EN BANC

G.R. No. 263590 – ATTY. ROMULO B. MACALINTAL, *petitioner* **v. COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY LUCAS P. BERSAMIN**, *respondents*.

G.R. No. 263673 – ATTY. ALBERTO N. HIDALGO, ATTY. ALUINO O. ALA, ATTY. AGERICO A. AVILA, ATTY. TED CASSEY B. CASTELLO, ATTY. JOYCE IVY C. MACASA, and ATTY. FRANCES MAY C. REALINO, *petitioners* **v. EXECUTIVE SECRETARY LUCAS P. BERSAMIN, THE SENATE OF THE PHILIPPINES, duly represented by its Senate President, JUAN MIGUEL ZUBIRI, THE HOUSE OF REPRESENTATIVES, duly represented by its Speaker of the House, FERDINAND MARTIN ROMUALDEZ, and THE COMMISSION ON ELECTIONS, duly represented by its Chairman, GEORGE ERWIN M. GARCIA,** *respondents.*

Promulgated:

June 27, 2023

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SEPARATE OPINION

CAGUIOA, *J.*:

I concur that Republic Act (RA) No. 11935[1] (assailed law), which postpones the conduct of the 2022 Barangay and Sangguniang Kabataan Elections (BSKE) from December 5, 2022 to a later date, *i.e.*, the last Monday of October 2023, is unconstitutional. A law which has an invalid reason for its enactment is unreasonable and thus violates substantive due process. Moreover, laws which make classifications based only on present conditions, but not future ones, are unconstitutional for violating the equal protection clause.

The reason for the enactment of the assailed law, as uncovered during the oral arguments, is unconstitutional which thereby renders the assailed law invalid.

When the constitutionality of a law is assailed, an inquiry into the reasons behind its enactment may be inevitable. Indeed, courts have the power, if not the duty, to ascertain the legislative intent in the course of

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[1] AN ACT POSTPONING THE DECEMBER 2022 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, October 10, 2022.

performing their constitutional duty to apply and interpret the law. To be sure, the reasonableness of the law goes into the very heart of whether such law complies with substantive due process.

In this case, the real reason for the law was brought to the fore during the oral arguments in this case—a reason that cannot be described as anything but unconstitutional. When the head of respondent Commission on Elections (COMELEC), Chairperson George Erwin M. Garcia (Chairperson Garcia), was confronted with the Explanatory Note provided by Senator Francis Escudero in Senate Bill (SB) No. 288, which states: ". . . the bill enables the government **to realign a portion of the P8.44 billion appropriations for the barangay and SK elections towards interventions aimed at sustaining the current momentum in addressing the coronavirus pandemic and achieving our collective socioeconomic objectives**,"[2] Chairperson Garcia admitted and confirmed that this was the very same reasoning advanced by Congress in the congressional hearings before the House of Representatives —that the funds earmarked for the BSKE were going to be realigned towards funding other projects, programs, or activities to address socioeconomic concerns brought about by the COVID-19 pandemic.[3] Thus:

> **ASSOCIATE JUSTICE CAGUIOA:**
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> And I noticed that the reason that they give is economic. The reason is, that, in the word of Senator Escudero, finally, and I quote it "[F]inally the bill enables the Government to realign a portion of the 8.44 billion appropriations for the Barangay and SK elections towards interventions aimed at sustaining the current momentum in addressing the Corona Virus pandemic and achieving our collective socio-economic objectives." Do you confirm that is the reason?
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> . . . .
>
> These are all downloaded from the website of the Senate. So, in the explanatory note for the proposal of Senator Estrada, he says, in paragraph 2, "Furthermore, our country is still in the midst of a pandemic brought about by Covid-19. Our country has not yet fully recovered from the havoc brought about by the pandemic. The budget in the amount of 8 billion for the conduct of the said election can be used to fund economic programs and health services to ease the effect of the pandemic to all Filipinos particularly to those who are greatly affected." Again, do we have any question that these are the reasons given for the passage of this bill?
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> . . . .
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> **CHAIRPERSON GARCIA:**
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> When we appeared before the House of Representatives, as it would appear to be the reason given by the Members of the House, but when we appeared before the Senate, we were not given that particular reason, but since, your Honor, you have mentioned that, then it would appear to be the same reason given to us by the House of the Representatives.[4]

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2 Explanatory Note, Senate Bill No. 288, 19th Congress of the Philippines. Emphasis supplied.
3 TSN, October 21, 2022, pp. 108–111.
4 *Id.* at 105–106.

This rationale was also cited in SB No. 453, introduced by Senator Jinggoy Ejercito Estrada, as well as in SB No. 684, introduced by Senator Sherwin Gatchalian. These explanatory notes accompanying the original bills which were introduced by the bills' proponents are part of the public records, which the Court is mandated to take judicial notice of.[5] These explanatory notes and the admissions of Chairperson Garcia relate to the real reasons advanced by the legislators when the original bills were introduced in the houses of Congress and during their deliberations, and up to the passage of what is now the assailed law.

While the Office of the Solicitor General argues, in its Memorandum submitted after the Oral Arguments, that the reason for postponing the BSKE was to allow Congress to study, and perhaps enact, electoral reforms, given the numerous complaints which arose during the 2022 National and Local Elections,[6] and to "allow the [COMELEC] and local government units to better prepare for [the BSKE] and for the Government to apply corrective adjustments to the honoraria of poll workers"[7]—these are clear afterthoughts conjured after the bills were introduced and the law was already passed by Congress. These belatedly proffered reasons do not detract from the primary motive that impelled Congress to pass the legislation.

Thus, the *ponencia*'s declaration that the assailed law is unconstitutional for not being supported by a legitimate government interest or objective is accurate.[8]

Notably, this declaration of unconstitutionality of the assailed law rests upon the finding that the law fails to meet the two requisites of substantive due process:[9] the concurrence of a lawful subject[10] and a lawful method.[11] However, while the *ponencia* mentions the three levels of scrutiny at which the Court reviews the constitutionality of a law,[12] it is silent as to the appropriate level of scrutiny applicable in the present case. As I will discuss further below, it is imperative that the Court precisely determine the lens through which to examine the constitutionality of the assailed law.

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5 Section 1, Rule 129 of the Rules of Court provides:

> SECTION 1. Judicial Notice, When Mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **official acts of the legislative, executive and judicial departments of the National Government of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

6 *Rollo* (G.R. No. 263673), p. 194.

7 *Id.* at 194–195. Emphasis omitted.

8 *See ponencia,* pp. 54–64.

9 *Id.* at 35 and 54.

10 *Id.* at 54–63.

11 *Id.* at 63–64.

12 *Id.* at 35.

Statutes which impose restrictions on the regular and periodic exercise of the constitutional right of suffrage must pass the test of **strict scrutiny**.[13] As such, the burden rests upon the State to prove that the restriction satisfies the following requisites:[14] (a) the presence of a **compelling** governmental interest; and (b) that the means employed are the **least restrictive** for achieving that interest.[15]

With respect to the first requisite, the *ponencia* aptly recognizes[16] what the interpellations during the Oral Arguments uncovered: that the real reason behind the passage of the law is to enable the government to realign a portion of the ₱8.44 billion appropriations for the BSKE towards governmental efforts to address the coronavirus pandemic and other socioeconomic objectives.[17] However, this reason—the realignment of the budget for the BSKE towards other objectives—simply cannot be considered as a valid reason to support the assailed law because it is illegal. Revealingly, Chairperson Garcia himself, during the Oral Arguments, candidly admitted to being confused by this claimed objective of Congress as he himself knew that the funds allocated for the BSKE were earmarked only for that purpose, and cannot legally be realigned by Congress.

As a matter of law, it is only the COMELEC that can realign the funds that have been allocated to it. This is a point of law that was brought to light during the Oral Arguments, thus:

> **ASSOCIATE JUSTICE CAGUIOA:**
> Now, can I call back, Mr. Chairman. Chairman I have a basic conundrum here. Article 9, Section 5 of the Constitution, speaking of Constitutional Commissions, says, "The Commission, and this includes the Commission on Elections[,] shall enjoy fiscal autonomy, their approved annual appropriations shall be automatically and regularly released." Correct?
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> **CHAIRPERSON GARCIA:**
> That is correct, your Honor.
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> **ASSOCIATE JUSTICE CAGUIOA:**
> In common parlance, "Isang bagsakan lang ito, di ba?"
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> **CHAIRPERSON GARCIA:**
> Tama po, your Honor.
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> **ASSOCIATE JUSTICE CAGUIOA:**
> Kailan ito binagsak?

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13 *See Kabataan Party List v. COMELEC*, 775 Phil. 523, 552 (2015) and *GMA Network, Inc. v. COMELEC*, 742 Phil. 174 (2014).

14 *See Kabataan Party List v. COMELEC*, id. at 552; *GMA Network, Inc. v. COMELEC*, id.

15 *Kabataan Party List v. COMELEC*, id.

16 *See ponencia*, pp. 60–61.

17 *See* Explanatory Note, Senate Bill No. 288, 19th Congress of the Philippines.

CHAIRPERSON GARCIA:
It was given to us, for this year, your Honor?

ASSOCIATE JUSTICE CAGUIOA:
Yes.

CHAIRPERSON GARCIA:
[₱]8.441 billion.

ASSOCIATE JUSTICE CAGUIOA:
When was it given?

CHAIRPERSON GARCIA:
It was given sometime, March of this year.

ASSOCIATE JUSTICE CAGUIOA:
March of this year?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, the money is no longer with the Philippine Treasury, it is with you, correct?

CHAIRPERSON GARCIA:
That is correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And since you are a CFAG or a Constitutional Fiscal Autonom[ous] Group, the alignment of these funds to fund social civic project[s] or other public projects is not by legislature, correct?

CHAIRPERSON GARCIA:
That is not by Legislature.

ASSOCIATE JUSTICE CAGUIOA:
It's by you?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, when they say that the money for this can be used for other projects, what are they talking about?

CHAIRPERSON GARCIA:
With all due respect, your Honor, I really do not know because as far as the law is concerned, it says, that the fund is subject to a continuing appropriation by the Commission on Elections.

ASSOCIATE JUSTICE CAGUIOA:
Exactly, and that fund is earmarked, correct?

CHAIRPERSON GARCIA:
Correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It's earmarked for elections?

CHAIRPERSON GARCIA:
That is right.

ASSOCIATE JUSTICE CAGUIOA:
It cannot be used for any purpose other than election?

CHAIRPERSON GARCIA:
You are correct, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
It cannot be realigned by the President, by the Supreme Court Chief Justice, by the Senate President. It cannot be realigned because they are not COMELEC?

CHAIRPERSON GARCIA:
Only by the COMELEC, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Only by you?

CHAIRPERSON GARCIA:
Yes, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
Therefore, when you give as a reason for this law that, I, government, can use that [8.4] billion to fight the pandemic, that is not the correct reason, do you agree?

CHAIRPERSON GARCIA:
I would like to agree, your Honor.

ASSOCIATE JUSTICE CAGUIOA:
And, therefore, we are now faced with the situation with the law that says, it doesn't say what [its] reason is but the proposed reason coming from the proposals do not appear to be correct? Correct?

CHAIRPERSON GARCIA:
That may be the conclusion that will be derived from the series of questions.

ASSOCIATE JUSTICE CAGUIOA:
That is right. And, therefore, the Supreme Court can in fact look into this law, bakit nga ba? [A]nd say. . .

CHAIRPERSON GARCIA:

No doubt on the power of the Supreme Court to inquire into the validity and constitutionality of this law.[18]

These admissions of the head of respondent COMELEC completely align, and are, in fact, based on solid constitutional and statutory grounds. Section 25(5),[19] Article VI of the Constitution prohibits the intended postponement of the BSKE by Congress in order to realign the COMELEC's budget allocation to the Executive's COVID-19 and economic recovery programs as this constitutes an **impermissible cross-border transfer of appropriations**.[20]

What is more, a review of the nature of the COMELEC as an independent constitutional body, and the General Appropriations Act for the Fiscal Year 2022 (2022 GAA) itself, reveals how the underlying intentions behind the assailed law gravely offend the Constitution, and thus, can, on no account, or because of this, satisfy the requirement of a compelling state interest.

Under the 2022 GAA, the COMELEC was given a total budget of ₱8,441,280,000.00 for the BSKE, which were originally scheduled on December 5, 2022.

The COMELEC, endowed by the Constitution with fiscal autonomy, enjoys unbridled freedom from outside control and limitations, other than those provided by law. Indeed, this freedom to allocate and utilize funds granted by law carries with it the bounden duty to use it only in accordance with law.[21]

In line with the COMELEC's fiscal autonomy, no less than the Constitution, in Section 5, Article IX(A), mandates the automatic and regular release of the COMELEC's approved annual appropriations. Section 11, Article IX(C) reiterates this and provides that funds certified by the COMELEC as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairperson of the COMELEC.

Indeed, the budget for the BSKE was released to the COMELEC, per the admission of Chairperson Garcia, as early as March of 2022.[22]

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18 TSN, October 21, 2022, pp. 108–111.

19 (5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and **the heads of Constitutional Commissions** may, by law, be authorized to **augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations**. (Emphasis and underscoring supplied)

20 *See Araullo v. Aquino III*, 737 Phil. 457 (2014).

21 *See Commission on Human Rights Employees' Association v. CHR*, 486 Phil. 509, 531 (2004).

22 TSN, October 21, 2022, pp. 108–109.

The unexpended funds appropriated and earmarked for the BSKE under the 2022 GAA were valid and available for obligation for conducting the BSKE until December 31, 2022, pursuant to Section 68[23] of the same law. Section 68 likewise enjoins the COMELEC to strictly observe the validity of this appropriation. **Thus, when the assailed law was passed, it was legally impossible to realign the said funds towards purposes other than the conduct of the BSKE.**

Parenthetically, it cannot also be pretended that the unexpended funds can be considered as savings under Section 75(a)[24] of the 2022 GAA because the BSKE was neither completed, finally discontinued, nor abandoned. It was simply postponed by the assailed law. In plain language, the BSKE funds cannot be realigned.

And even if, for the sake of argument, the funds can be considered as savings within the purview of Section 75 of the 2022 GAA, only the Chairperson of the COMELEC—to the exclusion of everyone else including Congress—is authorized to realign such savings of the COMELEC. And any such realignment must be for the purpose solely of augmenting actual deficiencies incurred for the same year in another item in the appropriations for the COMELEC, thus:

> **Sec. 74. Authority to Use Savings.** The President of the Philippines, the President of the Senate of the Philippines, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, **the Heads of** the Civil Service Commission, the **Commission on Elections**, and the COA **are hereby authorized to declare and use savings in their respective appropriations to augment actual deficiencies incurred for the current year in any item of their respective appropriations.** (Emphasis supplied)

This authority is reiterated in paragraph 2 of the Special Provisions of the Appropriations for COMELEC in the 2022 GAA, thus:

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23 **Sec. 68. Cash Budgeting System.** Appropriations authorized in this Act, including budgetary support to GOCCs, and financial assistance to LGUs, shall be available for release and obligation for the purpose specified, and under the same general and special provisions applicable thereto, until December 31, 2023.
. . . .
Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy . . . shall strictly observe the validity of appropriations[.]

24 **Sec. 75. Meaning of Savings. Savings refer to portions or balances of any released appropriations in this Act which have not been obligated as a result of** any of the following:
(a) **completion, final discontinuance, or abandonment of a program, activity or project for which the appropriation is authorized; or**
(b) implementation of measures resulting in improved systems and efficiencies and thus enabled an agency to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.
In case final discontinuance or abandonment is used as basis in the declaration of savings, such discontinued or abandoned program, activity or project shall no longer be proposed for funding in the next two (2) fiscal years.
Allotments that were not obligated due to the fault of the agency concerned shall not be considered savings. (Emphasis supplied)

> 2. **Use of Savings. The Chairperson of COMELEC is authorized to use savings** to augment actual deficiencies in accordance with Section 25(5), Article VI of the Constitution and the General Provisions of this Act. (Emphasis supplied)

In short, the funds allocated for the BSKE under the 2022 GAA cannot be legally realigned towards other purposes when the assailed law was passed, as the funds were then still valid and must be obligated solely in accordance with the purpose under the 2022 GAA. Even assuming that the same may be realigned as they already constitute savings, only the COMELEC Chairperson can undertake such realignment to augment the other items in the COMELEC's appropriations.

Again, the only conclusion that can be drawn is that the reason of Congress in passing the assailed law postponing the BSKE, *i.e.*, realigning the funds appropriated therefor under the 2022 GAA towards other purposes, is completely and totally flawed. It is a legal impossibility. It cannot thus, by any stretch, be taken as a compelling state interest to satisfy the strict scrutiny test.

And even if it were assumed further that the assailed law passes the requisite of having a compelling state interest, and that the unexpended funds of the COMELEC generated by the postponement of the BSKE can be redirected towards the purposes intended by Congress, such means of attaining this interest cannot still be said to be the least restrictive. As I extensively discussed during the deliberations of this case, the right of suffrage is the foundation of our republican democracy and is zealously protected by the Constitution. It is the exercise of this right that Congress delays and, to a great and grave extent, impairs, when it enacts a law that postpones the BSKE in order to supposedly fund other State activities. With due respect to the co-equal branches of this Court, there are other sources of funding available to the State, which it can legitimately and legally tap for this purpose—sources which do not bear on the constitutional powers of the COMELEC, and the correlative constitutional right of the people to choose their leaders during the BSKE.

Contrary to the ponencia's findings, the assailed law extends the terms of offices of the incumbent barangay officials. Thus, the cases on the hold-over doctrine cited in the ponencia cannot apply.

A review of the barangay elections conducted through the years, including the various laws that governed them, reveals that there have actually been only five sets of barangay officials that have been elected for the last two decades, or since 2002, which sets of officials had different terms and tenures through the years.

The first law enacted specifically to institutionalize a synchronized BSKE was RA No. 9164,[25] which set them on July 15, 2002, with succeeding elections set on the last Monday of October and every three years thereafter. Subsequent laws enacted after RA No. 9164, however, have postponed the elections and, in doing so, effectively amended the individual terms of some barangay and Sangguniang Kabataan (SK) officials by providing for a different commencement date of such term than when it would have commenced under the preceding laws, as follows:

Set of barangay and SK officials	**Original Term (according to the law in effect at the time of elections)**	**Actual Term**	**Date of Elections Postponed by:**
First	August 15, 2002 to October 2005	August 15, 2002 to November 30, 2007 (total of 5 years)	RA No. 9340[26] (enacted in 2005)
Second	November 2007 to October 2010	November 2007 to November 30, 2010	None
Third	November 2010 to October 2013	November 2010 to November 30, 2013	None
Fourth	November 2013 to October 2016	November 2013 to June 30, 2018 (total of 4.5 years)	RA No. 10923[27] (postponed to October 2017); RA No. 10952[28] (further postponed to May 2018)

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25 AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES, March 19, 2002.

26 AN ACT AMENDING REPUBLIC ACT NO. 9164, RESETTING THE BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AND FOR OTHER PURPOSES, September 22, 2005.

27 AN ACT POSTPONING THE OCTOBER 2016 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340 AND REPUBLIC ACT NO. 10656, PRESCRIBING ADDITIONAL RULES GOVERNING THE CONDUCT OF BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS AND FOR OTHER PURPOSES, October 15, 2016.

28 AN ACT POSTPONING THE OCTOBER 2017 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO. 10632, REPUBLIC ACT NO. 10656, AND REPUBLIC ACT NO. 10925, AND FOR OTHER PURPOSES, October 2, 2017.

Fifth	June 2018 to May 2020	June 2018 to November 30, 2023 (total of 5.5 years)	RA No. 11462[29] (postponed to December 5, 2022); RA No. 11935 (further postponed to October 2023

The terms of barangay and SK officials through the years have thus fluctuated from three to five years. The above laws have adjusted the terms—*not just the tenure*—of incumbent barangay and SK officials because the laws affected even the commencement of the term of the subsequent officials. RA No. 9340, for instance, set the date of the elections (originally scheduled on October 2005 under RA No. 9164) to "October 2007 and every three (3) years thereafter."[30] Instead, however, of keeping the original term of the incumbents, the law adjusted the same by providing that "[t]he term of office of the barangay and [SK] officials elected in the October 2007 election and subsequent elections shall commence at noon of November 30 next following their election."[31] To address the gap created by the postponement of the elections, the laws, such as RA No. 9340, have a "hold-over" provision which provides that "[a]ll incumbent barangay and all [SK] officials shall remain in office unless sooner removed or suspended for cause until their successors shall have been elected and qualified."[32]

That said, I disagree with the *ponencia* that the terms of offices of the incumbent barangay officials are unaffected by the assailed law because only their tenures are extended, referring to the "hold-over" provision in the law and to various decisions of the Court upholding the validity of hold-overs.[33] This stance disregards Section 2 of the assailed law which plainly and unequivocally states that the ***terms*** of those to be elected thereunder "shall commence at noon of November 30 next following their election."

To treat the terms of the incumbents as unmoved by the assailed law would lead to the absurdity that from noon of January 1, 2023 (the date of the expiration of their terms under the previous law, RA 11462) to November 30, 2023 (the start of the terms of those to be elected in the October 2023 elections under the assailed law), there were no existing barangay officials. During this gap in the terms, it is absurd to speak of tenures or hold-overs, which, as defined by the *ponencia* itself and the several Court decisions it cites, means that the tenure extends beyond the official's term and thereby necessarily use up the successor's term. Under the assailed law, if one is to assume that the

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29 AN ACT POSTPONING THE MAY 2020 BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9164, AS AMENDED BY REPUBLIC ACT NO. 9340, REPUBLIC ACT NO. 10632, REPUBLIC ACT NO. 10656, REPUBLIC ACT NO. 10923 AND REPUBLIC ACT NO. 10952, AND FOR OTHER PURPOSES, December 3, 2019.

30 RA No. 9340, Section 1.

31 RA No. 9340, Section 2.

32 *See* RA No. 9340, Section 3.

33 *Ponencia*, pp. 73–77.

terms of the incumbents ended last January 1, 2023, and their successors' terms are to start on November 30, 2023, whose terms are the incumbents presently occupying?

Indeed, the only logical way to interpret Section 2 of the assailed law is to deem the terms of the incumbents as having been extended beyond their expiration last January 1, 2023. Thus, while I agree that the Court had settled the validity of hold-overs, by the very definition of the word—the extension of the tenure beyond the term, with the latter remaining fixed—the assailed law and, as mentioned above, its predecessor statutes, did not occasion hold-overs. Despite the explicit language of the assailed law, its legal effect is not the hold-over that the Court, including the *ponencia*, had in mind. The jurisprudence cited therefore by the *ponencia* cannot apply in the present case.

The assailed law, insofar as it extends the terms of the incumbent barangay officials, is likewise unconstitutional for violating the equal protection clause.

To my mind, this practice of postponing scheduled elections and extending the terms of incumbent officials is unconstitutional.

It is true that providing for the possibility of hold-over—for positions in the government whose terms are not provided for in the Constitution—are not necessarily unconstitutional. This is not to say, however, that the legislature has unbridled discretion to provide for hold-over. Like all other matters that Congress legislates on, the power to provide for hold-overs must not contravene the Constitution. A review of the laws through the years, however, has revealed that Congress' exercise of its powers has gone outside constitutional bounds. In particular, the laws, including the presently assailed law, are unconstitutional because (1) they constitute legislative appointments, and (2) they violate the equal protection clause.

First, as correctly pointed out by petitioner Atty. Romulo Macalintal, the laws were effectively legislative appointments which are constitutionally impermissible. While these laws, at first glance, appear to be regular exercises of legislative power, a closer look would clearly show how they have transgressed the Constitution. Take the case of RA No. 9164 and RA No. 9340. At the time the BSKE was held on July 15, 2002, under the regime of RA No. 9164, all voters were of the impression that they were electing officials for a three-year term.

In other words, the mandate of the electorate at the time that they cast their votes was for their elected officials to serve them only for three years. Sometime midway, however, Congress enacted RA No. 9340 which reset the scheduled BSKE in 2005 to 2007 and provided that the subsequent elected

officials shall start their terms only on November 30 next following their election, thereby effectively extending the term of the incumbent officials by two years. This additional two years of both term and tenure source their validity not from the mandate of the electorate—which, to recall, was only for three years—but from the legislative enactment extending their term. The extension was not a permissible hold-over because it affected not just the tenure, but the very term itself of the incumbents. As early as in 1946, in the cases of *Guekeko v. Santos*[34] and *Topacio Nueno v. Angeles*,[35] the Court had already made it clear that:

> [T]he term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. **The term of office is not affected by the hold over.**[36] (Emphasis and underscoring supplied)

The purpose of a constitutionally permissible hold-over is merely to "[preserve] continuity in the transaction of official business and [prevent] a hiatus in government pending the assumption of a successor into office."[37] It is not meant to meddle with the term of incumbent officials.

Simply put, while Congress can provide for hold-over, it cannot enact laws that *extend* the **term** of *incumbent* barangay and SK officials, for they are unconstitutional for violating both (1) the democratic underpinnings of our governmental system, wherein elective officials serve by virtue of winning an election, and (2) the separation of powers because "the power to appoint is essentially executive in nature."[38]

Second, the extension of terms of incumbent barangay officials violates the equal protection clause. To be clear, "the equal protection clause applies only to persons or things identically situated and does not bar a reasonable classification of the subject of legislation."[39] However, the classification, to be valid, must conform to the following requirements: "(1) it is based on substantial distinctions which make real differences; (2) [the classification is] germane to the purpose of the law; **(3) the classification applies not only to present conditions but also to future conditions which are substantially identical to those of the present**; [and] (4) the classification applies only to those who belong to the same class."[40]

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34 76 Phil. 237 (1946).
35 76 Phil. 12 (1946).
36 *Guekeko v. Santos*, *supra* note 34, at 240, citing *Topacio Nueno v. Angeles*, id. at 21–22.
37 *Sambarani v. Commission on Elections*, 481 Phil. 661, 675 (2004).
38 *Kida v. Senate of the Philippines*, 675 Phil. 316, 374 (2011).
39 *Ormoc Sugar Co., Inc. v. The Treasurer of Ormoc City*, 130 Phil. 595, 598 (1968).
40 *Id.* at 598–599. Emphasis supplied.

The pattern of legislation relating to barangay and SK officials—including the assailed law—violates the third requirement above. In particular, the extensions of terms made through RA Nos. 9340, 10923, 10952, 11462, and the subject of this case, RA No. 11935, make classifications applicable only to the present conditions but not to future ones of a similar character. To illustrate the application of this requirement of the equal protection clause, it is well to revisit the case of *Ormoc Sugar Co., Inc. v. The Treasurer of Ormoc City*[41] (*Ormoc Sugar*).

In *Ormoc Sugar*, what was assailed was a tax measure levied "on any and all productions of centrifugal sugar milled at the Ormoc Sugar Company Incorporated, in Ormoc City."[42] While the Court upheld the power of the local government to impose the tax measure, it nevertheless struck down the ordinance as unconstitutional for violating the equal protection clause. The Court held:

> A perusal of the requisites instantly shows that the questioned ordinance does not meet them, for it taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company, Inc. and none other. At the time of the taxing ordinance's enactment, Ormoc Sugar Company, Inc., it is true, was the only sugar central in the city of Ormoc. **Still, the classification, to be reasonable, should be in terms applicable to future conditions as well. The taxing ordinance should not be singular and exclusive as to exclude any** subsequently established sugar central, **of the same class** as plaintiff, from the coverage of the tax. As it is now, even if later a similar company is set up, it cannot be subject to the tax because the ordinance expressly points only to Ormoc Sugar Company, Inc. as the entity to be levied upon.[43] (Emphasis and underscoring supplied)

Applying the foregoing to the present case, the extensions of terms of barangay officials from time to time is thus unconstitutional. These extensions of terms handed out by RA Nos. 9340, 10923, 10952, 11462, and 11935 applied only to the incumbent officials at the time of the enactment of the statutes providing for them. Each of these laws thus created separate classes of barangay officials that served for four years to 5.5 years **without any reasonable distinction between them and the other sets of barangay officials**. It must be noted that each of these laws maintained that the term of barangay officials is only three years, but all of them effectively made exceptions for the incumbent officials at the time of their enactment, who, in turn, effectively had longer terms.

It is patently clear, therefore, that these laws only legislated for present conditions and are not applicable for future ones. For this additional reason, the laws extending the terms of barangay officials, including the assailed law herein, are thus unconstitutional.

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41 *Supra* note 39.
42 *Id.* at 597.
43 *Id.* at 599.

At this juncture, it is well to acknowledge that the Constitution, indeed, grants the legislature the power to fix the term of barangay officials.[44] It must be clarified, however, that this only gives the legislature the discretion to set the length of time for which these officials shall serve. Like all other exercises of discretion, it must be exercised within constitutional bounds. It cannot be exercised in violation of the separation of powers or the equal protection clause. Surely, like all laws, the legislature can repeal its previous enactments and change its mind on the term of barangay officials. For this not to offend the separation of powers or the equal protection clause, however, laws changing the term of barangay officials must be applied ***prospectively***—that is, to subsequent barangay officials who are to be elected under the new law. This way, voters are also well aware—***when they cast their votes on election day***—of the term of the officials they are voting into office.

The guidelines in determining the validity of statutes postponing the exercise of the right to vote must be crafted through the lens of the strict scrutiny test.

Regrettably, the *ponencia* left undetermined the appropriate level of scrutiny to be applied in the present case.[45] In *City of Manila v. Laguio, Jr.*,[46] the Court recognized that the determination of whether the right to substantive due process is violated significantly depends on the level of scrutiny used:

> Substantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, **substantive due process looks to whether there is a sufficient justification for the government's action**. Case law in the United States (U.S.) tells us that **whether there is such a justification depends very much on the level of scrutiny used**.[47] (Emphasis supplied; citations omitted)

Indeed, a critical analytical tool in reviewing the constitutionality of a disputed law is the level of scrutiny that the Court shall apply in considering the case.[48] Thus, to my mind, it is imperative to establish a definitive ruling on the appropriate level of scrutiny to be used in cases involving the right to suffrage. Here, being that the assailed law interferes with the exercise of the

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44 Section 8, Article X of the 1987 Constitution provides:

> SECTION 8. The **term of office of** elective local officials, except **barangay officials, which shall be determined by law**, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis and underscoring supplied)

45 *See ponencia*, p. 35.

46 495 Phil. 289 (2005).

47 *Id.* at 311.

48 *C.J.* Gesmundo, Concurring and Dissenting Opinion in *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, *et al.*, December 7, 2021.

people's constitutional right of suffrage which must be regular and periodic,[49] the same must be met with **strict scrutiny**.[50]

Any law which postpones the elections must pass the test of strict scrutiny—even if, as argued during the case deliberations, the same merely regulates the *time* of the elections—because suffrage is a primordial right that is required to be exercised in a manner that is regular, genuine, and periodic.[51] Thus, any infringement, **even if temporary**, on the sovereign people's constitutional right of suffrage demands that the Court review the legislation with strict scrutiny.

Accordingly, the guidelines in the *ponencia* should have adopted the framework of the strict scrutiny test, thus:

> 1. . . .
>
> 2. The postponement of the election must serve a **compelling state interest.**
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> . . . .
>
> 3. . . .
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> 4. The postponement of an election is **the least restrictive means for achieving the compelling state interest.**
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> . . . .

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[49] *See* Article 25 of the International Covenant on Civil and Political Rights, the pertinent portion of which reads:

> Article 25
> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
> . . . .
> (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors[.]

See Article 21 of the Universal Declaration of Human Rights, which reads:

> **Article 21**
> 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
> 2. Everyone has the right of equal access to public service in his country.
> 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in **periodic and genuine elections** which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

[50] *See* Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration of Human Rights and *White Light Corp. v. City of Manila*, 596 Phil. 444, 463 (2009).

[51] *See id.*

> c. The postponement is narrowly-tailored, **being the least restrictive means and only** to the extent necessary to advance the **compelling state interest.**

On this score, I believe that the Court should not shirk from ruling on the appropriate level of scrutiny to be used in assessing a challenged statute—more so when the assailed law allegedly infringes upon or denies a primordial constitutional right such as the right of suffrage.

Failing to definitively settle the issue on the test to be employed in this case, the guidelines in the *ponencia* confusingly appear to be the new applicable tool in determining the validity of any future laws or rules postponing elections. This, to my mind, negates, rather than supplements, the long line of jurisprudence establishing the three levels of judicial scrutiny under our jurisdiction.[52]

Still and all, and based on the premises discussed in this Opinion, I vote to **GRANT** the petitions and declare the assailed law unconstitutional for violating the due process and equal protection clauses of the Constitution.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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52 *See Social Justice Society (SJS) Officers v. Lim*, 748 Phil. 25 (2014); *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245 (2009); *White Light Corp. v. City of Manila*, *supra* note 50; *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004).