation in our country's legislative process.<sup>4</sup>

These elected groups and organizations become active participants in the House of Representatives by virtue of the nominees each group submits to the Commission on Elections (COMELEC). According to the Party-List System Act, "each registered party, organization or coalition shall submit to the COMELEC not later than 45 days before the election a list of names, not less than five, from which party-list representatives shall be chosen in case it obtains the required number of votes."<sup>5</sup> These nominees, like all public elective officials, are required to possess the qualifications provided for by law. Section 9 of the Party-List System Act provides:

Sec. 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks

1. See, PHIL. CONST. art VI, § 5 (1).
2. An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor [PARTY-LIST SYSTEM ACT], Republic Act No. 7941 (1995).
3. *Id.* Section 11 (b) provides:  
The parties, organizations, and coalitions receiving at least two percent of the total votes cast for the party-list system shall be entitled to one seat each: *Provided*, That those garnering more than two percent of the votes shall be entitled to additional seats in proportion to their total number of votes: *Provided*, finally, That each party, organization, or coalition shall be entitled to not more than three seats.
4. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 687 (2003 ed.) [hereinafter BERNAS].
5. PARTY-LIST SYSTEM ACT, § 8.

to represent for at least 90 days preceding the day of the election, and is at least 25 years of age on the day of the election.

In case of a nominee of the youth sector, he must at least be 25 but not more than 30 years of age on the day of the election. Any youth sectoral representative who attains the age of 30 during his term shall be allowed to continue in office until the expiration of his term.<sup>6</sup>

Party-list representatives shall be proclaimed by the COMELEC based on the list of names submitted by the respective parties, organizations, or coalitions to the COMELEC according to their ranking in said list.<sup>7</sup>

In the recent elections, the controversy with the party-list system rested on the identity and true representation of the nominees of the various party-list groups and organizations. During the campaign period, it was a common practice for party-list groups to campaign solely for the name of the group, excluding the names of their nominees. Given the country's present-day political maneuverings, the non-disclosure of certain party-list nominees casted doubts on the integrity of the party-accreditation formulated by the COMELEC to implement the system of representation.<sup>8</sup> Moreover, the non-disclosure of these names aroused public suspicion that the party-list system, instead of being a means for legislative advocacy of the under-represented, has become a patented device in clothing faceless politicians with legitimized power.<sup>9</sup> It is in the light of these circumstances that the Supreme Court had the occasion to rule upon the said controversy in the consolidated case of *Bantay-Republic Act No. 7941 and Rosales v. Commission on Elections*.<sup>10</sup>

## II. THE MAIN CASE

The consolidated case originated from two separate petitions filed against COMELEC. In the first petition, docketed as G.R. No. 177271, petitioners Bantay-Republic Act (BA-RA) No. 7941 and the Urban Poor for Legal Reforms (UP-LR) assailed the resolutions made by COMELEC accrediting 33 party-list groups<sup>11</sup> for participation in the 14 May 2007 party-list elections, without simultaneously determining whether their respective nominees possessed the requisite qualifications prescribed by the Party-List System Act

6. *Id.* § 9 (emphasis supplied).

7. *Id.* § 13.

8. See, Raul A. Pangalangan, *Party-list impostors and the Impostor in Chief*, PHIL. DAILY INQUIRER, Apr. 27, 2007, available at [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=62748](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=62748) (last accessed July 17, 2007).

9. *Id.*

10. Bantay-Republic Act No. 7941, *et al.* and Rosales, *et al.* v. Commission on Elections, G.R. Nos. 177271 and 177314, May 4, 2007.

11. The names of the 33 party-list groups were indicated in the petition.

and whether said nominees belonged to the marginalized and under-represented sector they purportedly represent.<sup>12</sup> The petitioners in this case prayed that the 33 party-list groups be declared unqualified for failure to comply with the guidelines set by the Court in the case of *Ang Bagong Bayani v. Commission on Elections*<sup>13</sup> and that the COMELEC be enjoined from allowing said party-list groups to participate in the said elections.<sup>14</sup>

In the second petition, docketed as G.R. No. 177314, petitioners Loretta Ann P. Rosales, Kilosbayan Foundation, and Bantay Katarungan Foundation impugned COMELEC Resolution 07-0724, which effectively denied their request for the release or disclosure of the names of the nominees of the 14 accredited participating party-list groups mentioned in petitioner Rosales' previous letter-request.<sup>15</sup>

Both petitions sought to compel COMELEC to disclose or to publish the names of the nominees of the various party-list groups named in the petitions.

### A. Factual Setting

On 12 January 2007, COMELEC issued Resolution No. 7804,<sup>16</sup> prescribing rules and regulations to govern the registration and submission of names of nominees under the party-list system of representation in connection with the 14 May 2007 elections.<sup>17</sup> A number of groups filed the necessary manifestations and were subsequently accredited by COMELEC to participate in the elections, namely: (1) BABAE KA, (2) ANG KASANGGA, (3) AKBAY PINOY, (4) AKSA, (5) KAKUSA, (6) AHON PINOY, (7) OFW PARTY, (8) BIYAHENG PINOY, (9) ANAD, (10) AANGAT ANG KABUHAYAN, (11) AGBIAG, (12) BANAT, (13) BANTAY LIPAD, and (14) AGING PINOY.<sup>18</sup>

In response to these approved registrations, BA-RA 7941 and UP-LR filed with the COMELEC an Urgent Petition, seeking to disqualify the nominees of said party-list organizations. Both petitioners did not appear to have the names of the nominees sought to be disqualified, as they still asked

12. *Bantay-Republic Act No. 7941*, G.R. Nos. 177271 and 177314.

13. *Ang Bagong Bayani - OFW Labor Party v. Commission on Elections*, 359 SCRA 698 (2001).

14. *Bantay-Republic Act No. 7941*, G.R. Nos. 177271 and 177314.

15. *Id.*

16. Commission on Elections, Resolution No. 7804, Jan. 12, 2007.

17. *Bantay-Republic Act No. 7941, et al.* and Rosales, *et al.* v. Commission on Elections, G.R. Nos. 177271 and 177314, May 4, 2007.

18. *Id.*

for a copy of the list of nominees.<sup>19</sup> With the emerging public perception that the nominees behind the aforementioned party-list groups do not actually represent the poor and marginalized sectors, petitioner Rosales sent a letter, dated 29 March 2007, to Director Alioden Dalaig of the Commission's Law Department requesting for a list of the nominees of the said organizations.<sup>20</sup> Two days later, another letter containing the same request followed, emphasizing the particular urgency of the need for disclosure.<sup>21</sup>

Petitioner Rosales did not receive any official response from the COMELEC. The 13 April 2007 issue of the Manila Bulletin, however, carried the front-page headline "COMELEC WON'T BARE PARTY-LIST NOMINEES," with the words "Abalos says party-list polls not personality oriented" indicated as its subheading.<sup>22</sup> Three days later, Atty. Emilio Capulong, Jr. and former Senator Jovito R. Salonga, individually and as counsels of petitioner Rosales, invoked their constitutionally-guaranteed right to information and sent a letter to the COMELEC formally requesting for a definitive decision on Rosales' earlier plea for information regarding the names of the disputed party-list nominees.<sup>23</sup>

Not known to the petitioner and her counsels, COMELEC *En Banc* Resolution 07-0724,<sup>24</sup> dated 3 April 2007, had been issued virtually declaring the nominees' names confidential and, in effect, denying petitioner Rosales' basic disclosure request.<sup>25</sup> The pertinent portion of said Resolution reads:

RESOLVED, moreover, that the Commission will *disclose/publicize* the names of party-list nominees in connection with the May 14, 2007 Elections *only after 3:00 p.m. on election day.*

Let the Law Department implement this resolution and reply to all letters addressed to the Commission inquiring on the party-list nominees.<sup>26</sup>

Aggrieved by the circumstances,<sup>27</sup> petitioners sought recourse from the Supreme Court, by way of *certiorari* and *mandamus*, to nullify the issuance and

19. *Id.* At the time of the promulgation of the main case, the Urgent Petition, docketed as SPA Case No. 07-026 was yet to be resolved.

20. *Id.*

21. *Id.*

22. *Id.* See also, E.T. Suarez, *COMELEC won't bare party-list nominees*, MANILA BULLETIN, Apr. 13, 2007, available at [http://www.mb.com.ph/archive\\_pages.php?url=http://www.mb.com.ph/issue/s/2007/04/13/MAIN2007041391710.html](http://www.mb.com.ph/archive_pages.php?url=http://www.mb.com.ph/issue/s/2007/04/13/MAIN2007041391710.html) (last accessed July 17, 2007).

23. Bantay-Republic Act No. 7941, *et al.* and Rosales, *et al.* v. Commission on Elections, G.R. Nos. 177271 and 177314, May 4, 2007.

24. Commission on Elections, *En Banc* Resolution 07-0724, Apr. 3, 2007.

25. *Bantay-Republic Act No. 7941*, G.R. Nos. 177271 and 177314.

26. *Id.*

to compel the Commission to disclose the names of the nominees of the party-list groups.

### B. Issues Presented

On the issue of canceling the accreditation of the 33 party-list groups set forth in the first petition, the Supreme Court denied BA-RA and UP-LR's prayer, as it would entail a factual determination, a matter outside the office of judicial review by way of the special civil action of *certiorari*.<sup>28</sup> According to the decision, "such course of action would entail going over and evaluating the qualities of the sectoral groups or parties in question, particularly whether or not they indeed represent marginalized/under-represented groups."<sup>29</sup> The Supreme Court also noted that "[n]owhere in R.A. No. 7941 is there a requirement that the qualification of a party-list nominee be determined simultaneously with the accreditation of an organization."<sup>30</sup>

With respect to the consolidated case's core issues, the Supreme Court summarized them into two:

1. whether or not COMELEC, by refusing to reveal the names of the nominees of the various party-list groups, has violated the right to information and free access to documents as guaranteed by the Constitution; and

27. *Id.* According to the case, petitioner Rosales was only able to obtain a copy of the Resolution on Apr. 21, 2007, days later than the date of said issuance. She later stated the observation that the last part of the

[o]rder empowering the Law Department to 'implement this resolution and reply to all letters ... inquiring on the party-list nominees' is apparently a fool-proof bureaucratic way to distort and mangle the truth and give the impression that the antedated Resolution of April 3, 2007 ... is the final answer to the two formal requests ....

28. *Id.* See, 1997 RULES OF CIVIL PROCEDURE, rule 65, § 1. See also, *Acoba v. Court of Appeals*, G.R. No. 144459, Feb. 3, 2004; *Oro v. Diaz*, 361 SCRA 108 (2001); *Reyes v. Court of Appeals*, 321 SCRA 368 (1999); *Philippine Tuberculosis Society, Inc. v. National Labor Relations Commission*, 294 SCRA 567 (1998); *Building Care Corporation v. National Labor Relations Commission*, 268 SCRA 666 (1997).

29. *Bantay-Republic Act No. 7941, et al.* and Rosales, *et al.* v. Commission on Elections, G.R. Nos. 177271 and 177314, May 4, 2007.

30. *Id.*

2. whether or not COMELEC is mandated by the Constitution to disclose to the public the names of said nominees.<sup>31</sup>

### C. The Supreme Court's Ruling

For the COMELEC, the reasoning behind the non-disclosure is found in section 7 of the Party-List System Act, which states that revealing the names of party-list nominees in the certified public list of party-list groups on the day of the elections is prohibited. The provision reads:

Sec. 7. *Certified List of Registered Parties.*- The COMELEC shall, not later than 60 days before election, prepare a certified list of national, regional, or sectoral parties, organizations or coalitions which have applied or who have manifested their desire to participate under the party-list system and distribute copies thereof to all precincts for posting in the polling places on election day. *The names of the party-list nominees shall not be shown on the certified list.*<sup>32</sup>

In the decision penned by Justice Cancio C. Garcia, the Supreme Court upheld the constitutional guarantee of the right to information and the government policy of full disclosure and transparency<sup>33</sup> over a cursory reading of the Party-List System Act. According to the decision, the last sentence of section 7 is not a justified reason for the non-disclosure of the names of the party-list nominees, as the prohibition only applies to the certified list.<sup>34</sup> As aptly explained by the Supreme Court:

To us, the prohibition imposed on the COMELEC under said section 7 is limited in scope and duration, meaning, that it extends only to the certified list which the same provision requires to be posted in the polling places on election day. To stretch the coverage of the prohibition to the absolute is to read into the law something that is not intended. As it were, *there is absolutely nothing in R.A. No. 7941 that prohibits the COMELEC from disclosing or even publishing through mediums other than the "Certified List" the names of the party-list nominees.* The COMELEC obviously misread the limited non-disclosure aspect of the provision as an absolute bar to public disclosure before the May 2007 elections. *The interpretation thus given by the COMELEC virtually tacks an unconstitutional dimension on the last sentence of section 7 of R.A. No. 7941.*<sup>35</sup>

31. *Id.*

32. PARTY-LIST SYSTEM ACT, § 7 (emphasis supplied).

33. See, PHIL. CONST. art III, § 7 & § 28.

34. *Bantay-Republic Act No. 7941*, G.R. Nos. 177271 and 177314.

35. *Bantay-Republic Act No. 7941, et al. and Rosales, et al. v. Commission on Elections*, G.R. Nos. 177271 and 177314, May 4, 2007 (emphasis supplied).

From the Court's point of view, no amount of strict statutory interpretation can override the self-executory nature of the constitutional right to information. When this right is invoked in matters of public interest, the government must adhere to its policy of transparency.

The right to information is a public right where the real parties in interest are the public, or the citizens to be precise. And for every right of the people recognized as fundamental lies a corresponding duty on the part of those who govern to respect and protect that right. This is the essence of the Bill of Rights in a constitutional regime. Without a government's acceptance of the limitations upon it by the Constitution in order to uphold individual liberties, without an acknowledgment on its part of those duties exacted by the rights pertaining to the citizens, the Bill of Rights becomes a sophistry.<sup>36</sup>

The Supreme Court likewise emphasized that the disclosure of the names of the party-list nominees come within the meaning of the terms *public concern* and *public interest*, thus allowing the petitioners to avail of the constitutional guarantee. Applying the doctrine of *Legaspi v. Civil Service Commission*,<sup>37</sup> the Court explained:

If, as in *Legaspi*, it was the legitimate concern of a citizen to know if certain persons employed as sanitarians of a health department of a city are civil service eligibles, *surely the identity of candidates for a lofty elective public office should be a matter of highest public concern and interest.*

As may be noted, no national security or like concerns is involved in the disclosure of the names of the nominees of the party-list groups in question ...<sup>38</sup>

In view of the foregoing, the Supreme Court *en banc*, by a unanimous vote, held that the COMELEC committed grave abuse of discretion in refusing to perform its constitutional duty to disclose and to release the names of the nominees of the party-list groups named in the petitions.<sup>39</sup>

### III. THE RIGHT TO INFORMATION: SURVEY OF PRESENT LAW AND JURISPRUDENCE

Presently enshrined in section 7 of the Bill of Rights, the constitutional guarantee to the right to information is coupled with the right of access to public documents:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well to government

36. *Id.*

37. *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987).

38. *Id.* (emphasis supplied).

39. *Id.*

research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.<sup>40</sup>

This right was first recognized in the 1948 case of *Subido v. Ozaeta*,<sup>41</sup> which involved the public's right to demand the examination of public land records.<sup>42</sup> In this case, the Supreme Court ruled that the press had a statutory right to examine said records of the Register of Deeds because the interest of the press was real and adequate.<sup>43</sup> The right first garnered its self-executory character in the context of the 1973 Constitution, whereby every citizen had standing to challenge any violation of the said right and may seek its enforcement by *mandamus*.<sup>44</sup> In the case of *Tañada v. Tuvera*,<sup>45</sup> what was involved was the demand for publication of presidential issuances in the Official Gazette. The constitutional guarantee was bolstered by what the Supreme Court declared as "an imperative duty of the government officials concerned to publish all important legislative acts and resolutions of a public nature as well as all executive orders and proclamations of general applicability."<sup>46</sup> The duty must "be enforced if the constitutional right of the people to be informed on matters of public concern is to be given substance and reality."<sup>47</sup>

#### A. Requisites and Scope

In order that the right to information and its corollary right to access official documents may apply, the subject of the inquiry (1) must be a "matter of public interest" or "of public concern" and (2) "is not exempted by law from the operation of the constitutional guarantee."<sup>48</sup> Such categorization, according to the Supreme Court in *Legaspi*, eludes exact definition,<sup>49</sup> as these terms "embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally

40. PHIL. CONST. art III, § 7.

41. *Subido v. Ozaeta*, 80 Phil. 383 (1948).

42. BERNAS, *supra* note 4, at 370 (citing *Subido v. Ozaeta*, 80 Phil. 383 (1948)).

43. *Id.* at 371.

44. *Id.* (citing *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987)); *see*, 1997 RULES OF CIVIL PROCEDURE, rule 65, § 3.

45. *Tañada v. Tuvera*, 136 SCRA 27 (1985).

46. *Legaspi v. Civil Service Commission*, 150 SCRA 530, 537 (1987) (citing *Tañada v. Tuvera*, 136 SCRA 27, 39 (1985)).

47. *Tañada*, 136 SCRA at 39.

48. *Valmonte v. Belmonte*, 170 SCRA 256, 266 (1989) (citing *Legaspi v. Civil Service Commission*, 150 SCRA 530, 541-42 (1987)).

49. *Legaspi*, 150 SCRA at 542. *See also*, *Valmonte v. Belmonte*, 170 SCRA 256 (1989); *Gonzales v. Narvasa*, 337 SCRA 733 (2000).

*arouse the interest of an ordinary citizen.*"<sup>50</sup> Subject to exceptions provided by regulation or law, the right to information may be invoked on virtually any inquiry of public interest.

The best examples of areas of public interest and concern include information held by various administrative agencies. In the case of *Legaspi v. Civil Service Commission*,<sup>51</sup> the Civil Service Commission denied petitioner Legaspi's request for information on the civil service eligibilities of certain persons employed as sanitarians in the Health Department of Cebu City, on the ground that it did not have the ministerial duty to grant said request. The Supreme Court, acknowledging the constitutional right to information, ruled in favor of Legaspi explaining that:

while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of *mandamus* in a proper case.<sup>52</sup>

The right to information cannot be curtailed even if the concerned administrative agency invokes confidentiality and the right to privacy. In the case of *Valmonte v. Belmonte*,<sup>53</sup> several media practitioners, in the name of public interest, requested the Government Service and Insurance System (GSIS) for access to the names of members from the House of Representatives who were able to secure clean loans thru the intercession of then First Lady Imelda Marcos. The GSIS denied their request, anchoring their reasons on the existence of a confidentiality relationship between the agency and its borrowers.<sup>54</sup> The Supreme Court granted the petition for *mandamus*, giving the following reasoning:

Petitioners are practitioners in media. As such, they have both the right to gather and the obligation to check the accuracy of information they disseminate. For them, the freedom of the press and of speech is not only critical, but vital to the exercise of their professions. The right of access to information ensures that these freedoms are not rendered nugatory by the government's monopolizing pertinent information. For an essential element

50. Bantay-Republic Act No. 7941, *et al.* and Rosales, *et al. v. Commission on Elections*, G.R. Nos. 177271 and 177314, May 4, 2007. *See*, *Legaspi v. Civil Service Commission*, 150 SCRA 530, 541 (1987) (emphasis supplied).

51. *Legaspi v. Civil Service Commission*, 150 SCRA 530 (1987).

52. *Id.* at 539.

53. *Valmonte v. Belmonte*, 170 SCRA 256 (1989).

54. *Id.* at 267-68.

of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently ....

The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech and of the press. Far from it. *The right to information goes hand-in-hand with the constitutional policies of full public disclosure and honesty in the public service.* It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.<sup>55</sup>

The same principle was espoused in the case of *Aquino-Sarmiento v. Morato*.<sup>56</sup> In this case, petitioner Aquino-Sarmiento, a member of the Movie and Television Review and Classification Board (MTRCB), requested to examine the Board's records pertaining to the voting slips accomplished by the individual board members after a review of the movies and television productions.<sup>57</sup> Aquino-Sarmiento's request was denied by MTRCB Chairman Manuel Morato, on the ground that "whenever the members of the board sit in judgment over a film, their decisions as reflected in the individual voting slips partake the nature of conscience votes and as such, are purely and completely private and personal."<sup>58</sup> According to Chairman Morato, "the individual voting slips [are] the exclusive property of the member concerned and anybody who wants access thereto must first secure his [the member's] consent, otherwise, a request therefor may be legally denied."<sup>59</sup> Arguing that the voting slips are public in character, Aquino-Sarmiento sought recourse with the Supreme Court. Granting the petition for *mandamus*, the Court said:

may the decisions of respondent Board and the individual members concerned, arrived at in an official capacity, be considered private? Certainly not. As may be gleaned from the decree (PD 1986) creating the respondent classification board, there is no doubt that its very existence is public in character; it is an office created to serve public interest. It being the case, respondents can lay no valid claim to privacy. The right to privacy belongs to the individual acting in his private capacity and not to a governmental agency or officers tasked with, and acting in, the discharge of

55. *Id.* at 265-66 (emphasis supplied).

56. *Aquino-Sarmiento v. Morato*, 203 SCRA 515 (1991).

57. *Id.* at 518.

58. *Id.*

59. *Id.*

public duties. There can be no invasion of privacy in the case at bar since what is sought to be divulged is a product of action undertaken in the course of performing official functions. To declare otherwise would be to clothe every public official with an impregnable mantle of protection against public scrutiny for their official acts.

Further, the decisions of the Board and the individual voting slips accomplished by the members concerned are acts made pursuant to their official functions, and as such, are neither personal nor private in nature but rather public in character. They are, therefore, public records access to which is guaranteed to the citizenry by no less than the fundamental law of the land. Being a public right, the exercise thereof cannot be made contingent on the discretion, nay, whim and caprice, of the agency charged with the custody of the official records sought to be examined. The constitutional recognition of the citizen's right of access to official records cannot be made dependent upon the consent of the members of the board concerned, otherwise, the said right would be rendered nugatory.<sup>60</sup>

The right to information also serves as a form of governmental check afforded to the public. This was one of the issues discussed by the Supreme Court in *Gonzales v. Narvasa*.<sup>61</sup> Petitioner Gonzales wrote a letter to then Executive Secretary Ronaldo Zamora requesting for the names of executive officials holding multiple positions in the government and the accompanying copies of their appointments, together with a list of the recipients of luxury vehicles seized by the Bureau of Customs and subsequently turned over to Malacañang.<sup>62</sup> Receiving no response, Gonzales went to the Supreme Court to compel the Executive Secretary to disclose the names of said officials. In its decision, the Court ruled in favor of Gonzales and applied the Ethical Standards Act,<sup>63</sup> whereby public officials are obliged by law to respond to letters sent to their offices, subject to the time period and other limitations set by law.<sup>64</sup> According to the Court, "respondent Zamora, in his official capacity as Executive Secretary, has a constitutional and statutory duty to answer petitioner's letter dealing with matters which are unquestionably of public concern — that is, appointments made to public offices and the utilization of public property."<sup>65</sup>

60. *Id.* at 522-23.

61. *Gonzales v. Narvasa*, 337 SCRA 733 (2000).

62. *Id.* at 745.

63. Code of Conduct and Ethical Standards for Public Officers and Employees [ETHICAL STANDARDS ACT], Republic Act No. 6713 (1989).

64. *Gonzales*, 337 SCRA at 746; see, ETHICAL STANDARDS ACT, § 5 (a) & (e); see also, Civil Service Commission, Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees, rule IV (1989).

65. *Gonzales*, 337 SCRA at 747.

In the controversial case of *Chavez v. Public Estates Authority and Amari Coastal Bay Development*,<sup>66</sup> petitioner Chavez filed a petition for *mandamus* to compel the Public Estates Authority (PEA) to disclose all facts on the agency's then on-going re-negotiations with Amari Coastal Bay and Development Corporation (Amari) for the reclamation of Manila Bay. The question presented to the Court was whether or not the constitutional right to information includes official information on on-going negotiations before a final agreement, such as those between PEA and Amari.<sup>67</sup> Answering in the affirmative, the Court explained:

Certainly, a consummated contract is not a requirement for the exercise of the right to information. Otherwise, the people can never exercise the right if no contract is consummated, and if one is consummated, it may be too late for the public to expose its defects.

Requiring a consummated contract will keep the public in the dark until the contract, which may be grossly disadvantageous to the government or even illegal, becomes a *fait accompli*. This negates the State policy of full transparency on matters of public concern, a situation which the framers of the Constitution could not have intended. Such a requirement will prevent the citizenry from participating in the public discussion of any proposed contract, effectively truncating a basic right enshrined in the Bill of Rights. We can allow neither an emasculatation of a constitutional right, nor a retreat by the State of its avowed policy of full disclosure of all its transactions involving public interest.<sup>68</sup>

In deciding for petitioner Chavez, the Supreme Court integrated all its previous rulings, summarizing the kinds of information that are covered by the constitutional provision.

The right covers three categories of information which are 'matters of public concern,' namely: (1) official records; (2) documents and papers pertaining to official acts, transactions and decisions; and (3) government research data used in formulating policies. The first category refers to any document that is part of the public records in the custody of government agencies or officials. The second category refers to documents and papers recording, evidencing, establishing, confirming, supporting, justifying or explaining official acts, transactions or decisions of government agencies or officials. The third category refers to research data, whether raw, collated or processed, owned by the government and used in formulating government policies.<sup>69</sup>

66. *Chavez v. Public Estates Authority (PEA) and Amari Coastal Bay Development (Amari)*, 384 SCRA 152 (2002).

67. *Id.* at 174; *see, Chavez v. Philippine Commission on Good Government*, 299 SCRA 744 (1998).

68. *Chavez v. PEA and Amari*, 384 SCRA at 187.

69. *Id.* at 187-88.

B. *Limitations: The Case of Chavez v. Presidential Commission on Good Government*

Despite being self-executory, the right to information and its corollary right of access to public documents are clearly not absolute and may be the subject of statutory regulation.<sup>70</sup> In the case of *Chavez v. Presidential Commission on Good Government*,<sup>71</sup> the Supreme Court has provided the limitations as to when these rights may be exercised.

Petitioner Chavez, in a taxpayer's suit, sought *mandamus* to compel the Presidential Commission on Good Government (PCGG) to disclose all of its negotiations and agreements, whether on-going or perfected, with the heirs of former President Ferdinand Marcos.<sup>72</sup> The PCGG's contention was that the constitutional provision only applies to completed and operational acts.<sup>73</sup> According to the Commission, there was yet no right of action that had accrued because said agreements had not yet been approved by the President and the Marcos heirs had failed to fulfill their express undertaking therein.<sup>74</sup> In its decision, the Supreme Court decided in favor of Chavez, ruling that the subject agreements come within the term "matters of public concern."<sup>75</sup>

In general, writings coming into the hands of public officers in connection with their official functions must be accessible to the public, consistent with the policy of transparency of governmental affairs. *This principle is aimed at affording the people an opportunity to determine whether those to whom they have entrusted the affairs of the government are honestly, faithfully and competently performing their functions as public servants.* Undeniably, the essence of democracy lies in the free flow of thought; but thoughts and ideas must be well-informed so that the public would gain a better perspective of vital issues confronting them and, thus, be able to criticize as well as participate in the affairs of the government in a responsible, reasonable and effective manner. Certainly, it is by ensuring an unfettered and uninhibited exchange of ideas among a well-informed public that a government remains responsive to the changes desired by the people.<sup>76</sup>

In its decision, the Supreme Court explicitly created jurisprudential limitations to the exercise of the right to information, by integrating

70. *Id.*

71. *Chavez v. Presidential Commission on Good Government*, 299 SCRA 744 (1998).

72. *Id.* at 750.

73. *Id.*

74. *Id.*

75. *Id.* at 765.

76. *Id.* at 767 (citing 66 Am. Jur. § 19, Records and Recording Laws; *Legaspi v. Civil Service Commission*, 150 SCRA 530, 540 (1987); 16A Am. Jur. 2d 315-317, § 497)) (emphasis supplied).

pertinent legislation, regulations, and the 1986 Constitutional Commission's deliberations to the scope of the constitutional guarantee. These restrictions are: (1) national security matters and intelligence information, (2) trade secrets and banking transactions, (3) criminal matters, and (4) other confidential information.<sup>77</sup>

#### 1. Matters of National Security

In *Chavez v. PCGG*, the Supreme Court mentioned that Philippine jurisdiction "recognizes the common law holding that there is a governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters."<sup>78</sup> Nevertheless, where there is no need to protect such state secrets, the privilege may not be invoked to withhold documents and other information,<sup>79</sup> provided that they are examined "in strict confidence" and given "scrupulous protection."<sup>80</sup> Likewise, information on inter-government exchanges, prior to the conclusion of treaties and executive agreements, may be subject to reasonable safeguards for the sake of national interest.<sup>81</sup>

#### 2. Trade Secrets and Banking Transactions

The Supreme Court noted that the 1986 Constitutional Commission unequivocally affirmed the exemption of trade and industrial secrets from compulsory disclosure, pursuant to relevant commercial laws, such as the Intellectual Property Code.<sup>82</sup> Pursuant to the Secrecy of Bank Deposits Act,<sup>83</sup> banking transactions are likewise a recognized limitation to the exercise of the right to information.

77. *Chavez v. Presidential Commission on Good Government (PCGG)*, 299 SCRA 744, 764-65 (1998).

78. *Id.* at 764 (citing IV RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 921-22 & 931; *Almonte v. Vasquez*, 244 SCRA 286, 295 & 297 (1995)); see, *Legaspi v. Civil Service Commission*, 150 SCRA 530, 540 (1987).

79. *Chavez v. PCGG*, 299 SCRA at 764 (citing *Almonte v. Vasquez*, 244 SCRA 286 & 297 (1995)).

80. *Id.* at 764.

81. *Id.* (citing V RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 25).

82. *Id.* (citing An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes, Republic Act No. 8293 (1997)).

83. See, An Act Prohibiting Disclosure of or Inquiry Into, Deposits with any Banking Institution and Providing Penalty Therefor, Republic Act No. 1405, as amended by Presidential Decree No. 1792 (1955). Section 2 reads:

All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the

#### 3. Criminal Matters

According to the Supreme Court, "classified law enforcement matters, such as those relating to the apprehension, the prosecution and the detention of criminals,<sup>84</sup> which courts may not inquire into prior to such arrest, detention and prosecution."<sup>85</sup> The Court opined that "efforts at effective law enforcement would be seriously jeopardized by free public access to ... police information regarding rescue operations, the whereabouts of fugitives, or leads on covert criminal activities."<sup>86</sup>

#### 4. Other Confidential Information

In its pronouncement, the Court noted other classes of information that may be considered confidential and, therefore, exempt from compulsory disclosure and public access. These include classified information officially known to public officials and employees by reason of their office,<sup>87</sup> diplomatic correspondence, closed-door Cabinet meetings and executive

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Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except when the examination is made in the course of a special or general examination of a bank and is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity, or when the examination is made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank, or upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

84. *Chavez v. Presidential Commission on Good Government (PCGG)*, 299 SCRA 744, 764-65 (1998) (citing 66 Am. Jur. § 27, Records and Recording Laws).

85. *Id.* at 765.

86. *Id.*

87. ETHICAL STANDARDS ACT, § 7 (c).

Disclosure and/or misuse of confidential information. - Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:

1. To further their private interests, or give undue advantage to anyone; or
2. To prejudice the public interest.



sessions of either House of Congress, as well as the internal deliberations of the Supreme Court.<sup>88</sup>

#### IV. EXAMINING THE VENUE: THE PHILIPPINE ELECTORAL SETTING

At present, the basis and value of Philippine elections remain to be objects of speculation. As a democratic institution, there is a glaring need to assess the current electoral process, the operative act by which the principles and ideals of democracy are realized by the sovereign people.

##### A. Competitiveness

Compared to most countries in Asia, elections in the Philippines are generally viewed as *moderately competitive*.<sup>89</sup> According to a Domestic Election Monitoring Study, three characteristics are assessed in determining the level of competitiveness of a country's electoral process: 1) when the political environment permits genuine political competition; 2) this acceptance of competition is reflected in electoral laws; and 3) there is a general commitment on the part of the political leadership to tolerate.<sup>90</sup> Competitiveness may also be evaluated based on the degree to which the following conditions exist:

1. freedom of participation of political parties and individuals;
2. opportunity of eligible voters to register and vote;
3. respect for the rights of free association;
4. free expression and free assembly;
5. fair treatment of political contestants;
6. absence of intimidation of candidates and voters;
7. ballot secrecy;
8. due process;
9. fairness and impartiality of the election administration;
10. fair and transparent balloting and counting procedures; and

88. *Chavez v. PCGG*, 299 SCRA at 765 (citing *Legaspi v. Civil Service Commission*, 150 SCRA 530, 536 (1987)).

89. NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS AND THE NATIONAL CITIZENS MOVEMENT FOR FREE ELECTIONS, MAKING EVERY VOTE COUNT: DOMESTIC ELECTION MONITORING IN ASIA 14 (1996) [hereinafter DOMESTIC ELECTION MONITORING IN ASIA].

90. *Id.* at 15.

#### 12. voter confidence in the election process.<sup>91</sup>

From a cursory reading of the factors enumerated above, it can be said that the current electoral process in the country appears to be *legally competitive*, as the components in assessing competitiveness are very much provided for in our Constitution and other relevant election laws.<sup>92</sup>

##### B. Quality

Nevertheless, *competitiveness* must be distinguished from the *quality* of the electoral process, *quality* to mean "the extent to which the electoral process provides an informed and involved electorate with a meaningful choice among candidates and parties representing competing programs and ideologies."<sup>93</sup> A highly competitive election does not necessarily result in a high quality election. An election may be fair and honest, but excessive personality- or region-based voting may diminish the value of the election as a contest between competing programs and ideologies.<sup>94</sup> Although citizens may be legally entitled to participate in an election, non-legal barriers (such as gender-based obstacles, massive fraud, and personalism) may effectively exclude significant sectors of society from participating in a meaningful way.<sup>95</sup> *The quality of an electoral process, therefore, evaluates the credibility of the electoral system as a whole, and addresses the issue of whether the enfranchised voter is able to translate the right to participate in an election into a genuine means of giving value to a democratic government.*

In assessing the quality of the elections, the role of media practitioners cannot be dispensed with. It cannot be gainsaid that media coverage during the election period largely affects the quality of the Philippine electoral process: most of the issues, platforms and information about the candidates and their political parties are broadcasted and relayed through the various forms of mass media. As observed by media practitioners themselves, "there is a hunger for information, and the voting populace is much more attentive

91. *Id.*

92. See generally, PHIL. CONST.; PARTY-LIST SYSTEM ACT; An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful and Credible Elections through Fair election Practices [FAIR ELECTION ACT], Republic Act No. 9006 (2001); An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor and Other Purposes [THE OVERSEAS ABSENTEE VOTING ACT OF 2003], Republic Act No. 9189 (2002).

93. DOMESTIC ELECTION MONITORING IN ASIA, *supra* note 89, at 15.

94. *Id.*

95. *Id.*

to media reports during elections than in other times.<sup>96</sup> As an example, in the 2004 national elections, critics have noted "the propensity of the media, particularly television, to focus on personalities rather than issues and platforms, thereby limiting the campaign information to stories on conflict, competition and controversy."<sup>97</sup> As a result, media practitioners "end up setting the news agenda, steering the direction of election coverage ..."<sup>98</sup> to the extent of widely influencing canvassing trends and election results.

In the recently-held mid-term elections, the coverage was more extensive: the media has somewhat transformed itself from a mere observer to the citizenry's activist watchdog.<sup>99</sup> Consequently, in this new role, the news media not only reported the unfolding events but also inexorably altered the results of the elections in more ways than one, for better or worse.<sup>100</sup> The party-list election was a genuine witness to such media contribution. In the Consolidated Media Coverage Report submitted by the Center for Media Freedom and Responsibility (CMFR) on this year's elections, the media exposure of party-list groups was far from an orientation of the voting population to ideals and platforms.<sup>101</sup> As pointed out by the Report,

96. SHIELA S. CORONEL, COCKFIGHT, HORSERACE, BOXING MATCH (WHY ELECTIONS ARE COVERED AS SPORT): LESSONS LEARNED FROM THE 2004 CAMPAIGN COVERAGE 5 (Philippine Center for Investigative Journalism 2004).

97. *Id.* at 1 (emphasis supplied); see, Ronald Meinardus, *Elections Philippine Style: A Foreigner's Comments(2)*, BUSINESSWORLD, May 13, 2004, available at <http://www.fnf.org.ph/liberalopinion/elections-philippines-style-2.htm> (last accessed July 17, 2007). Dr. Meinardus opines:

[t]o a degree, the media, too, is to be blamed for the poor quality of political discourse in the run up to the elections. There is a general perception that television, radio and the press failed to educate the electorate. On the other hand, mass media (and foremost television) did indeed play a decisive role by providing avenues for (some) candidates to communicate their sound bytes. Much of the airtime and ad space were allocated on a clearly commercial basis, thereby favoring those candidates who could afford to chunk out big sums of money.

98. CORONEL, *supra* note 96, at 2.

99. Winston A. Marbella, *Media played activist role in election victories*, PHIL. DAILY INQUIRER, June 17, 2007, available at [http://newsinfo.inquirer.net/inquirerheadlines/nation/view\\_article.php?article\\_id=71696](http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=71696) (last accessed July 17, 2007).

100. *Id.*

101. Consolidated Media Coverage Report conducted by the Center for Media Freedom and Responsibility, from Feb. 13 - Mar. 30, 2007, available at [http://www.cmfr-phil.org/\\_documents/CMFR\\_News\\_Media\\_Elections\\_Coverage\\_Monitoring\\_Project\\_Consolidated\\_Report.doc](http://www.cmfr-phil.org/_documents/CMFR_News_Media_Elections_Coverage_Monitoring_Project_Consolidated_Report.doc) (last accessed July 17, 2007).

[a]s the seven weeks of the campaign show, the increased attention to party-list candidates was not due to an increase in background information about these groups and candidates, or why there is a need to understand the party-list system, which many people still do not completely understand, despite the fact that party-list elections were first held nine years ago.<sup>102</sup>

This finding is not a surprise. Comprising 20% of the seats in the House of Representatives, the party-list system is sure to be part of the controversies that make good subjects of media coverage, at the expense of disseminating information about its importance and value. The electoral process remains to be limited to individuals, not pressing issues or ideals.

Apart from the haywire effects caused by extensive media exposure provide — other recurring factors such as massive election fraud, personality-oriented politics, election-related violence, overrated campaign spending, and affiliation biases — all militate against the quality of the Philippine electoral process, thus creating an actual discrepancy from its envisioned competitiveness.

#### V. ANALYSIS: RECONCILING A CONSTITUTIONAL RIGHT WITH AN ELECTORAL REALITY

The Supreme Court's pronouncement in the case of *BA-RA No. 7941 and Rosales v. Commission on Elections*, albeit consistent with well-settled jurisprudence, seems to be more distant than material. Though the right to information may be invoked in matters clothed with public concern, its practical effect in the Philippine electoral setting may not necessarily lead to a more informed and effective choice.

A careful reading of the decision reveals that the Supreme Court merely emphasized the fact that the party-list nominees are potential public officials. By this reason alone, the information sought automatically become matters of public interest. Since the categorization did not fall under the limitations set by jurisprudence, the Court held that the disclosure of the names of the party-list nominees are subject to the self-executory right to information and, consequently, *mandamus* will lie against the COMELEC. From the Court's point of view, it appears that the case simply called for a peremptory response to squarely apply well-entrenched jurisprudence.

It is likewise important to point out, however, that such pronouncement does not go beyond the disclosure of the names of party-list nominees. There is really no question about the applicability of the constitutional guarantee to the right to information, as unswerving jurisprudence has already provided the scope and parameters for its exercise.<sup>103</sup> Perhaps the

102. *Id.* (emphasis supplied).

103. See, *Chavez v. Public Estates Authority and Amari Coastal Bay Development*, 384 SCRA 152 (2002); *Gonzales v. Narvasa*, 337 SCRA 733 (2000); *Chavez v.*

more significant, and undoubtedly relevant, concern for the Court to determine was whether the focus on the disclosure of names would strengthen the ideals of the party-list system and improve the electoral process as a whole. The decision failed to address these equally important matters.

The crux of these issues lies on the effect of the self-executory right to information to the nature of the party-list system and the actual electoral culture. While the party-list system is dedicated towards optimal representation of marginalized sectors, it cannot be denied that the Philippine electoral process remains largely personality-oriented and inclined to support identities rather than groups and working organizations. The Supreme Court even acknowledged this area of concern:

The COMELEC's reasoning that a party-list election is not an election of personalities is valid to a point. It cannot be taken, however, to justify its assailed non-disclosure stance which comes, as it were, with a weighty presumption of invalidity, impinging, as it does, on a fundamental right to information. *While the vote cast in a party-list elections is a vote for a party, such vote, in the end, would be a vote for its nominees, who, in appropriate cases, would eventually sit in the House of Representatives.*<sup>104</sup>

Will the exercise of the right to information result in better representation for marginalized sectors? Or will it further a long-standing electoral culture of identities and personalities? The decision in the instant case does not answer these questions, as the Court simply presumed that the right to information, when invoked, will lead to a more meaningful and informed choice of public officials:

it has been repeatedly said in various contexts that the people have the right to elect their representatives on the basis of an informed judgment. Hence the need for voters to be informed about matters that have a bearing on their choice. The ideal cannot be achieved in a system of blind voting, as veritably advocated in the assailed resolution of the COMELEC.<sup>105</sup>

The Court overlooked the reality of the discrepancy between the competitiveness and the quality of the Philippine electoral process, in the hope of protecting a fundamental right. The constitutional guarantee was upheld, but without pronouncement as to balancing the possible effects of its exercise. While the disclosure of the names of the different party-list

Philippine Commission on Good Government, 299 SCRA 744 (1998); Aquino-Sarmiento v. Morato, 203 SCRA 515 (1991); Valmonte v. Belmonte, 170 SCRA 256 (1989); Legaspi v. Civil Service Commission, 150 SCRA 530 (1987); Tañada v. Tuvera, 136 SCRA 27 (1985); Subido v. Ozaeta, 80 Phil. 383 (1948).

104. Bantay-Republic Act No. 7941, et al. and Rosales, et al. v. Commission on Elections, G.R. Nos. 177271 and 177314, May 4, 2007 (emphasis supplied).

105. *Id.*

nominees will help identify the true representation of each party-list organization,<sup>106</sup> it still nonetheless exposes the system to the perils and abuses of personality politics,<sup>107</sup> veering away from its intended purpose of achieving a representative and democratic electoral exercise. As Mr. James Jimenez, COMELEC spokesperson, pointed out in an interview,

[w]hile I must agree that people do have the right to be informed, and that an informed choice is the only kind of choice that is palatable, I must nevertheless express my belief that if we are ever to progress beyond personality politics, we must be brave enough to insist that — *in the realm of party-list representation at least — personalities are insignificant* ....<sup>108</sup>

In fine, the Supreme Court's ruling in *BA-RA No. 7941 and Rosales v. Commission on Elections* cannot stand alone in improving the electoral process, especially with respect to the party-list elections where there are not enough measures to ensure the representation of the party-list organizations and their respective nominees. *The constitutionally-protected right to information, though essential in the creation of a wise and informed party-list vote, must not be separately viewed from the electoral mechanisms that operate within the country's present system.* As a clear example, an informed party-list vote will not become an instrument in achieving a truly representative legislature if the COMELEC's accreditation process<sup>109</sup> of the party-list groups continues to be a simplistic matter of compliance with formal requirements, setting aside the value of representation among the marginalized sectors. In order to achieve the desirable consequences of the disclosure, a balance must be created in order to reconcile the guarantee of a constitutional right with electoral realities.

More importantly, an informed vote — whether for a party-list or an individual candidate — will not give meaning to an election where the characterization of the vote is still based on an unexamined know-how of a candidate/nominee's credentials, party affiliation, popularity, and personality. Efforts to reform the culture of the Philippine electorate must be fortified, in

106. See, Jerome Aning & Nikko Dizon, *Loopholes of party-list law scored*, PHIL. DAILY INQUIRER, May 6, 2007, available at [http://newsinfo.inquirer.net/breakingnews/nation/view\\_article.php?article\\_id=64419](http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=64419) (last accessed July 17, 2007). The later disclosure revealed certain nominees who were closely affiliated with the incumbent administration and other political families.

107. See, *Voting 101*, at <http://ivote.ph/voting101.php?q6> (last accessed July 17, 2007). Personality politics is the inculturated practice where the basis for selection of public officials is their personality rather than their platforms or reform agenda.

108. Aning & Dizon, *supra* note 106 (emphasis supplied).

109. See, Ang Bagong Bayani – OFW Labor Party v. Commission on Elections, 359 SCRA 698, 727-31 (2001) (where the Supreme Court outlined the guidelines for screening party-list participants).

order to restore the present election system from a popularity contest to a venue for re-examining significant national issues, ideals, and concrete plans towards stability and development.

#### VI. CONCLUSION

*When the leaders choose to make themselves bidders at an auction of popularity, their talents, in the construction of the state, will be of no service. They will become flatterers instead of legislators; the instruments, not the guides, of the people.*

- Edmund Burke

Democracy is the reason for the conduct of national elections. As embodied in the Preamble of the Constitution,<sup>110</sup> the sovereign power of government is vested in the people, whose genuine interests are represented in the proper forum through competent officers. When elections for these public officers prove to be motivated by personal and individual agenda, we rob ourselves of the power afforded by the fundamental law to participate in the national system of governance. When elections continue to revolve around faces and names, and not towards legitimate principles and standards, we do not compromise anyone but ourselves.

As reviewed from the factual backdrop and the Supreme Court's decision in the case of *BA-RA No. 7941 and Rosales v. Commission on Elections*, the current electoral setting does not provide a venue conducive to the meaningful exercise of certain basic rights enshrined in the Constitution. As such, courts must actively take due notice of the appropriate electoral reforms and balance them with the enforcement of constitutionally-guaranteed rights, together with spearheading changes in electoral culture perspectives in order to improve the quality of the Philippine electoral process, and in the larger context, to enliven the state as a democratic institution.

#### 110. The Preamble of the present Constitution states:

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

## A Dual Citizen's Right to Vote: A Comment on *Nicolas-Lewis v. Commission on Elections*

Floralie M. Pamfilo\*

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#### I. INTRODUCTION

The Philippines just recently witnessed yet another highlight in its political arena — the 2007 elections. Elections in the Philippines are very similar to the *fiestas* the country is known for — festivities abound in political sorties, streets are aligned with campaign paraphernalia, and anticipation builds up as the election day itself approaches.<sup>1</sup> The whole process is a culture in itself, sometimes mayhem, but definitely, of national interest.

However, the real drawing power of elections is not in the frills, but in the authority it extends to the citizens to have a voice in the future of the country. By having the right to vote, an individual can give his consent to the person he deems will serve the country's interest. It is a right as well as a responsibility, for its consequences can have a tremendous impact on the direction that the nation will take.

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