

EN BANC

G.R. No. 277177 – SUBAIR GUINTHUM MUSTAPHA, Petitioner, v.
COMMISSION ON ELECTIONS, Respondent.

Promulgated:

July 8, 2025

x

CONCURRING OPINION

LEONEN, S.A.J.:

I concur.

The Commission on Elections (COMELEC) gravely abused its discretion in declaring petitioner a nuisance candidate without substantial evidence and contrary to jurisprudence. This Court has held that winnability and availability of funds to wage a nationwide campaign do not by themselves determine *bona fide* intent to run for public office, the lack of which may characterize an electoral candidate as a nuisance candidate.¹ On the contrary, petitioner's leadership experience, involvement in labor advocacy, and personal platform adequately rebut the COMELEC's findings and show his serious intent to run for senator.

There are two significant provisions in the Constitution that the COMELEC, in its prerogative to interpret its own rules, must always be conscious of.

First, is the very first section in Article II of the Constitution which states that, "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." This is the command to respect, as far as practicable, the privilege of each citizen to participate in elections to share their views of the most significant issues and their proposed solutions.

Second, is the provision on social justice in Article II, Section 10: "The State shall promote social justice in all phases of national development."

The COMELEC must be careful not only to favor those who are powerful, those who are incumbent, those who already have resources, or those who are popular, in deciding who is a nuisance candidate.

¹ *Ollesca v. Commission on Elections*, G.R. No. 258449, July 30, 2024 [Per S.A.J. Leonen, *En Banc*].

Elections are not exercises to entertain the masses. Neither are they a process that should continue to empower those whose only claim to power is that they are incumbents.

Elections, as envisioned, should also be a platform for those who are unpopular and at the margins of our society to present their view of which problems in our society are important and to present their solutions by articulating their program of government.

With this view, a popular celebrity who cannot articulate his or her concrete program of government can be considered as a nuisance candidate because they will pervert the constitutional purpose of elections.

On the other hand, petitioner who is neither popular, monied, nor has the resources but can articulate a clear program of government based on his lived experiences should not be considered as a nuisance candidate.

I

The nature and essence of our republican democracy is that citizens enjoy the right to vote and be voted for a public office regardless of social or economic distinctions.² It is premised on the primary principle that “[s]overeignty resides in the people and all government authority emanates from them.”³

Retired Associate Justice Isagani A. Cruz has explained the character of a republican state and a public office:

A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is **representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only**, after which they are replaced or retained, at the option of their principal. *Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, 'at all times be accountable to the people' they are sworn to serve. The purpose of a republican government it is almost needless to state, is the promotion of the common welfare according to the will of the people themselves.*⁴ (Emphasis ours and italics in the original)

² J. Bengzon, Concurring Opinion in *Maquera v. Borra*, 122 Phil 412, 415 (1965) [Notice, *En Banc*].

³ CONST. art. II, sec. 1.

⁴ Cited in Associate Justice Reynato S. Puno, Concurring Opinion in *Frivaldo v. COMELEC*, 327 Phil. 521, 579 (1996) [Per J. Panganiban, *En Banc*].

Elections are “the primary mechanism by which the principles of a democratic and republican society can be achieved.”⁵ Voting is a direct act of sovereignty where people choose the representatives to whom they will entrust the exercise of powers of government. Through voting, the individual’s voice is heard. As such, it is the foremost expression of free speech. In the words of former Chief Justice Reynato S. Puno in his dissenting opinion in *Tolentino v. COMELEC*:⁶

The electoral process is one of the linchpins of a democratic and republican framework because it is through the act of voting that government by consent is secured. Through the ballot, people express their will on the defining issues of the day and they are able to choose their leaders in accordance with the fundamental principle of representative democracy that the people should elect whom they please to govern them. Voting has an important instrumental value in preserving the viability of constitutional democracy. It has traditionally been taken as a prime indicator of democratic participation.

... *The existence of the right of suffrage is a threshold for the preservation and enjoyment of all other rights* that it ought to be considered as one of the most sacred parts of the constitution. In *Geronimo v. Ramos, et al.*, we held that the right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him Voting makes government more responsive to community and individual needs and desires. Especially for those who feel disempowered and marginalized or that government is not responsive to them, meaningful access to the ballot box can be one of the few counterbalances in their arsenal.⁷

The importance of elections cannot be over emphasized. Thus, the need to safeguard the integrity of the electoral process. Ensuring that those elected will best represent the people and will be able to carry out their responsibilities well is vital to this.

II

While the Constitution guarantees “equal access to opportunities for public service,”⁸ it could never be the intent to allow just anyone to run. The aspirant must possess the qualifications and eligibilities required for public office. Thus, the Constitution fixes the minimum qualifications for national

⁵ J. Leonen, Separate Opinion in *Vitangcol III v. Commission on Elections*, G.R. Nos. 224027 & 224116, October 11, 2016 [Notice, *En Banc*]. (Citation omitted)

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

⁷ J. Puno, Dissenting Opinion in *Tolentino v. COMELEC*, 465 Phil 385, 433–434 (2004) [Per J. Carpio, *En Banc*]. (Citation omitted)

⁸ CONST., art. II, sec. 26.

electoral positions such as the President,⁹ Vice President,¹⁰ Senators¹¹ and members of the House of Representatives.¹² These basic qualifications: citizenship, residency, age, and literacy, ensure full and undivided allegiance to the Republic and a certain level of maturity and competence to assume the powers and responsibilities of public office. Congress, in the exercise of its plenary legislative power, prescribes conditions for the exercise of the right to run for office and additional qualifications and disqualifications for elective office, consistent with the Constitution.

Those who possess such qualifications are, therefore, “deemed legally fit, at least, to aspire to such office and to run therefor, provided that they file their respective certificates of candidacy within the time, at the place and in the manner provided by law[.]”¹³

The importance of a valid certificate of candidacy rests at the very core of the electoral process.¹⁴ Section 79(a) of the Omnibus Election Code defines a “candidate” as “any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy[.]” The certificate of candidacy announces a person’s intent to run for the elective office indicated in the certificate and contains declarations on his/her eligibility.¹⁵ As such, it signals

⁹ CONST., art. VII, sec. 2 states:

SECTION 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

¹⁰ CONST., art. VII, sec. 3 states:

SECTION 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. He may be removed from office in the same manner as the President.

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation.

¹¹ CONST., art. VI, sec. 3 states:

SECTION 3. No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

¹² CONST., art. VI, sec. 6 states:

SECTION 6. No person shall be a Member of the House of Representatives unless he is a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

¹³ *Abcede v. Imperial*, 103 Phil 136, 140–141 (1958) [Per J. Concepcion, *En Banc*].

¹⁴ *Miranda v. Abaya*, G.R. No. 136351, 370 Phil 642 (1999) [Per J. Melo, *En Banc*].

¹⁵ Section 74 of the Omnibus Election Code on the contents of the certificate state:

Sec. 74. *Contents of certificate of candidacy.* — The certificate of candidacy *shall state* that the person filing it is *announcing his candidacy for the office stated therein and that he is eligible for said office*; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or section which he seeks to represent; *the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation*; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge. Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his *Hadji* name after performing the prescribed religious pilgrimage: *Provided*, That when there are two or more candidates for an office

the official entry of a person into the electoral race and is a manifestation of the person's willingness to submit to the electoral process and abide by the rules and regulations governing elections. Without the proper filing of a certificate of candidacy, an individual cannot legally be considered a candidate.

This Court explained the purposes of the law in requiring the filing of certificates of candidacy and in fixing a time limit in filing a certificate of candidacy:

(a) to enable the voters to know, . . . , the candidates among whom, they are to make the choice, and (b) to avoid confusion and inconvenience in the tabulation of the votes cast; for if the law did not confine the choice or election by the voters to the duly registered candidates, there might be as many persons voted for as there were voters, and votes might be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election.¹⁶

The COMELEC has the ministerial duty to receive and acknowledge receipt of certificates of candidacy.¹⁷ However, in certain instances provided under the law,¹⁸ the COMELEC may refuse to give due course or cancel a certificate of candidacy, but only after procedural due process has been observed.

III

An instance would be under Section 69 of the Omnibus Election Code, where the Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy of a nuisance candidate.

with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires. (Emphasis supplied)

See *Salcedo II v. Commission on Elections*, 371 Phil 377 (1999) [Per J. Gonzaga-Reyes, *En Banc*].

¹⁶ *Monsale v. Nico*, 83 Phil 758, 761 (1949) [Per J. Ozaeta, First Division].

¹⁷ Section 76 of the Omnibus Election Code states:

Sec. 76. *Ministerial duty of receiving and acknowledging receipt.* — The Commission, provincial election supervisor, election registrar or officer designated by the Commission or the board of election inspectors under the succeeding section shall have the ministerial duty to receive and acknowledge receipt of the certificate of candidacy.

¹⁸ Under Section 78 of the Omnibus Election Code, the Commission may deny due course or cancel a certificate of candidacy through a verified petition filed exclusively on the ground of false material representation/s in the certificate of candidacy. In addition, a candidate may be disqualified from running through a petition for disqualification filed with the COMELEC before proclamation of the candidate, premised on Section 12¹⁸ or 68¹⁸ of the Omnibus Election Code, or Section 40 of the Local Government Code.



Section 69 provides:

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

A nuisance candidate is one who files a certificate of candidacy:

- 1) to put the election process in mockery or disrepute;
- 2) to cause confusion among the voters by the similarity of the names of the registered candidate; or
- 3) in other circumstances which clearly demonstrate that the candidate has no *bona fide* intention to run for the office and thus prevent a faithful determination of the true will of the electorate.

Earlier cases on nuisance candidacy involved certificates of candidacy that were filed to cause confusion among the electorate through the similarity of the names of the registered candidate.¹⁹

In later instances, the COMELEC refused to give due course to certificates of candidacy based on circumstances showing a lack of *bona fide* intent to run for the office. Thus, in *Pamatong v. Commission on Elections*,²⁰ COMELEC declared petitioner as a nuisance candidate because he could not wage a nationwide campaign and/or is not nominated or supported by a political party. Petitioner sought before this Court to reverse, on grave abuse of discretion, the COMELEC's ruling. However, the Court could not determine the presence or absence of grave abuse of discretion for lack of any indication in the assailed COMELEC resolutions of the evidence considered in arriving at its findings. Hence, the case was remanded to the COMELEC for reception of further evidence, with a word of caution to comply with due process in the conduct of its hearings.

The Court recognized the power of COMELEC to exclude nuisance candidates to ensure a credible and orderly elections:

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling

¹⁹ *Bautista v. Commission on Elections*, 359 Phil 1, 13 (1998) [Per J. Melo, *En Banc*], citing *Fernandez v. Fernandez*, 146 Phil 605, 617 (1970) [Per J. Ruiz Castro, *En Banc*].

²⁰ 470 Phil 711 (2004) [Per J. Tinga, *En Banc*].

interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions[.]

....

The preparation of ballots is but one aspect that would be affected by allowance of "nuisance candidates" to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place, watchers in the board of canvassers, or even the receipt of electoral contributions. Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process[.]²¹

In *Martinez III v. House of Representatives Electoral Tribunal*,²² the Court clarified that more than the practical considerations in *Pamatong*, the paramount consideration is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate.

In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.

In elections for national positions such as President, Vice-President and Senator, the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign[.]

....

²¹ *Id.* At 720–721.

²² 624 Phil 50 (2010) [Per J. Villarama, Jr., *En Banc*].

Given the realities of elections in our country and particularly contests involving local positions, *what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in Pamatong.* A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least 18 parts of the country. The success of this clever scheme by political rivals or operators has been attributed to the last-minute disqualification of nuisance candidates by the Commission, notably its "slow-moving" decision-making.²³ (Emphasis supplied)

In *Ollesca v. Commission on Elections*,²⁴ it was emphasized that the right to run for public office must be balanced with COMELEC's practical challenges in ensuring free, fair, and peaceful elections. Having too many candidates can make the ballot confusing and harder to manage, requiring more time and resources to prepare for the election. To improve the process, the COMELEC needs to regulate the number of candidates and manage the ballots while still allowing everyone a fair chance to compete. The law prohibits nuisance candidates from running for public office—those who are not serious about running for office and only seek to confuse voters or mock the election process. These candidates interfere with the true will of the voters.

Over the last few years, several cases have shaped the interpretation of the law on nuisance candidacy.

In the 2019 case of *Marquez v. COMELEC*,²⁵ this Court held that "the COMELEC cannot condition a person's privilege to be voted upon as senator on his or her financial capacity to wage a nationwide campaign."²⁶ The financial capacity requirement is a property requirement that is "inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same[.]" This Court cites former Chief Justice Cesar Bengzon's concurring opinion in *Maquera v. Borra*,²⁷ on why the property requirement imposed upon an aspirant for public office is constitutionally impermissible:

The Constitution, in providing for the qualification of Congressmen, sets forth only age, citizenship, voting and residence qualifications. No property qualification of any kind is thereunder required. Since the effect of Republic Act No. 4421 is to require of candidates for Congress a substantial

²³ *Martinez III v. House of Representatives Electoral Tribunal*, 624 Phil 50, 69–70 (2010) [Per J. Villarama, Jr., *En Banc*].

²⁴ G.R. No. 258449, July 30, 2024 [Per J. Leonen, *En Banc*].

²⁵ 861 Phil. 667 (2019) [Per J. Jardeleza, *En Banc*].

²⁶ *Id.* at 684.

²⁷ *Maquera v. Borra*, 122 Phil 412 (1965) [Notice, *En Banc*].

property qualification, and to disqualify those who do not meet the same, it goes against the provision of the Constitution which, in line with its democratic character, requires no property qualification for the right to hold said public office.

Freedom of the voters to exercise the elective franchise at a general election implies the right to freely choose from all qualified candidates for public office. The imposition of unwarranted restrictions and hindrances precluding qualified candidates from running, is, therefore, violative of the constitutional guaranty of freedom in the exercise of elective franchise. It seriously interferes with the right of the electorate to choose freely from among those eligible to office whomever they may desire.

....

Nuisance candidates, as an evil to be remedied, do not justify the adoption of measures that would bar poor candidates from running for office. Republic Act 4421 in fact enables rich candidates, whether nuisance or not, to present themselves for election. Consequently, it cannot be sustained as a valid regulation of elections to secure the expression of the popular will.²⁸ (Emphasis supplied, citation omitted)

This Court further held that “[a] candidate's financial capacity to sustain the rigors of waging a nationwide campaign does not *necessarily* equate to a *bona fide* intention to run for public office.”²⁹ It is the COMELEC's burden to show a reasonable correlation between “financial capacity” and “bona fide intent.”³⁰

Later, in relation to the 2022 national and local elections, the Court held in the 2022 case of *Marquez v. COMELEC*³¹ that while the COMELEC cited an apparently different ground to accord Marquez a nuisance status, i.e. he is unknown to the entire country and has no political party to make himself known, these are closely intertwined with lack of financial capacity to “wage a nationwide campaign”³² that was previously used against him. The Court emphasized that “*bona fide* intent is present when a candidate is able to demonstrate that he or she is serious in running for office.”³³ Marquez had indubitably demonstrated his intent to run by availing of judicial remedies twice to protect his candidacy, first in 2019, where he prevailed; and second, in relation to the 2022 elections, by his crafting a program of governance.

This Court continued:

Further, declaring one a nuisance candidate simply because he or she is not known to the entire country reduces the electoral process — a sacred instrument of democracy — to a mere popularity contest. The matter

²⁸ *Id.* at 420–421.

²⁹ *Marquez v. Commission on Elections*, 861 Phil. 667, 689 (2019) [Per J. Jardeleza, *En Banc*].

³⁰ *Id.*

³¹ 924 Phil. 179 (2022) [Per J. Lazaro-Javier, *En Banc*].

³² *Id.* at 180.

³³ *Id.* at 193.

of the candidate being known (or unknown) should not be taken against that candidate but is best left to the electorate. As it is, our democratic and republican state is based on effective representation. Thus, the electorate's choices must be protected and respected.

Of note, nuisance candidates, as an evil to be remedied, do not justify the adoption of measures, not specifically indicated under our election laws or rules, which would consequently bar seemingly unpopular candidates from running for office. On this score, we reckon with *Marquez v. COMELEC* the first instance where Marquez sought aid from this Court for the protection of his opportunity to run for public office, viz.:

It bears reiterating that the Court acknowledges the COMELEC's legitimate objective in weeding out candidates who have not evinced a *bona fide* intention to run for office from the electoral process. **Any measure designed to accomplish the said objective should, however, not be arbitrary and oppressive and should not contravene the Republican system ordained in our Constitution.** Unfortunately, the COMELEC's preferred standard falls short of what is constitutionally permissible. (Emphasis supplied)³⁴

In *De Alban v. Commission on Elections*,³⁵ the Court rejected De Alban's claims that the third paragraph of Section 69 of the Omnibus Election Code is unconstitutional for lacking comprehensible standards. It held that the provision does not violate due process because "it gives fair notice of what conduct to avoid and does not leave law enforcers unbridled discretion in carrying out its provisions."³⁶ Thus:

The third instance refers to the candidate's "circumstances" or "acts" that would demonstrate that the purpose of the filing of the CoC is inconsistent with the definition of a candidate as someone "aspiring for or seeking elective public office." The common thread of the three instances is that the nuisance candidates filed their CoCs not to aspire or seek public office but to prevent a faithful determination of the people's true will. Relevantly, the assailed last phrase in Section 69 of the OEC should cover all acts or circumstances clearly demonstrating that the CoC was filed in bad faith[.]

....

*To ensure that the third instance in Section 69 of the OEC will not unnecessarily curtail the privilege to run for public office, the legislature inserted the word "clearly" before the word "demonstrate" to confine the denial of due course on the CoC only when the absence of bona fide intention to run for public office is evident.*³⁷ (Emphasis supplied)

Maintaining the provision's validity, the Court further held that Section 69 does not infringe the equal protection clause and the right of suffrage.

³⁴ *Id.* at 195–196.

³⁵ 921 Phil. 524 (2022) [Per J. Lopez, M.V., *En Banc*]

³⁶ *Id.* at 542.

³⁷ *Id.* at 535–538.

There are real differences between certificates of candidacy filed in good faith and those filed to prevent a faithful determination of the true will of the electorate. The cancellation of certificates filed in bad faith is aligned to the policy to ensure rational, objective and orderly elections. Moreover, Section 69 provides a reasonable restriction to keep the purity of elections and addresses the malpractice of unscrupulous candidates to the detriment of the voters.

This Court reiterated that financial capacity to wage a nationwide campaign is not required to run for public office because it is equivalent to a property qualification that is constitutionally impermissible. Likewise, it held that non-membership in a political party or being unknown nationwide, or the low probability of success do not by themselves equate to the absence of *bona fide* intention.

In the same vein, the Court finds that non-membership in a political party or being unknown nationwide, or the low probability of success do not by themselves equate to the absence of *bona fide* intention to run for public office under Section 69 of the OEC. Membership in a political party is not a requirement to run for senator under the current electoral framework while non-membership does not prevent a faithful determination of the will of the electorate. Also, the candidate's degree of success is irrelevant to *bona fide* intention to run for public office. A candidate "*has no less a right to run when he faces prospects of defeat as when he expected to win.*" Neither the candidate's act of participating for the first time in elections be equated with the absence of good faith. The Court had overruled the COMELEC's postulation that a *bona fide* intention to run for public office is absent if there is no "*tiniest chance to obtain the favorable endorsement of a substantial portion of the electorate.*" Again, it appears that the COMELEC Law Department initiated actions only against De Alban and other unknown candidates without a political party, or those with low chances of winning. The COMELEC did not bother to substantiate its conclusion that De Alban's CoC was filed without *bona fide* intention to run for public office when it remarked that "*[t]he Commission is not duty-bound to adduce evidence for any party or for [De Alban] in this case . . .*" Worse, the burden of evidence improperly shifted to De Alban to convince the COMELEC why his CoC should be given due course. To reiterate, the COMELEC has the ministerial duty to receive and acknowledge a duly filed CoC. The candidate's name will be on the ballot unless the CoC is withdrawn or canceled.³⁸ (Emphasis in the original, citations omitted)

Finally, the Court observed that COMELEC's characterization of De Alban as a nuisance candidate right after the filing of his certificate of candidacy was premature and is based on an erroneous inference that De Alban's supposed weak campaign machinery would not change even at the start of the campaign period. It further said:

It would have been different if the action of the COMELEC Law Department against De Alban was initiated during the campaign period to

³⁸ *Id.* at 549.

determine whether he would not promote his candidacy clearly demonstrating the lack of *bona fide* intention to run for public office. Quite the contrary, De Alban presented evidence showing his plan to actively campaign with the use of social media. The records show that De Alban submitted receipts of payment for his “De Alban for Senator Movement,” engagement posts on “Facebook” showing an initial number of “impressions,” and the receipt of payment for the maintenance of his website. On this score, the COMELEC must have been aware of the popularity of social media, the number of online users nationwide, and how these platforms potentially influence the preferences of registered voters.³⁹ (Citation omitted)

IV

The law prescribes a 90-day campaign period so anyone, whether rich or poor, or popular or not, can be given the opportunity to become known and to convince the voters that they are the best choice. During this period, the candidates engage in numerous activities⁴⁰ to push for their election and respective platforms. Such activities include attending public rallies, distributing campaign materials, doing door-to-door campaigning and motorcades, delivering political pitches and through social media platforms. It is in this critical period where the voting public comes to know the official candidates, what they stand for and what their plans are.

People are most engaged in political discourse. Citizens seek information on candidates and, in turn, campaign and persuade other people to likewise vote for their chosen candidate. Suffrage necessarily includes expressing a political ideology and campaigning for one’s candidate of choice. Hence, in *Diocese of Bacolod v. Commission on Elections*,⁴¹ this

³⁹ *Id.* at 550.

⁴⁰ Section 79 of the Omnibus Election Code defines an “election campaign” as follows:

....
(b) The term “election campaign” or “partisan political activity” refers to *an act designed to promote the election or defeat of a particular candidate or candidates to a public office* which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article. (Emphasis supplied)

⁴¹ 751 Phil 301 (2015) [Per J. Leonen, *En Banc*].

Court recognized that free speech and expression are fundamental and consequential during the election period:

"[S]peech serves one of its greatest public purposes in the context of elections when the free exercise thereof informs the people what the issues are, and who are supporting what issues." At the heart of democracy is every advocate's right to make known what the people need to know, while the meaningful exercise of one's right of suffrage includes the right of every voter to know what they need to know in order to make their choice.⁴² (Citations omitted)

In my Concurring Opinion in *Nicolas-Lewis v. Commission on Elections*,⁴³ I expounded on the paramount importance of protecting free speech and expression during elections.

Freedom of expression, as with other cognate constitutional rights, is essential to citizens' participation in a meaningful democracy. Through it, they can participate in public affairs and convey their beliefs and opinion to the public and to the government. Ideas are developed and arguments are refined through public discourse. Freedom of expression grants the people "the dignity of individual thought." When they speak their innermost thoughts, they take their place in society as productive citizens. Through the lens of self-government, free speech guarantees an "ample opportunity for citizens to determine, debate, and resolve public issues."

Speech that enlivens political discourse is the lifeblood of democracy. A free and robust discussion in the political arena allows for an informed electorate to confront its government on a more or less equal footing. Without free speech, the government robs the people of their sovereignty, leaving them in an echo chamber of autocracy. Freedom of speech protects the "democratic political process from the abusive censorship of political debate by the transient majority which has democratically achieved political power."

....

As a direct exercise of the people's sovereignty, political expression is accorded the highest protection. This is even more heightened during the election period, when political activities and speech are propelled by the electorate's ideals and choice of representatives. Given the crucial importance of political expression in our democracy, it should be favored and guarded against any illicit and unwarranted government censorship.⁴⁴

V

The COMELEC's exercise of its power to "enforce and administer all laws and regulations relative to the conduct of an election"⁴⁵ to ensure a "free,

⁴² *Id.* at 372.

⁴³ 859 Phil. 560 (2019) [Per J. Reyes, Jr., *En Banc*]

⁴⁴ *Id.* at 614-617.

⁴⁵ CONST., art IX(C), sec. 2(1).

orderly, honest, peaceful and credible elections,”⁴⁶ must always be reconciled with the republican system ordained in our Constitution and the social justice principles underlying the same.

The Constitutional provisions on social justice are clear:

Article II.

Section 10. The state shall promote social justice in all phases of national development.

Article XIII.

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

“The command to promote social justice in Article II, Section 10, in all phases of national development, further explicated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality.”⁴⁷

Government is expected to adhere to and carry out the ideals of social justice, which is aimed at reducing the social, economic and political disparities and the equitable distribution of wealth and political power.

In *Guido v. Rural Progress Administration*,⁴⁸ the Court expounded:

Social justice does not champion division of property or equality of economic status; what it and the Constitution do guaranty are equality of opportunity, equality of political rights, equality before the law, equality between values given and received, and equitable sharing of the social and material goods on the basis of efforts exerted in their production.

The early case of *Maquera v. Borra*,⁴⁹ is explicit that “social justice presupposes equal opportunity for all, rich and poor alike, and that accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office[.]”⁵⁰

⁴⁶ CONST., art IX(C), sec. 2(4).

⁴⁷ *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil 531 (2004) [Per J. Puno, *En Banc*], citing JOAQUIN G. BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES* 160 (2003).

⁴⁸ 84 Phil 847, 852 (1949) [Per J. Tuason, *En Banc*].

⁴⁹ 122 Phil 412 (1965) [Resolution, *En Banc*].

⁵⁰ *Id.* at 415.

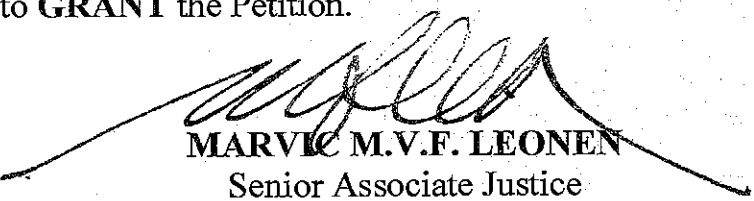
VI

Indeed, the COMELEC has the mandated function of preserving the integrity and purity of the electoral process by preventing the proliferation of candidates whose purpose is not to genuinely run for office but to confuse voters, make a mockery of the elections, or cause disrepute to the candidacy of legitimate aspirants. Nonetheless, it cannot achieve this objective by conditions that are arbitrary⁵¹ and contrary to the imperatives of the Constitution.

The determination of the question of who a nuisance candidate may be is a factual issue that should be decided closely and wisely.⁵² Intent as a state of mind is shown by overt acts. From the previous rulings of the Court, the determination of *bona fide* intent is on a case-to-case basis and should rest upon the totality of the circumstances. Neither winnability,⁵³ popularity,⁵⁴ nor capacity to campaign per se establish *bona fide* intent or the lack thereof. On the other hand, factors such as lack of a political platform, no visible campaign, lack of a past record of public service⁵⁵ or statements disavowing a serious candidacy may indicate a lack of a genuine or serious intent to run for public office.

The prohibition against nuisance candidates is meant to protect the voter's will. It is aimed particularly to "give effect to, rather than frustrate, the will of the voter."⁵⁶ The COMELEC should not be too hasty then to characterize a candidate as nuisance without clear demonstration of lack of *bona fide* intent, in deference to the Constitutional guarantees of equal access to opportunities for public service and nondiscrimination against *bona fide* candidates. The COMELEC must rather ensure that candidates placed on the ballot are those who meet the minimum requirements of the Constitution and laws, who know what they are getting into, who possess a clear agenda of what they plan to do, and who have a genuine desire to serve the people in the position sought. This ensures that the electorate is given a genuine choice among legitimate aspirants and that the electoral process is not reduced to a farce. Only then can we work towards a vibrant and empowering democracy.

ACCORDINGLY, I vote to GRANT the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁵¹ *Marquez v. Commission on Elections*, 861 Phil. 667, 694 (2019) [Per J. Jardeleza, *En Banc*].

⁵² *De Alban v. Commission on Elections*, 921 Phil. 524, 545 (2022) [Per J. Lopez, M.V., *En Banc*].

⁵³ *Id.* at 549.

⁵⁴ *Amad v. Commission on Elections*, 924 Phil. 861, 872 (2022) [Per J. Gaerlan, *En Banc*].

⁵⁵ *Ollesca v. Commission on Elections*, G.R. No. 258449, July 30, 2024 [Per J. Leonen, *En Banc*].

⁵⁶ *Bautista v. Commission on Elections*, 359 Phil. 1, 13 (1998) [Per J. Melo, *En Banc*].