

the individual is present; thus, it would not warrant a prohibition on private text messages containing political agenda.

Keeping up with the fast pace of technological advancement, difficult as it may be, should never be forsaken. However, laws designed to keep up with technology should never disregard the rights ingrained in the supreme law. New as it may seem, text messaging is still subject to proper restrictions, especially if it involves the elections.

# Reforming the Limitations on Election Campaign Expenditures and Contributions

*Regina Ann L. Nonato\**

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## I. INTRODUCTION

One of the major election concerns pertains to candidates' expenditures for campaigning during the campaign period. Candidates are often known to shell out money to reach out to the masses through various means like streamers, flyers, stickers, radio, and television. Prior to the 2007 General Election, candidates were reminded to "observe the spending cap" as provided for by law.<sup>1</sup> At present, however, this issue remains problematic

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1. See Philippine Information Agency, *Would-be Candidates Reminded vs. Overspending*, Jan. 7, 2007, available at <http://www.pia.gov.ph/Default.asp?>

because many candidates seem to fail to observe the required spending cap. To illustrate, during the 2007 elections, the combined campaign expenses of the senatorial candidates of TEAM Unity<sup>2</sup> have been reported to reach ₱919 million from 13 February to 1 May, while that of the Genuine Opposition<sup>3</sup> shelled out a total of ₱519 million for the same period. Even with this, concerned groups expect “campaign expenses to increase in the last two weeks of the campaign.”<sup>4</sup> Should candidates be reminded that “[they] are only allowed by law to spend ₱3.00 per voter during the campaign period or roughly ₱135 million for the 45 million registered voters in the country?”<sup>5</sup>

Candidates spend so much money for campaigning, particularly television advertisements and radio jingles, because of the harsh reality that popularity is equated with exposure, and more exposure means more familiarity among voters, especially the masses. This is why media exposure becomes a hotly contested issue. It would seem that richer candidates would gain more exposure and more votes. The Omnibus Election Code in fact attempts to regulate this by authorizing the Commission on Elections (COMELEC) to procure print space and broadcast time to be allocated impartially among candidates.<sup>6</sup> It is apparent, however, that money gets

m=12&sec=reader&rp=1&fi=p070107.htm&no=3&date=01/07/2007 (last accessed Mar. 6, 2010).

2. Together Everybody Achieves More (TEAM) Unity was the “umbrella coalition of the administration-backed senatorial line-up for the 2007 elections.” See Alecks P. Pabico, Team Unity (TU), available at [http://www.i-site.ph/blog/?page\\_id=79](http://www.i-site.ph/blog/?page_id=79) (last accessed Mar. 6, 2010).
3. Genuine Opposition was the “umbrella political coalition party of the opposition’s senatorial and local line-up for the 2007 Philippine midterm elections.” See Alecks P. Pabico, Genuine Opposition (GO), available at [http://www.i-site.ph/blog/?page\\_id=93](http://www.i-site.ph/blog/?page_id=93) (last accessed Mar. 6, 2010).
4. Philippine Information Agency, *supra* note 1.
5. See An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes, Republic Act No. 7166, § 13 (1991).
6. Omnibus Election Code of the Philippines [OMNIBUS ELECTION CODE OF THE PHILIPPINES], Batas Pambansa Blg. 881, § 90, 92 (1985). These sections provide:

Sec. 90. Comelec space. — The Commission shall procure space in at least one newspaper of general circulation in every province or city: Provided, however, That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as “Comelec Space” wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated.

Sec. 92. Comelec time. — The Commission shall procure radio and television time to be known as “Comelec Time” which shall be

more exposure through newspapers, radio broadcasting, television, or even through the internet. The 1987 Philippine Constitution’s mandate of “equal access to public office”<sup>7</sup> therefore seems to be reduced to a mere request, not a command.

Where do these candidates get their money for campaigning? It may come from their personal funds, or hard earned money, but this is highly improbable. More likely it would come from campaign contributions in any form and from all directions. For instance, COMELEC official records show that the Governor of Pampanga, Eduardo “Ed” Panlilio, received a total of ₱4,761,699.90 cash money and campaign materials from 56 individuals.<sup>8</sup> Note that he is allowed only ₱5 million to spend for his campaign under present law. Thus, all of his money came from outside sources.

Contributions of this kind may be for the genuine purpose of helping a worthy candidate, but this is not always the case. Contributions to a candidate’s campaign fund may have strings attached to it. This fact is taken cognizance of by law, and is even admitted by the Supreme Court. In *Pilar v. Commission on Elections*,<sup>9</sup> the Court acknowledged this by saying that:

The state has an interest in seeing that the electoral process is clean, and ultimately expressive of the true will of the electorate. One way of attaining such objective is to pass legislation regulating contributions and expenditures of candidates, and compelling the publication of the same. *Admittedly, contributions and expenditures are made for the purpose of influencing the results of the elections.* Thus, laws and regulations prescribe what contributions are prohibited or unlawful, and what expenditures are authorized or lawful.<sup>10</sup>

Thus, much concern must be given to campaign spending. It is reflective of our current situation. For an average of a ₱35,000 per month salary, spending around ₱900 million to get that salary is grossly disproportionate. It must be noted, however, that several laws have been passed to answer the

allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television station are hereby amended so as to provide radio television time, free of charge, during the period of the campaign.

*Id.*

7. PHIL. CONST. art. II, § 26.
8. Marna H. Dagumboy, Poll body Bares Panlilio's Election Campaign Financiers, Jan. 24, 2008, available at <http://www.sunstar.com.ph/static/pam/2008/01/24/news/poll.body.bares.panlilio.s.election.campaign.financiers.html> (last accessed Mar. 6, 2010).
9. *Pilar v. Commission on Elections*, 245 SCRA 759 (1995).
10. *Id.* at 764 (emphasis supplied).

concern on campaign expenditures: Republic Act (R.A.) No. 7166 introduced limitations on campaign spending;<sup>11</sup> COMELEC Resolution (Res.) No. 7794 strengthened the disclosure requirement of campaign expenditures for all candidates.<sup>12</sup> These laws and resolutions aim at augmenting the Omnibus Election Code, which govern these matters. Nevertheless, from the facts and circumstances of the recent elections, there is every reason to believe that the law is still insufficient.

To answer these pressing problems, it is imperative that reforms be made to limit, if not to remove totally, the possibility of corruption. Accountability must be emphasized to remove any avenues for corruption, or any opportunities for it. There is a need to emphasize also the constitutional mandate to “ensure equal opportunity, time, and space ... for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.”<sup>13</sup> The flow of money and expenditures must be strictly regulated to ensure equal spending among candidates, to the aim that no one is to have an undue advantage over others.

It is the aim of this Note to achieve this by proposing a law answering the above concerns. It shall include limitations on allowable contributions to the campaign funds of a candidate, safeguards such as enforced disclosure of contributions, and a new limit on the spending cap for each registered voter. The goal also is to strengthen political parties and use them as vehicles to curb opportunities for corruption in everything related to electoral finance. The latter goal may be achieved since strengthening political parties would lead to the following:

- (1) It would give equal access to the public office by leveling the playing field. It will change the focus from the ability to raise campaign funds to ensuring equality by employing the “limited contribution” rule and the proposed state subsidy for political parties;
- (2) Political parties will limit the chance of “political favors” in exchange of contributions, since the funds will not be under an individual’s disposal, but under the party’s;
- (3) It will also discourage nuisance candidates, who are usually without parties; and lastly
- (4) It will encourage platform and not popularity campaigning.

11. R.A. NO. 7166, § 13.

12. Rules and Regulations Governing Electoral Contributions and Expenditures in Connection with the May 14, 2007 National and Local Elections, COMELEC Resolution No. 7794, §§ 3, 11-13. (2006).

13. PHIL. CONST. art. IX (C), § 4.

The political party in turn will be under the strict supervision of the state, along with necessary rules and guidelines, to ensure that they dispose of their responsibilities in accordance with law. These concerns and proposals will be the main discussion of this Note.

It cannot be more emphasized that the Constitution enjoins the COMELEC to “enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall,”<sup>14</sup> with the aim of ensuring free, orderly, and honest elections. Equal opportunity for public office is also mandated. Amendments in law are therefore required if this is to be achieved.

## II. ALLOWABLE EXPENSES FOR EACH VOTER

### A. Campaign Expenditures

Elections in the Philippines can be quite expensive. Despite the limitations imposed by the Omnibus Election Code of the Philippines<sup>15</sup> and

14. PHIL. CONST. art. IX (C), § 2.

15. OMNIBUS ELECTION CODE OF THE PHILIPPINES, art. XI, § 102. This section provides:

Sec. 102. *Lawful expenditures.* — To carry out the objectives of the preceding sections, no candidate or treasurer of a political party shall, directly or indirectly, make any expenditure except for the following purposes:

- (a) For travelling expenses of the candidates and campaign personnel in the course of the campaign and for personal expenses incident thereto;
- (b) For compensation of campaigners, clerks, stenographers, messengers, and other persons actually employed in the campaign;
- (c) For telegraph and telephone tolls, postage, freight and express delivery charges;
- (d) For stationery, printing and distribution of printed matters relative to candidacy;
- (e) For employment of watchers at the polls;
- (f) For rent, maintenance and furnishing of campaign headquarters, office or place of meetings;
- (g) For political meetings and rallies and the use of sound systems, lights and decorations during said meetings and rallies;
- (h) For newspaper, radio, television and other public advertisements;
- (i) For employment of counsel, the cost of which shall not be taken into account in determining the amount of expenses

COMELEC Res. No. 7794,<sup>16</sup> candidates have their ways and means of circumventing them. They do so because, to have a chance of actually

which a candidate or political party may have incurred under Section 100 and 101 hereof;

- (j) For copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists the costs of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof; or
- (k) For printing sample ballots in such color, size and maximum number as may be authorized by the Commission and the cost of such printing shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred under Sections 100 and 101 hereof.

*Id.*

16. COMELEC Res. No. 7794, §§ 7-8. These sections provide:

Sec. 7. *Authorized Expenses of Candidates and Political Parties.* — The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follow:

- (a) For official candidates of political parties — Three Pesos (₱3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy;
- (b) For candidates without any political party and without support from any political party — Five Pesos (₱5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy; and
- (c) For political parties and party-list groups. — Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where they have official candidates or nominees.

The expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign.

If the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the COMELEC shall assess the amount commensurate with the expenses for the use thereof, based on the prevailing rate in the locality and shall be included in the total expenses incurred by the candidate.

*Id.*

winning the elections, a candidate has to spend millions, even billions of pesos, depending on whether the candidate is running for a local or national post. It is a recognized fact in the Philippines that money makes elections happen. Thus, it can be deduced that candidates need to spend prodigious amounts of money to win; the higher up the ladder, culminating in the presidential candidate, the more a candidate has to spend.<sup>17</sup>

Sec. 8. *Lawful Expenditures.* — No candidate or treasurer of a political party shall, directly or indirectly, make any expenditure except for the following purposes:

- (a) For traveling expenses of the candidates and campaign personnel in the course of the campaign and for personal expenses incident thereto;
- (b) For compensation of campaigners, clerks, stenographers, messengers, and other persons actually employed in the campaign;
- (c) For telegraph and telephone tolls, postages, freight and express delivery charges;
- (d) For stationery, printing and distribution of printed materials relative to the candidacy;
- (e) For employment of watchers at the polls;
- (f) For rent, maintenance and furnishing of campaign headquarters, office or place of meetings;
- (g) For political meetings and rallies and the use of sound systems, lights and decorations during said meetings and rallies;
- (h) For newspaper, radio, television and other public advertisements;
- (i) For employment of counsel;
- (j) For copying and classifying lists of voters, investigating and challenging the right to vote of persons registered in the lists; and
- (k) For printing sample ballots in such color, size and maximum number as may be authorized by the COMELEC.

The expenditures for items (i), (j), and (k) above, shall not be taken into account in determining the amount of expenses which a candidate of political party may have incurred under Section 7 hereof.

*Id.*

17. Joel E. Rocamora, Campaign Finance and the Future of Philippine Political Parties, prepared a presentation at a conference organized and cosponsored by the Sejong Institute, Sungnam, Korea, and the National Endowment for Democracy at Washington, D.C., U.S.A on "Political Finance and Democracy in East Asia: The Use and Abuse of Money in Campaigns and Elections" on June 28-30, 2001 at Seoul, South Korea [hereinafter Rocamora, Campaign Finance].

Because those running the election machinery have become quite creative in assuring the victory of their respective electoral bets, there is therefore a necessity to address the exponential increase in campaign expenses by determining how much a candidate can actually spend on during the elections. In line with providing equal access to public office and incorporating partial state subsidy in campaign financing in the Philippine electoral system, it is necessary to set limitations on allowable expenses for each voter and campaign expenditures in general — with the end goal of encouraging the formation and strengthening of political parties during elections

The current authorized amount of campaign expenditures that a candidate or registered political party may spend for election campaign, as used in the previous 2007 elections, is as follows:

- (a) For official candidates of political parties — Three Pesos (₱3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy;
- (b) For candidates without any political party and without support from any political party — Five Pesos (₱5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy; and
- (c) For political parties and party-list groups — Five Pesos (₱5.00) for every voter currently registered in the constituency or constituencies where they have official candidates or nominees.<sup>18</sup>

This amount is lower than that provided for in R.A. No. 7166 and the proposed Senate Bill (S.B.) No. 2610, which provide for ₱10.00 per voter<sup>19</sup> and ₱11.00 per voter,<sup>20</sup> respectively.

This amount though is too small to run a decent campaign for any elective post. As such, most often than not, the candidates and political parties in general understate their expenses to comply with the limitations set by law. In the 1992 Presidential Elections, candidates were allowed to spend ₱10.00 per voter. With more than 30 million registered voters, each presidential candidate was allowed to spend a total of ₱321 million at the prevailing exchange rate. As high as this amount is, most analysts say candidates spent more, in the area of ₱1 billion per candidate. Fulfilling

18. COMELEC Resolution No. 7794, § 7.

19. An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes, Republic Act No. 7166, § 13 (a) (1991).

20. An Act Strengthening the Political Party System, Appropriating Funds Therefor, and for Other Purposes [The Political Party Development Act of 2007], S.B. 2610, 13th Cong., 3d Sess., § 15 (Feb. 7, 2007).

COMELEC requirements, after the election Ramos reported that he spent ₱118 million and his party, Lakas another ₱98,981,281. *Kilosbayan*<sup>21</sup> later accused the Aquino government of spending ₱400 million in government funds to support Ramos' candidacy.

In 2001, the director of the research institute of the Liberal Party, one of the oldest parties in the country, estimated that it costs between ₱25 to ₱50 million to run and win a seat in the House of Representatives. The variation depends on the size of the district where the number of voters can range from 10,000 to 200,000 and the intensity of the competition. A congressman's salary is ₱35,000 a month, around ₱435,000 a year. Including perks and allowances, the sum allocated to each congressman in three years, the term of office, totals nearly ₱8 million. Even at the lower end of the expenditure scale, the congressman is still short ₱17 million, which is a major incentive for corruption to occur.<sup>22</sup>

The high cost of an election campaign coupled with the unrealistic expenditure limits set by the COMELEC forces almost all candidates to make a mockery of the law by directly violating the limitations but appearing compliant even though they are not. The law should be followed, and not mocked openly by our supposedly honorable lawmakers and government officials. It should be both realistic and enforceable in order to be followed, thus, the proposals in this Note were drafted to meet both of these requirements.

#### B. Proposed Provisions

The authorized expenditures of political parties and candidates should be increased in line with the current socio-economic environment of the country. The increase, however, must be made to provide equal access to public office. Thus, it must be limited in order to not deprive low-budgeted candidates the opportunity to be elected. In addition, the increase must not be so high as to be tantamount to vote buying, and it should be insufficient so as not to induce a voter to vote for a particular candidate.

The proposal is to allow candidates for national positions, namely, the President, Vice-President, and Senators, 5% of the existing minimum wage per voter and political parties, also 5% of the same rate base per voter. Thus, candidates for such elective posts, supported by political parties, are entitled to 10% of the existing minimum wage rate in Metro Manila. If elections were held today, a candidate is entitled to spend an aggregate amount of

21. Kilosbayan is a citizen's movement headed by former Senator Jovito Salonga.

22. Provided by Lourdes Gordolan, IPD research associate, based on remarks made by Chito Gascon, Director of the National Institute for Policy Studies, at a forum July 18, 2000.

₱38.20 per voter based on the minimum wage in Metro Manila of ₱382.00 per day.<sup>23</sup>

Such an amount is not enough to directly induce a voter to vote for a particular candidate but the total aggregate amount that will be available for the candidate is sufficient to run a decent campaign without sacrificing the integrity of the reportorial requirements of the law. With this amount, honest candidates will be placed on a level playing field with those who understate their declarations to comply with COMELEC requirements.

In addition, the use of existing minimum wage rate as the basis for computing authorized expenditures is more responsive to the purposes of the imposition of the expenditure limit. There is no further need for the COMELEC to periodically change existing expenditure limits since all that needs to be done is to ascertain the existing wage rate at the commencement of the campaign period.

Aside from increasing authorized campaign expenditures of political parties and individual candidates, the author also proposes that specific expenses be prohibited since the blanket prohibition under the Omnibus Election Code and other laws and resolutions is subject to interpretation and may not be enough to meet the increasing number of ways that candidates and political parties are circumventing the law on election expenditures.

The following are some of the proposed specific prohibitions:

- (a) Media advertisements, whether commercial or not, by candidates and political parties during the campaign period;
- (b) Direct payment to voters in exchange for their votes;
- (c) Gifts to election officers and other public officials, whether in cash or in kind;
- (d) Travel and lodging expenses used to transport voters from one place to another in order to vote for a particular candidate;
- (e) Food and gifts to election watchers, except a reasonable food allowance for the candidate's or political party's own watchers;
- (f) Wages or allowances of any kind to persons in polling places and counting areas aside from those authorized by the Commission to be present in such areas; and

23. Daily Minimum Wage Rates, available at [http://www.nwpc.dole.gov.ph/pages/ncr/cmwr\\_table.html](http://www.nwpc.dole.gov.ph/pages/ncr/cmwr_table.html) (last accessed Mar. 6, 2010).

- (g) Contributions and donations to wakes, funerals, fiestas and other events during the campaign period, except for regular donations to institutions and foundations, such as scholarships and charity, which donations should have been in existence six (6) months prior to the start of the campaign period.

It is necessary to disallow expenses (a) to (e) during the campaign period in recognition of the policy of the State to grant equal access to opportunities for public service.

Candidates who are well-funded should not take advantage of their resources by buying air time to the discrimination and detriment of candidates who cannot afford the high costs of advertising. Also, the abundant resources available to these candidates should not be used to promote the illegal practice of vote-buying usually employed by well-funded candidates. In addition, the equal access clause in the Constitution necessarily entails that gifts and other unnecessary expenses which tend to favor the more generous candidate shall be disallowed. The author is not unaware of the current practice, prevalent in the local election scene and elusive in national elections, that election officers, public officers, and voters are actually being bribed, in the form of gifts, in cash or in kind, to obtain favors from them, whenever and however beneficial to the candidate. There should be more teeth in the proposed law by expressly making gifts of this nature as a prohibited expense.

During the campaign, "guns, goons, and gold" are used extensively to intimidate competitors' supporters and to literally buy support.<sup>24</sup> In order to prevent this existing problem from rearing its ugly head in future elections, expenses (f) should be prohibited as it corresponds to the "guns, goons, and gold" problem.

While expenses (g) are not completely abhorrent, these practices have been used as a political strategy by candidates to increase their chances of winning, at the expense of other candidates who do not have as much funds for campaigning. Thus, it is necessary to categorize this as a prohibited expense for reasons already discussed. In addition, using such noble charitable events into campaign sorties prostitutes them and removes meaning from these events.

24. Rocamora, Campaign Finance, *supra* note 19.

### III. ALLOWABLE AND PROHIBITED DONATIONS OR CONTRIBUTIONS DURING ELECTIONS

#### A. Campaign Contributions

Corruption of all forms seems to be prevalent in our country, especially during election season. Despite the regulations imposed by COMELEC Res. No. 7794,<sup>25</sup> corruption is still rampant. In fact, experts believe that corruption is the sole basis for restricting electoral contributions as well as the use of campaign money. It has been said that:

It is commonly accepted that an effective election campaign needs sufficient resources. Parties and candidates would not be able to convey their

25. COMELEC Res. No. 7794, § 4. This section provides:

Sec. 4. *Prohibited Contributions.* — No contribution for purposes of partisan political activity shall be made, directly or indirectly by any of the following:

- (a) Public or private financial institutions. However, nothing herein shall prevent the making of any loan to a candidate or political party by any such public or private financial institutions legally in the business of lending money, and that the loan is made in accordance with laws and regulations and in the ordinary course of business;
- (b) Natural and juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation;
- (c) Natural and juridical persons who holds contracts or subcontracts to supply the government or any of its divisions, subdivisions or instrumentalities, with goods or services or to perform construction or other works;
- (d) Natural and juridical persons who have been granted franchises, incentives, exemptions, allocations, or similar privileges or concessions by the government or any of its divisions, subdivisions, or instrumentalities, including government-owned or controlled corporations;
- (e) Natural and juridical persons who, within one year prior to the date of the elections, have been granted loans or other accommodations in excess of P100,000.00 by the government or any of its divisions, subdivisions, or instrumentalities, including government-owned or controlled corporations;
- (f) Educational institutions which have received grants of public funds amounting to no less than P100,000.00;
- (g) Officials and employees in the Civil Service or members of the Armed Forces of the Philippines; and
- (h) Foreigners and foreign corporations.

*Id.*

programmes to the electorate without financial resources. Therefore political funding is considered a necessary condition for elections in modern democracies. Nevertheless, it should be clear that *money may lead to corruption and to unfair political competition in the electoral process.* Thus, it is *important that election (and party) legislation contains clear and comprehensive regulations on party and campaign finances.*<sup>26</sup>

Thus, the limitations on campaign contributions are warranted not only by the compelling state interest of preventing the actuality and appearance of corruption, but also to afford equal access to opportunities for public service, such that more Filipinos should be afforded the opportunity to serve the public as government leaders and that money should not be the deciding factor in elections.

#### B. Proposed Provisions

With corruption and the need to provide equal access to opportunities for public service to the candidates in mind, the following maximum amounts as limits on voluntary contributions to any political party should be set. These limits are actually the same ones found in S.B. No. 2610: “Up to One Hundred Thousand Pesos (₱100,000.00) from a natural person;” and “[u]p to One Million Pesos (₱1,000,000.00) from a juridical person.”<sup>27</sup>

Said limits are reasonable enough as it is not too small to deprive the people of their freedom to contribute and give support to their preferred candidates; neither is it too big which may be a possible ground for corruption, manipulation, or cheating. It is best to limit contributions in the form of cash and in kind, but not real properties. Prohibiting real property contributions will be further discussed in the latter part of this Note.

Furthermore, the following provision is proposed:

When a candidate is running as an independent, he may make voluntary contributions from his or her personal or immediate family's funds for his or her own candidacy. However, if a candidate is running under a political party, only the registered and accredited political parties may receive, and authorize any voluntary contributions as well as any dispensation and subsidy from the Fund.

There are three primary reasons for including such provision: (1) to provide equal access to public office, (2) for purposes of partial state subsidy, and (3) to encourage the formation of political parties during elections. The first reason has already been explained such that if a candidate running under a political party is allowed to use his or her own personal funds in addition to that of the party he represents, such candidate would be in a better position than that of a candidate running as an independent. To curb such inequality

26. Rocamora, Campaign Finance, *supra* note 19 (emphasis supplied).

27. S.B. No. 2610, § 10.

and the possibility of manipulating votes and the election as a whole, candidates running under a political party are prohibited to make voluntary contributions from his or her personal or immediate family's funds for his or her own candidacy. It is even said that the basic idea during the pre-election period is that political parties and candidates should act on a level playing field. According to the Code of Good Practice in Electoral Matters, equality of opportunities should be ensured between different parties and candidates, at least as far as possible.<sup>28</sup>

The second reason with regard to the partial state subsidy will be discussed in detail in the following section of this Note. As for the third reason, it cannot be denied that until now, many candidates are still running independently such that the party itself has historically not been a major source of electoral funds. It is said that in the Philippines:

[W]hat is financed are not so much political parties, but individual candidacies. Political parties, as a rule, do not undertake sustained party-building activities for which they require regular funds. For, they have no meaningful organizational presence outside of elections. And indeed, within the present system of Philippine politics, they do not need to have one. Every candidate must raise his own funds — from his family, friends, business associates, and from political allies.<sup>29</sup>

Since one of the functional requirements of the current economic situation is the presence of political parties capable of aggregating interests and translating them into policy, the formation of political parties is encouraged and that candidates run under such parties; hence, the reason for the inclusion of the aforementioned provision. Hopefully, this provision would transform Philippine political parties, currently loosely structured and faction-based, into more program-oriented and more tightly structured parties in the long run.

As for the Prohibited Voluntary Contributions, it would be best to retain the current prohibited voluntary contributions found in Sections 81,<sup>30</sup>

28. European Commission for Democracy Through Law (Venice Commission), a report on Electoral Law and Electoral Administration in Europe, adopted by the Council for Democratic Elections at its 17th meeting in Venice (June 8-9, 2006) and the Venice Commission at its 67th plenary session in Venice (June 9-10, 2006) [hereinafter European Commission] (emphasis supplied).

29. Rocamora, Campaign Finance, *supra* note 19.

30. OMNIBUS ELECTION CODE OF THE PHILIPPINES, art. X, § 81. This section provides:

Sec. 81. Intervention of foreigners. — It shall be unlawful for any foreigner, whether judicial or natural person, to aid any candidate or political party, directly or indirectly, or take part in or influence in any manner any election, or to contribute or make any expenditure in connection with any election campaign or partisan political activity.

95,<sup>31</sup> and 96<sup>32</sup> of the Omnibus Election Code as well as in COMELEC Res. No. 7794.<sup>33</sup>

*Id.*

31. *Id.* art. XI, § 95. This section provides:

Sec. 95. Prohibited contributions. — No contribution for purposes of partisan political activity shall be made directly or indirectly by any of the following:

- (a) Public or private financial institutions. (This includes contributions from all banks, though legitimate loans are allowed.)
- (b) Operators of public utilities or holders of licenses to exploit the nation's natural resources. (This would include all mining, logging, and deep-sea fishing companies, and operators of public utilities like electric companies and transport enterprises.)
- (c) Suppliers or contractors of goods and services to the government. (This would cover virtually all the big construction companies engaged in infrastructure construction or contractual supplies to the government.)
- (d) Recipients of franchises, incentives, exemptions, allocations, concessions or similar privileges by the government. (This would cover virtually all the big ones, all radio and television companies insofar as they need a franchise to use the air waves, and all beneficiaries of tax exemptions and other forms of incentives.)
- (e) Beneficiaries of loan or other forms of accommodations by the government in excess of P100,000.00.
- (f) Educational institutions which have received public funds in excess of P100,000.00.
- (g) Government officials and employees, and members of the Armed Forces of the Philippines. (This covers practically everybody working in government.)
- (h) Foreigners and foreign corporations. (This will also cover all Filipinos living overseas who have acquired foreign citizenship) "It shall be unlawful for any person, including a political party or public or private entity to solicit or receive, directly or indirectly, any aid or contributions of whatever form or nature from influencing the results of the election.

32. *Id.* art. XI, § 96. This section provides:

Sec. 96. Soliciting or receiving contributions from foreign sources. — It shall be unlawful for any person, including a political party or public or private entity to solicit or receive, directly or indirectly, any aid or contribution of whatever form or nature from any foreign national, government or entity for the purposes of influencing the results of the election.



There are compelling reasons for retaining the aforementioned prohibitions. Those reasons, however, would no longer be explained in detail. In addition to such prohibited voluntary contributions, the following should be added:

- (a) Those made by persons seventeen (17) years old or younger.
- (b) Those made in the name of another person.
- (c) Those made by labor organizations or worker's associations.
- (d) Those made by persons enjoying exemption from taxation, or have submitted an application for the determination of tax-exempt status.
- (e) Those made within two (2) years after the conduct of elections.
- (f) Those donations of real property.
- (g) Those donations made by the immediate family of the candidate for a specific purpose or project identified by the candidate or the contributor(s) prior to its disbursement.
- (h) Those donations which are the result of "grey money" or money which came from illegal economic activities, gambling, smuggling, prostitution and drugs.<sup>34</sup>

Minors are susceptible of becoming victims of forced or involuntary contributions, such that they are easily prone to manipulation due to immaturity and unsound discretion without parental guidance. Hence the reason for prohibited contribution (a).

Contributions made in the name of another person can also be a ground for manipulation and cheating during the electoral period. The maximum limits for voluntary contributions would be rendered nugatory if contributions made in the name of another person will be allowed. This indirect form of contribution should be prohibited so as not to induce and tolerate cheating and manipulation during the elections.

Contributions made by labor organizations or workers' associations should be prohibited to prevent possible biases in favor of the labor organization which may have intentions of supporting the winning candidate because such might negatively affect their bargaining with employers. There might also be a tendency for employers to induce the unions to support a certain candidate and manipulate labor organizations into supporting such

*Id.*

33. COMELEC Res. No. 7794, § 4.

34. *Id.*

candidate. Also, only contributions from labor organizations or worker's association itself are prohibited, not from each particular employee or individual. Thus, the individual's freedom of expression, so to speak, is still unhampered.

Prohibited contribution (g) should be included so that that persons or institutions enjoying exemption from taxation will not be used by candidates or their supporters for possible circumvention of the law such as to evade donor's and donee's taxes. Again, this is in order to prevent any form of indirect voluntary contributions.

Prohibited contribution (e) takes into consideration that elections, local elections in particular, occur every three years, no contribution for election purposes must be made until one year before an election. To be particular: "Provincial, city and town executives and legislative councils and members of the Lower House of Congress are elected to three year terms, with a three term limit. Half of the 24 senators, congressmen and local government officials are elected in mid-term elections, but during presidential election years, everyone is elected at the same time."<sup>35</sup>

Thus, the provision is included to prevent any form of indirect contribution or manipulation in making contributions to a preferred candidate. Also, the author recognizes the fact that cheating does not end at the time of the actual election. It is even said that "[e]lection return canvassers, often public school teachers, are bribed to manipulate the results. If cheating before and during the election is 'retail' cheating, at the municipal and provincial counting stage it is 'wholesale' cheating which occurs."<sup>36</sup>

Contributions in cash should be allowed, but donations of real property should be prohibited. The absolute conveyance of real property or transfer of title because donation of such real properties will be most likely be used by the candidates and their supporters as headquarters, and allowing such will be disadvantageous to the candidates who are running independently or who have fewer resources and connections. Again, equal opportunity should be promoted in access to public service.

Prohibited contribution (g) should be included because it is akin to an indirect personal contribution which, if allowed, will be directly linked with the candidate, and thus, would put him at a better position as opposed to those candidates who have fewer resources or are not that well-off or well-known in society.

Lastly, grey money contributions should also be included because emphasis has to be given that any form of illegal activities used as funding or

35. Rocamora, Campaign Finance, *supra* note 19.

36. *Id.*

contributions during elections is strictly prohibited and illegal. Thus, it should be emphasized that any form of indirect and involuntary contribution is prohibited. To note, there are two categories of funding sources during elections, what is called "legitimate" money and "grey" money. "Legitimate money" is basically money from lawful activities or businesses. "Grey money," on the other hand, comes from the operators of illegal economic activities, gambling, smuggling, prostitution, and drugs.<sup>37</sup> Toleration of contributions from any indirect and involuntary as well as illegal or prohibited means is not to be allowed.

In connection with this, election financing should be as transparent as possible so as to deter the possibility of corruption, cheating, and manipulation before, during, and even after the elections. The voluntary as well as involuntary contributions are not only to be highly regulated, but auditing of accounts is also required of every candidate. It cannot be denied that "many recommendations by electoral experts and international observers aim to improve accountability and transparency of public and even private funding."<sup>38</sup> In some countries like Ukraine, it was pointed out that the Law should require full disclosure, before and after elections, of sources, and amounts of financial contributions and the types and amounts of campaign expenditure, in order to provide timely and relevant campaign finance information to the public.<sup>39</sup> With this in mind, a section on the availability of information on the deposit accounts of political parties<sup>40</sup> should be included as well as a section on audit of voluntary contributions.<sup>41</sup>

### C. Tax on Political Contributions

Political contributions shall be taxed under Title III, Chapter II of the National Internal Revenue Code (NIRC) on Donor's Tax.<sup>42</sup> The burden of the tax is placed on the individual or entity making the contribution for three reasons.

First, the purpose of the law is to reduce opportunities for corruption in relation to elections and to level the playing field among the different candidates. Imposing a tax on the donor will help achieve these purposes by

37. Joel E. Rocamora, *Philippine Political Parties, Electoral System and Political Reform*, Feb. 27, 1998, available at <http://www.philsol.nl/pir/JR-98a.htm> (last accessed Mar. 6, 2010).

38. European Commission, *supra* note 38, at 22.

39. *Id.*

40. Election Campaign Finance Act of 2009, § 18.

41. *Id.* § 19.

42. An Act Amending The National Internal Revenue Code, As Amended, And For Other Purposes [Tax Reform Act of 1997], Republic Act No. 8424, title III, ch. 2 (1997).

discouraging excessive contributions, which later on may translate into a leverage tool for the person making the contribution. The tax will work hand in hand with the limitations imposed on contributions. Limitations on the amount of contributions alone will not be able to achieve the purposes of the law. There are always ways around the limitations. For instance, a corporation desiring to make a large contribution to a candidate or political party, aware of the limitations, can simply procure several of its employees to make the contributions individually thereby evading the limitation. Taxing the contributions would address those problem areas which limitations alone cannot effectively address. Because the contribution itself is taxed, even if the corporation chooses to have different individuals to make the contribution for it, it will still be discouraged to donate excessively large amounts of money.

Second, the definition of political contributions falls squarely within the definition of donations under the NIRC. The Code defines donations simply as "the transfer by any person, resident or nonresident of the property by gift."<sup>43</sup> It is evident that the broad definition of donations under the NIRC covers political contributions.

Finally, taxing political contributions under the NIRC will provide for a smoother, more transparent, and reliable system. The Title already provides for the requirements of filing the required return and paying the tax due. Not only will it be more convenient for the government, it will also achieve the purposes of the law.

### IV. GOVERNMENT SUBSIDIES OR PUBLIC FINANCING FOR THE CANDIDATES

In the past national elections, one can readily observe that whoever is the most popular and has the most resources is usually the winning candidate. This is the reason why many aspiring politicians spend so much money in advertising themselves, be it in television, radio, or newspaper. The higher the office, the higher the amount of money needed to finance a campaign since one has to cover a lot of ground, especially the masses, which occupy a greater majority of the Philippine population.

Surveys show that in order for a candidate to be able to have at least a chance to win the election, he has to spend a huge amount of money. For a presidential candidate, it is estimated that he would need to spend around ₱2.5 billion to ₱5 billion pesos.<sup>44</sup> For those aiming to become senators, they would need to spend from ₱150 million to ₱500 million pesos in order to

43. Tax Reform Act of 1997, § 98.

44. Ramon Casiple, *Politics, Campaign Financing and Corruption*, available at <http://www.pcij.org/blog/wp-docs/CasipleCorruption22jan07.pp> (last accessed Mar. 6, 2010).

have a fighting chance.<sup>45</sup> For local candidates on the other hand, around ₱3 million to ₱100 million pesos would be needed to launch a campaign for a congressional seat, while that for the campaign of a governor, the campaign expenses could go as high as ₱150 million pesos and as low as ₱5 million pesos.<sup>46</sup> A mayoralty campaign which is lesser in scope compared to the other offices would still cost millions of pesos and it could even reach ₱100 million pesos in some cases.<sup>47</sup>

Given the high cost of running for office, it is almost always the case that when election time arrives, one of the concerns of the populace as well as the COMELEC is the sources of the funds of these politicians. One major criticism usually thrown at a candidate is the huge amount of money he spends for his election campaign. These election expenses cannot be borne only by the candidate himself since one's resources also has its limits. The common practice of politicians in the country is to ask for donations and contributions from family, friends, and other interested individuals. Soliciting funds from different people raises some concerns on the objectivity and honesty that a potential public officer may have in the performance of his duties since it is undeniable that Filipinos are well-known for their *utang na loob* — for every help that one gets from others, he is obliged to give back something in return. And this fear is reasonable given the fact that more often than not, majority of contributions come from individuals or corporations that have business interests which will greatly be benefitted if the candidate they are supporting are elected. These benefits may be in the form of award of government contracts for certain projects, passage of a law granting it tax exemptions or other preferred status, and the like.

It is due to these issues of graft and corruption, the promotion of professionalism and accountability among the country's public officials, and strengthening of the political parties in the country that members of both the House of Representatives and the Senate have throughout the years proposed the enactment of a law which will provide for monetary subsidies to political parties in the Philippines to aid their campaign and party development expenses: a recent attempt being S.B. No. 2610. Similar to the aim of said bill, the author also seeks to promote the creation of a government subsidy fund for political parties in order to address the problems stated above by adopting and incorporating certain provisions of S.B. No. 2610 in her proposed law. The question that now remains is, whether the creation of a state subsidy is constitutional, and that will be discussed in the succeeding paragraphs.

45. *Id.*

46. *Id.*

47. *Id.*

Section 1, Article II of the Constitution provides: "The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them."<sup>48</sup> This declared principle means that it is the Filipino people who have the supreme legal authority<sup>49</sup> and that public officials chosen by the people are merely their agents. It is through these agents that Filipinos exercise their power to govern themselves, to make laws and to enter into agreements with other foreign countries. The power, however, of the legislative department, as agents of the Filipino people, to make laws is merely a derivative and delegated power.<sup>50</sup> In fact, it has been said that the Constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature in their derivative and subordinate capacity. The Constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move.<sup>51</sup> Stated differently, the laws made by Congress must conform to the requirements provided for in the Philippine Constitution in order for it to be valid. It is through these constitutional precepts that the validity of the group's proposed law granting government subsidies to accredited national political parties will be evaluated.

#### A. Public Purpose

As S.B. No. 2610 provides, the money for the state-subsidy fund will come from a special appropriation by Congress from the amount collected by the government from taxes.<sup>52</sup> The power of the government to appropriate is as broad as the power to tax.<sup>53</sup> This power, however, is subject to certain limitations one of which is that it must be for a public purpose:

It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose. It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interest to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. Incidental advantage to the public or to the state, which results from the promotion of private interest and the prosperity of private

48. PHIL. CONST. art. II, § 1.

49. JOAQUIN G. BERNAS, S.J., THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 55 (2009 ed.).

50. *Id.* at 676.

51. Vanhome's Lessee v. Dorrance, 2 U.S. 304, 308 (1795).

52. S.B. No. 2610, § 16.

53. BERNAS, *supra* note 68, at 781.

enterprise or business, does not justify their aid by the use of public money.<sup>54</sup>

The state subsidy fund is for a public purpose and therefore constitutional. The proceeds of the said fund will be used to finance the campaign expenses of the parties as well as their party development activities.<sup>55</sup> These expenses are for a public purpose in the sense that the direct object of the subsidy is to promote the welfare of the whole citizenry — that is to minimize if not prevent the corruption in the government and to make sure that the country's leaders are well trained, educated and efficient in performing the functions of their offices which will both result to an effective government in the country. In addition, the proceeds of the subsidy are not directly given for the benefit of the individual candidates but for the political party as a whole. And the amount to be given depends on the number of seats obtained by the parties during the previous election, meaning that the greater amount will be given to that party supported by majority of the voters in the country. Thus, by giving such support dependent on the number of seats, the subsidy program in effect supports the leaders chosen by the Filipino people, and thus, it will redound to the latter's benefit.

#### B. Equal Protection Clause

Section 1, Article III of the Philippine Constitution provides that: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of laws."<sup>56</sup> The equal protection provided in this Note does not mean however that all shall be treated equally under the law regardless of their differences. In *People v. Cayat*,<sup>57</sup> it has been held that:

It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.<sup>58</sup>

From the foregoing, it can be said that a different treatment for certain classes will be allowed by the law if the four requirements mentioned above are present. For the proposed law of the author, the subsidy shall only be given to accredited national parties in proportion to the number of seats they

54. *Pascual v. Secretary of Public Works*, 110 Phil 331, 340 (1960).

55. S.B. No. 2610, § 5.

56. PHIL. CONST. art. III, § 1.

57. *People v. Cayat*, 68 Phil 12 (1939).

58. *Id.* at 18.

occupy in government elected offices. This provision is not in contradiction to the equal protection clause because the four requirements provided in *Cayat* is present in this case.

First, there is substantial distinction between a national political party and an independent candidate. A political party is an organization of politicians sharing the same political ideologies, ideas or platforms of government and its branches or subdivisions. Furthermore, a national political party is one whose constituency is effectively spread across the geographical territory of all or a majority of the administrative regions of the Philippines and which regularly nominates and supports its members as candidates for public office.<sup>59</sup> While an independent candidate is an individual running for a public office having his own platform and not affiliated with any political organization or party.

Second, the classification between an independent candidate and a national political party is germane to the purpose of the law. One of the objectives of the bill is to strengthen the political party system in the Philippines as this will lead to an efficient electoral process, system and governance of the country.

Third, the classification is not limited to existing conditions only since the bill encompasses not only the upcoming national elections but those in the succeeding years as well.

Finally, the provision of the bill regarding state subsidy funds will apply to all accredited national political parties in the country and will be applied uniformly to those parties belonging to the same category particularly the number of seat occupied in the government elected offices.

#### V. CONCLUSION

The inability of our laws to conform to the changing times has invariably caused the problems that the author now seeks to address. The problems of corruption, lack of transparency, disrespect for election laws, cheating, and unfair election practices such as vote-buying and indiscriminate advertising are only some of the problems that resulted from the impossible and unrealistic election laws. In fact, there is no logic behind the limitations set forth in COMELEC Res. No. 7794, which sets expenditure limits lower than those stated in R.A. No. 7166. If gross violations were already being committed against the Omnibus Election Code, the setting of lower limitations despite the rising costs of campaigning only led to even more violations, and only put the Commission in a worse light than ever before for being unrealistic, and worse, for being ineffective in enforcing the law. Thus, to save the Commission from any more trouble, the author is

59. S.B. No. 2610, § 5.

proposing that a law be passed on election expenditures where the standards to be set are beyond the human frailties of the persons in the Commission but in the law itself, beyond interpretation but ready for implementation.

It should be emphasized that any form of indirect and involuntary contribution is prohibited. The use of grey money or soft money is to be strictly prohibited. Thus, aside from retaining the allowable and prohibited contributions provided for by the Omnibus Election Code, R.A. No. 7166, and COMELEC Res. No. 7794, the author has also included other prohibited contributions, particularly enumerating those which are indirect or involuntary, which candidates or their supporters might possibly use to circumvent the existing laws. Toleration of contributions from any indirect and involuntary as well as illegal or prohibited means should not be allowed. It is also the author's aim to keep the election financing as transparent as possible so as to deter the possibility of corruption, cheating, and manipulation before, during, and even after the elections. Thus, contributions are not only to be highly regulated, but auditing of accounts is also required of every candidate.

Lastly, it would be beneficial to the whole electorate if a law providing for the creation of a state subsidy fund is enacted. The creation of said fund is clearly in accord with the Constitution as it involves an appropriation for a public purpose and it does not violate the equal protection clause. Also, the current condition of the Philippine electoral system is ripe for the creation and implementation of a government subsidy as the confidence in the government and the electoral process of the country is dwindling because of rampant graft and corruption. The creation of state subsidy fund will to a certain extent, minimize if not remove graft and corruption.

#### APPENDIX A

##### AN ACT REGULATING ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

#### CHAPTER 1: PRELIMINARY CHAPTER

Section 1. *Title.* — This Act shall be known as “The Election Campaign Finance Act of 2010.”

Section 2. *Declaration of Policy.* — It is declared the policy of the State to institute reforms in campaign financing through effective and transparent mechanisms designed to level the playing field among all candidates and political parties during elections, reduce opportunities for graft and corruption, and to institutionalize and strengthen political parties as vital pillars of the country's democratic system.

The State shall also institute measures to professionalize political parties, and make them viable instruments of development and good governance, to the end of assuring equal opportunity for public service, and of a free, orderly, honest, peaceful and credible elections.

Section 3. *Purposes.* — This Act aims to:

- (a) Institutionalize reforms in the financing of electoral campaigns so as to promote accountability and transparency;
- (b) Provide financial subsidies to political parties and to augment their expenditures for campaign purposes;
- (c) To provide for a system of disclosure and monitoring of political parties consistent with the goal of full accountability and transparency; and
- (d) Promote party loyalty and discipline.

Section 4. *Coverage.* — This Act shall apply to all political parties duly registered with, and certified by, the Commission on Elections, and to all independent candidates in so far as they are covered by the provisions on limitations of expenditures for campaign purposes. It shall also apply, as far as practicable, to candidates contesting elections as independents.

Section 5. *Definition of Terms.* — The following terms as used in this Act shall mean:

- (a) “Campaign Contribution” refers to any form of donation to any candidate, political party, aggregation or coalition thereof, given before, during or after the holding of elections. It includes any gift, donation, subscription, loan, advance or deposit of money or anything of value, or those arising from a contract, pledge or agreement to contribute, made for the purpose of influencing the results of the elections, but shall not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. It also includes the use of office space, facilities, equipment, office supplies and other materials and fixtures voluntarily donated by other persons, or allowed their use for free, the monetary value of which shall be assessed based on market rates prevailing in a particular area.

- (b) "Campaign Expenditure" shall include those incurred or caused to be incurred by the political parties against transportation, equipment, facilities, apparatus, or paraphernalia owned by any of its candidates, which shall be assessed the amount commensurate with the expenses for the use thereof, based on the prevailing rate in the locality.
- (c) "Candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties. For purposes of this Act, the term shall include incumbents who are allowed by law to stand for reelection in the immediately succeeding election, unless and until they do not file their certificates of candidacy on the last day set by the Commission for filing such.
- (d) "COA" refers to the Commission on Audit.
- (e) "Commission" refers to the Commission on Elections.
- (f) "Disclosure Requirement" refers to the duty of all candidates and political parties, aggrupations or coalitions thereof to reveal the details of campaign contributions received by them, and the expenditures made on account thereof. For accredited national political parties, it includes expenditures and destinations of party development and campaign monies given to them as their share in the State Subsidy Fund established under this act.
- (g) "Election Period" shall be as defined under B.P. 881.
- (h) "Independent Candidates" any candidate who is not affiliated with any political party.
- (i) "Political Party" or "Party" means an organized group of persons pursuing the same ideology, political ideas or platforms of government and includes its branches and divisions. To acquire juridical personality, qualify it for subsequent accreditation, and to entitle it to the rights and privileges herein granted to political parties, a political party shall first be duly registered with the Commission. Any registered political party that, singly or in coalition with others, fails to obtain at least ten percent of the votes cast in the constituency in which it nominated and supported a candidate or candidates in the election next following its registration shall, after notice and hearing, be deemed to have forfeited such status as a registered political party in such constituency.

- (j) "Political Turncoatism" refers to the change of political party affiliation by any candidate whether or not elected, from the time he was first nominated; Provided that, the term shall not include any such change in party affiliation before the effectivity of this Act; Provided further that, political turncoatism shall not apply in any of the following instances: Abolition, merger or coalition of political parties where a candidate is a registered member thereof; Expulsion in writing, of the registered member from higher political party; Provided, that the cause for such does not constitute Political Turncoatism.  
  
It includes political opportunism or any act of a party member constituting disloyalty to the party, or regular non-adherence to the party's ideological principles, platforms, and programs, as determined by the party in accordance with its constitution and by-laws.
- (k) "State Subsidy Fund" refers to the fund for party development and campaign activities of accredited national political parties under this Act.
- (l) "Voluntary Contributions" refers to the contributions to candidates and/or political parties, aggrupations or coalitions thereof, from persons, natural or juridical, allowed under existing laws.

#### CHAPTER 2: STATE SUBSIDY FUND

Section 6. *Establishment of State Subsidy Fund.* — There is hereby established a State Subsidy Fund, which shall be used to augment the operating funds of the registered and accredited political parties. The fund shall be used directly and exclusively for:

- (1) Campaign Expenditures; and
- (2) Party Development Activities.

Section 7. *Distribution of the Fund.* — The total amount of state subsidy released for purposes of this Act shall be distributed as follows:

- (a) Ten per cent (10%) of the Fund shall accrue to the Commission, to be used exclusively for monitoring *and enforcement* purposes and for the conduct of information dissemination campaigns and voters' education;
- (b) Forty-five per cent (45%) of the Fund shall be proportionately and ratably distributed to registered and accredited political parties *based on the number of all nationally-*

*elected officials from the party in the most recent general elections;*  
and

- (c) Forty-five per cent (45%) of the Fund shall be proportionately and ratably distributed to registered and accredited political parties *based on the number of all locally-elected officials from the party in the most recent general elections.*

The share of each of the political parties in the State Subsidy Fund shall be released only upon proof that the concerned party has raised an amount equal to its share in the Fund from voluntary contributions; provided that, the party concerned that fails to raise an amount equal to its share in the Fund shall only receive an amount from its share in the Fund equal to the amount raised from voluntary contributions; provided, further, that the balance, if any, from the share in the Fund of the party concerned shall be forfeited and reverted to the general funds of the Government.

Section 8. *Schedule of Releases from the Fund.* — For purposes of this Act, all releases from the State Subsidy Fund shall be on a reasonable date as may be determined by Congress with the recommendation of the Commission and the DBM. The Commission shall inform the political parties of the schedule of release as well as the amount of the subsidy allocated.

All releases from the State Subsidy Fund during a non-election year shall be used exclusively for party development activities. Funds released during an election year shall be divided as follows: seventy five percent (75%) shall be used for campaign expenditures, and twenty five percent (25%) for party development activities.

The Commission and the DBM shall promulgate guidelines to facilitate the release of each political party's share in the Fund, *provided, that recognized opposition political parties shall be first to receive their subsidies.*

Section 9. *Management of the Subsidy.* — The political parties availing of the subsidy shall maintain a separate financial account for the funds used to finance campaign activities. Every political party shall submit to the Commission a breakdown of expenditures drawn from the Fund by the end of December of every election year.

No political party shall be allowed the use the subsidy for purposes other than those indicated in this Act.

Section 10. *Failure of a Political Party to Claim its Share in the Fund.* — The allocations of the eligible political parties from the State Subsidy Fund shall not be automatically credited to them. Failure to so claim its share, or failure in meeting the requirements of this Chapter on the dates so specified by the Commission, will not entitle the eligible political party to a late release unless justified, meritorious, and compelling reasons are shown therefor. The unclaimed amounts from the Fund shall revert in favor of the Government.

### CHAPTER 3: REGISTRATION AND ACCREDITATION OF POLITICAL PARTIES

Section 11. *Registration.* — Any organized group of persons seeking registration may file with the Commission a verified petition attaching thereto its constitution and by-laws, platform, principles, policies and general program of government, a verified list of its national officials, members of the executive board, or its equivalent, and the heads of its regional, provincial, and city chapters, and such other relevant information as may be required by the Commission. The Commission shall, after due notice and hearing, resolve the petition within ten (10) days from the date it is filed. No political party may be registered by the Commission within one (1) year prior to the date of election. Political parties already registered with the Commission prior to the effectivity of this Act shall not be required to register anew.

Section 12. *Criteria for Eligibility* — The Commission shall accredit national political parties eligible to receive subsidy from the State Subsidy Fund, based on the following general criteria:

- (a) Political representation from among the incumbent elective officials, including the President, Vice-President, members of Congress, Governors, Vice-Governors, City and Municipal Mayors, and Vice-Mayors;
- (b) Organizational strength and mobilization capability, which may include the number of political chapters, organizations nationwide, and number of active and permanent members of the party; and
- (c) Performance and track record of the party, which may include the number of years of existence of the party as well as the ability of the party to field a complete slate of candidates in the immediately preceding national elections.

Not later than ten (10) days after the political parties have met all applicable conditions for eligibility to receive its share of the Fund, the Commission shall certify to the Secretary of the Department of Budget and Management (DBM) the payment in full of the amounts to which they are entitled. This certification shall be final and conclusive, except to the extent that it is subject to examination, audit, and judicial review under this Act or pertinent laws.

Section 13. *Accreditation.* — A political party eligible in accordance with this Act, and which desires to be entitled to the rights and privileges as recipient of the subsidy provided for under this Act, may apply for accreditation by the Commission, under such rules and regulations as the Commission shall prescribe consistent with the provisions of this Act, provided, the Commission shall resolve the petition within ten (10) days from the date it is

filed. No political party may be accredited by the Commission within one (1) year prior to the date of election.

#### CHAPTER 4: VOLUNTARY CONTRIBUTIONS

Section 14. *Limits on Voluntary Contributions.* — Voluntary contributions to any political party shall be limited to the following maximum amounts:

- (a) Up to One Hundred Thousand Pesos (Php 100,000.00) from a natural person; and
- (b) Up to One Million Pesos (Php 1,000,000.00) from a juridical person allowed to make a voluntary contribution under this Act and existing laws.

When a candidate is running as an independent, he may make voluntary contributions from his or her personal or immediate family's funds for his or her own candidacy. If a candidate is running under a political party, only the registered and accredited political parties may receive and authorize any voluntary contributions as well as dispensation from and subsidy from its Fund.

Any contribution in excess of the amounts allowed by this Section shall be forfeited in favor of the Government.

Section 15. *Prohibited Voluntary Contributions.* — The following voluntary contributions are prohibited, in addition to those already prohibited by Sections 81, 95, and 96 of the Omnibus Election Code:

- (a) Those made by persons seventeen (17) years old or younger;
- (b) Those made in the name of another person;
- (c) Those made by labor organizations or worker's associations;
- (d) Those made by persons enjoying exemption from taxation, or those who have submitted an application for the determination of tax-exempt status;
- (e) Those made within two (2) years after the conduct of elections;
- (f) Those donations of real property;
- (g) Those donations made by the immediate family of the candidate for a specific purpose or project identified by the candidate or the contributor(s) prior to its disbursement; and
- (h) Those donations which are the result of "grey money" or money which came from illegal economic activities, gambling, smuggling, prostitution and drugs.

Section 16. *Prohibited Raising of Funds.* — It shall be unlawful for any candidate or political party to hold any event or gathering, in whatever form, nature, and manner, for the purpose of raising funds for an election campaign within the election period as may be determined by the Commission.

Section 17. *Voluntary Contributions, How Made.* — Voluntary contributions shall be deposited by the contributor to the account of the political party with any reputable bank accredited by the Commission, within six (6) months prior to the campaign period but not later than the day immediately preceding the day of the election. The accredited banks shall issue a corresponding receipt to the contributor on the amount deposited, and shall submit to the Commission a statement of account of every political party with deposits. The Commission shall cause the publication of the account of all political parties in any newspaper of general circulation within a reasonable time as determined by the Commission.

Within ten (10) days the person giving contribution shall also file with the Commission a report, under oath, the amount of the contribution given, the political party receiving the contribution, and the date of the contribution.

Section 18. *Availability of Information on the Deposit Accounts of Political Parties; How Made.* — Copies of the accounts of political parties shall be available to any interested individual, upon written request or demand from the Commission. Requests may not be denied by the Commission except upon meritorious and compelling grounds, which it shall specify in its resolution of the request. The demand shall be resolved by the Commission within five (5) days from receipt of the written request. A denial of the request may be appealed pursuant to the Rules of Court.

Section 19. *Audit of Voluntary Contributions.* — Voluntary contributions to any political party shall be accounted for separately under a different set of books of accounts, which shall be open to inspection by the COA and the independent auditors appointed or designated by the Commission under the provisions of this Act.

#### CHAPTER 5: AUTHORIZED AND ALLOWABLE EXPENSES

Section 20. *Allowable Party Development Activities.* — Due to the vital role played by the National Political Parties in the country's political development, and in order to promote professionalism and accountability among members of the parties, the following party development activities shall be allowed to be funded out of the State Subsidy Fund, *provided that the expenses are not incurred during an election year.*

- (a) Party administration, recruitment and civic education;
- (b) Research and policy development;



- (c) Education and training of members;
- (d) Institution building and constituent outreach program; and
- (e) Other reasonable logistical and operational expenses that are essential in strengthening the party.

Section 21. *Authorized Expenses of Political Parties.* — The amount that a political party may spend for every election campaign shall be, for every voter currently registered, five per cent (5%) of the existing daily minimum wage in Metro Manila. The Commission shall determine the allowable overall expenses of each party, and within 90 days before the day of election, announce the authorized amount through appropriate media as it may determine.

Section 22. *Authorized Expenses of Individual Candidates.* — The amount that an individual candidate for President, Vice – President, or Senator may spend for every election campaign shall be, for every voter currently registered, five per cent (5%) of the existing daily minimum wage in Metro Manila. If the candidate is running as an independent, he/she may spend, for every voter currently registered, seven and a half percent (7.5%) of the existing minimum wage in Metro Manila.

All other candidates may spend the amount of two and a half per cent (2.5%) of the existing daily minimum wage in Metro Manila for every voter currently registered. If such candidate is running as an independent, the amount that such candidate may spend shall be, for every voter currently registered, five per cent (5%) of the existing daily minimum wage in Metro Manila.

SECTION 23. *Allowable Campaign Expenditures by Political Parties.* — The registered and accredited political parties are authorized to use the subsidy given to them only for the following campaign activities:

- (a) Operating expenses of the party during the election period, which may include hiring of personnel, professional secretariat, setting up of headquarters, and other relevant electoral expenditures;
- (b) Travelling expenses of the candidates and support personnel in the course of the campaign, and for personal expenses incident thereto;
- (c) Information dissemination and advocacy campaigns of the political party;
- (d) Party Building activities as defined in this Code;
- (e) Production and distribution of electoral paraphernalia and other propaganda materials; and

- (f) Other expenditures under Sec. 102 of the Omnibus Election Code.

Section 24. *Allowable Campaign Expenditures of Individual Candidates.* — All candidates are authorized to spend the contributions to their campaign in accordance with the Lawful Expenditures as enumerated in Sec. 102 of the Omnibus Election Code. All other expenses are considered prohibited.

The following expenses are hereby expressly prohibited:

- (a) Media advertisements, whether commercial or not, by candidates and political parties during the campaign period;
- (b) Direct payment to voters in exchange for their votes;
- (c) Gifts to election officers and other public officials, whether in cash or in kind;
- (d) Travel and lodging expenses used to transport voters in order to vote for a particular candidate;
- (e) Food and gifts to election watchers, except a reasonable food allowance for the candidate's or political party's own watchers;
- (f) Wages or allowances of any kind to persons in polling places and counting areas aside from those authorized by the Commission to be present in such areas;
- (g) Contributions and donations to wakes, funerals, fiestas and other events during the campaign period, except for regular donations to institutions and foundations, such as scholarships and charity, which donations should have been in existence six (6) months prior to the start of the campaign period;
- (h) Any donation, contribution or gift, in cash or in kind, or undertake or contribute to the construction or repair of roads, bridges, schoolhouses, hospitals, churches or any other structures for public or for the use of any religious or civic organizations except normal and customary religious dues.
- (i) Payments to persons in order to carry out illegal or immoral activities for the candidate or against a rival candidate; and
- (j) Any other expenses as the Commission may determine prior to the start of the Election Period.

Section 25. *Customary, Periodic, or Contractual Payments by Individual Candidates.* — Expenses by individual candidates made customarily or

periodically, or due to contractual obligations, shall be suspended on orders of the Commission.

Section 26. *Duty of Suppliers and Contractors.* — It shall be the duty of any person or firm to whom an electoral expenditure is made to require every agent or privy of a political party or an individual candidate to present written authority to incur electoral expenditures on behalf of the political party.

#### CHAPTER 6: DISCLOSURES AND MONITORING

Section 27. *Audit of the Fund.* — The COA shall examine the financial reports of the registered and accredited political parties on their use of the State Subsidy Fund.

They shall likewise institute internal control mechanisms to promote accountability and transparency.

Section 28. *Independent Audit.* — The Commission, *motu proprio* or on request of an interested party, may also order the independent audit of the financial reports and accounts of the registered and accredited political parties. The audit reports shall also be made available as in Sec. xx of this Act.

Section 29. *Full Disclosure.* — The officials of registered and accredited political parties shall submit a sworn statement of their assets and liabilities to the Commission which shall be made available to the public. The registered and accredited political parties are also required to make a public disclosure of all contributions as well as expenditures incurred for the use of the State Subsidy Fund.

Persons or firms to whom any electoral expenditure have been made shall likewise file with the Commission a written report setting forth the details and particulars of such expenditures, its nature and purpose, the date and amount thereof, and such other information required by the Commission. It shall be signed and sworn to by the supplier or contractor, or in case of a corporation, partnership, or business association, by its president or general manager and treasurer.

All these disclosures shall be made, at least, through three (3) newspapers of general circulation and such other appropriate media as the Commission may direct and determine.

The Commission shall not allow the filing of partial disclosure statements and reports.

Section 30. *Information to be Disclosed.* — The disclosure and account statements shall contain the following, subject to any additional data the Commission may require:

- (a) Data on the entity that submits the report;
- (b) Data on the campaign activities undertaken by the political party;
- (c) Data on account circulation, or other income earned by the political party;
- (d) Data on free services rendered for the political party;
- (e) Full list of all donors of the political party; and
- (g) Data on every expenditure, the categories of expenditures, and destination of the expenditures, including all unpaid obligations, and how it will be paid.

Section 31. *Other Reports.* — The following shall also be reported by the registered and accredited political parties:

- (a) The amount of contribution, the date of receipt by the bank, and the full name and exact address of the person from whom the contribution was received;
- (b) A full report of expenditures and receipts incurred during the campaign, including those which were drawn from the State Subsidy Fund; and
- (c) Post-election disclosure statements as required under existing laws, which must be submitted to the Commission within thirty (30) days after election day.

Section 32. *Records of Contributions and Expenses.* — Every political party shall be responsible for the preservation of the records of contributions and expenditures, together with all pertinent documents, for at least three (3) years after the holding of the election to which they pertain and for their production for inspection by orders of the Commission or its duly authorized representatives, or upon presentation of a subpoena duces tecum duly issued by the Commission or the courts.

Suppliers and contractors shall keep and preserve in its place of business, subject to inspection under orders of the Commission or its duly authorized representatives, or upon presentation of a subpoena duces tecum duly issued by the Commission or the courts, the contracts, vouchers, invoices, and other records or documents relative to campaign expenditures made in their favor.

Section 33. *Failure to Comply with Disclosure and Reporting Requirements.* — Failure of the registered and accredited political parties to comply with the provisions of this Act will result in:

- (a) Its refunding of all amounts received from the Fund, plus a twenty-five per cent (25%) surcharge, and its disqualification

from receiving its share in the State Subsidy Fund for the following election year; and

- (b) The inability of its candidates elected to public office to enter upon the duties of their office until the filing of the statement of contributions and expenditures herein required.

Section 34. *Monitoring and Reporting System.* — The Commission and the COA shall jointly design and implement, in consultation with political parties, accredited citizens' arms, the private sector and non-governmental organizations, and other government agencies and instrumentalities, an integrated campaign subsidy performance monitoring and reporting system. The performance and monitoring system shall identify, define, and operationalize a system of performance indicators and measures for campaign subsidy deployment.

The Commission and the COA shall publish and disseminate annual reports on the distribution, use, and results of the campaign subsidies provided to political parties. These reports shall be submitted to both Houses of the Congress of the Philippines not later than the last day of June of the year after an election year, and shall be made available to the public as in Sec. xx of this Act.

#### CHAPTER 7: TAX ON POLITICAL CONTRIBUTIONS

Section 35. *Tax on Political Contributions.* — Any provision of other laws notwithstanding, there shall be levied, assessed, collected, and paid upon the transfer of any cash or property by way of voluntary contribution, to any political party or candidate, a donor's tax under Title III Chapter II of the National Internal Revenue Code of 1997 as amended.

Section 36. *Tax Payable by Donor.* — The tax shall be imposed upon the person, natural or juridical, making the campaign contribution.

Section 37. *Filing of Return and Payment of Tax.* — Any person making campaign contribution shall make a return and shall file and pay the tax due in accordance with the schedules and conditions provided in Title II Chapter II of the National Internal Revenue Code of 1997, as amended.

#### CHAPTER 8: PENAL PROVISIONS AND LIABILITIES

Section 38. *Punishable Acts.* — The following acts shall be punishable:

- (a) Misuse of funds received by political parties both from the State Subsidy Fund and voluntary contributions;
- (b) The giving, and knowingly soliciting, voluntary contributions which go beyond the allowable limits set under this Act and other existing laws;

- (c) The giving, and knowingly soliciting, prohibited voluntary contributions under this Act and other existing laws;
- (d) Receiving, directly or indirectly, any prohibited contribution from any of the persons prohibited by this Act or other existing laws;
- (e) Inability to account for all incoming contributions from whatever source;
- (f) Failure to submit pre-election as well as post-election disclosure statements to the Commission;
- (g) Failure to preserve records and documents as required by this Act without any valid and reasonable justification; and
- (h) False reporting or any misrepresentation in the financial statement reports.

Section 39. *Penalties for Punishable and Prohibited Acts.* —

- (a) Any candidate, or official of any registered and accredited political party, or their agents or privies, or any third person, who violates any provision of this Act shall be punished with imprisonment of not less than six (6) years but not more than twelve (12) years, or a fine ranging from Fifty Thousand Pesos (PhP 50,000.00) to Five Hundred Thousand Pesos (PhP 500,000.00), or both. The candidate or official shall likewise be disqualified to hold public office. *If the candidate or official is an incumbent not contesting the election, he or she shall be deemed resigned or removed from office.*
- (b) Any political party that violates any provision of this Act shall pay a fine of not less than One Hundred Thousand Pesos (PhP 100,000.00) but not more than One Million Pesos (PhP 1,000,000.00). *If the political party made liable shall have no means of paying the fine so imposed, its officers or executive board, as applicable, shall shoulder the amounts divided among them equally.*
- (c) Any certified public accountant involved in any manner in the fraudulent accounting of the expenditures and funds of the political party in relation to its election campaign activities, shall, in addition to the penalties under subsection (a) hereof, have their licenses to practice the profession revoked.
- (d) Any political party that fails to comply with any of the documentary requirements set forth in this Act shall be subject to administrative sanctions by the Commission,

which shall include temporary or permanent cancellation of the party's registration, as well as the payment of fines consistent with existing laws and regulations.

#### CHAPTER 9: MISCELLANEOUS AND FINAL PROVISIONS

Section 40. *Appropriations.* — The amount of Three Hundred Fifty Million Pesos (PhP 350,000,000.00) is appropriated out of the funds of the National Treasury for every election year. All such amounts pursuant to this Act shall go to the State Subsidy Fund, which shall be administered by the Commission.

Section 41. *Lead Agency.* — The Commission is hereby mandated as the independent regulatory agency charged with administering and enforcing the provisions of this Act.

Section 42. *Applicability.* — The provisions of Batas Pambansa Blg. 881, as amended, otherwise known as the Omnibus Election Code of the Philippines, Republic Act No. 7166, and Republic Act No. 9006, otherwise known as the Fair Election Act, and other election laws not inconsistent with this Act, shall apply suppletorily.

Section 43. *Rules and Regulations.* — The Commission shall promulgate the necessary rules and regulations to effectively implement the provisions of this Act.

Section 44. *Repealing Clause.* — Sections 13 and 14 of Rep. Act No. 7166 are hereby repealed accordingly. B.P. 881, also known as "the Omnibus Election Code" is amended accordingly, insofar as it is inconsistent with the provisions of this Act. All other laws, orders, issuances, resolutions, rules, and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed, modified, or amended accordingly.

Section 45. *Separability Clause.* — If any part of this Act is held invalid or unconstitutional, the other parts or provisions thereof not affected thereby shall remain valid and effective.

Section 46. *Effectivity.* — This Act shall take effect fifteen (15) days from its publication in at least two (2) newspapers of general circulation.

## Tracing the History of Guns and Goons: Proposing a Paradigm Shift as an Answer to Institutionalized Election Violence

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