

A DISPROPORTIONATELY UNEQUAL PLAYING FIELD: CHALLENGES TO AND PROSPECTS FOR CAMPAIGN FINANCE LAW AND POLICY IN THE PHILIPPINES

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Abstract

In the Philippines, the influence of money poses a challenge to political participation and representation of socially excluded, lesser-known, and historically underfunded candidates. Marginalized people and sectoral groups have to cope with discrimination alongside hurdling additional barriers of limited access to economic resources and rising campaign costs.

Using Carol Bacchi's "what is the problem represented to be?" (WPR) approach, this paper primarily interrogates how equal access to opportunities for public service is defined and represented in Philippine campaign finance law and policy. The approach also offers a conceptual framework that helps surface what remains 'unproblematized' by existing policy discussions and narratives.

This paper contends that challenges to electoral integrity, accountability, and transparency in campaign finance are not solely due to ineffective implementation and enforcement. The WPR approach enables us to reflect on how existing policy interventions or responses to what the law identifies as problematic can also entrench elite power and replicate uneven power dynamics evident in Philippine society. Thus, for campaign finance laws to promote, rather than block, political participation and representation, additional attention must be given to the assumptions, policy gaps, and silences that give rise to anti-competitive, corrupt, and disempowering practices and norms. The resulting analysis may prove useful for outlining avenues for future law reform and policy advocacy efforts, but invite the imagining of alternative and inclusive proposals to ensure that the ability to run for public office rests on merit and ability, rather than access to financial influence and resources.

Keywords: *campaign finance, electoral laws, political participation, representation, problem representations analysis, Philippines*

1. INTRODUCTION

The centrality of money in Philippine electoral campaigns poses challenges to the political participation and representation of socially excluded, lesser-known, and historically underfunded candidates. However, marginalized candidates and sectoral groups, such as women, Indigenous peoples, the urban and rural poor, ethnic and religious minorities, LGBTQIA communities, young people, and people with disabilities, among others, have to cope with discrimination alongside hurdling additional barriers of limited access to economic resources and rising campaign costs. These factors taken together contribute to a disproportionately unequal political playing field in the Philippines' elite-dominated democracy.

In the Philippines, equal access to opportunities for public service and the prohibition of political dynasties are constitutionally mandated.² However, this is accompanied by the limiting provision "as may be defined by law,"³ which means further defining and operationalizing these so-called constitutional 'guarantees' are mainly left to the will and interests of Congress. Considering that the Philippines follows a plurality system, *i.e.*, whoever garners the most votes wins the elections, vested interests will most likely incentivize legislative inaction in regulating

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2 1987 Constitution, Article II, Section 26: "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

3 *Pamatong v. COMELEC*, 427 SCRA 96 (2004).

campaign finance and, therefore, enlarging democratic spaces.⁴

If elections are considered to be “democratic choice, expressed through the ballot,” as stated by the Philippine Supreme Court in *Aquino v. COMELEC et al.* (1995),⁵ then access to campaign finance can increase the participation of qualified and meritorious candidates. A robust campaign finance legal landscape promotes equal access to funding, helps limit dynastic politics by enabling the inflow of new leaders,⁶ and opens spaces for the “free expression of the will of the people.”⁷

Against this backdrop, a broader question is raised: how is equal access to opportunities for public service defined and represented in Philippine campaign finance law and policy? Carol Bacchi’s “what is the problem represented to be?” (WPR) approach⁸ was used to interrogate and analyze the Philippines’ legal framework on campaign finance. The findings surfaced by the WPR approach proves useful because it can help outline new ways forward for legislative and policy advocacy efforts, and invite the imagining of alternative and inclusive proposals where the ability to run for public office is not predicated on financial influence and resources.

1.1. Conceptual and methodological framework

The WPR approach begins with the premise that proposed interventions in Philippine campaign finance laws reveal what the decision-makers find problematic or what needs to change.⁹ As a conceptual framework, the WPR approach helps surface what remains ‘unproblematized’ by existing policy discussions and narratives.¹⁰ As a methodology, I chose Bacchi’s WPR approach because it can open up a range of questions that other approaches can fail to address due to the focus on merely describing the law or the *status quo*.¹¹ Specifically, the following questions are explored in this paper:

- (1) How has equal access to opportunities for public service been defined and represented in Philippine campaign finance laws, and what are the underlying assumptions we need to unpack about these representations?
- (2) What historical and other contextual factors have led to the emergence of these problem representations on campaign finance?
- (3) What are the potential gaps, limitations, and silences of these problem representations?
- (4) What strategies can be used to question, disrupt, and replace challenges to electoral integrity, political participation, and representation?

4 See Julio C Teehankee, ‘Electoral Campaigning in the Philippines’ in *Election Campaigning in East and Southeast Asia: Globalization of Political Marketing* (Ashgate Publishing, Ltd 2006).

5 *Aquino v. COMELEC*, 248 SCRA 400 (1995).

6 See Eduardo T Gonzalez, ‘Regulating Campaign Finance in the Philippines: Limits and Challenges’ (2003) 47 *Philippine Journal of Public Administration* 26; Lolita Cigane and Magnus Ohman, ‘Political Finance and Gender Equality’ (IFES White Paper, 2014).

7 *Gonzalez v. COMELEC*, 27 SCRA 835 (1969); citing *People v. Vera*, 65 Phil. 56 (1937). *Manila Race Horse Trainers Asso. v. De la Fuente*, 88 Phil. 60 (1951); *Bautista v. Mun. Council*, 98 Phil. 409 (1956).

8 Carol Bacchi, “‘Are ‘Problem Representations’ (WPR) Problematizations?’” (*Carol Bacchi*, 11 June 2018) <<https://carolbacchi.com/2018/06/11/are-problem-representations-wpr-problematizations/>> accessed 22 October 2020; Carol Bacchi and Susan Goodwin, *Poststructural Policy Analysis: A Guide to Practice* (Springer 2016). \u00u8216{\u00u8220}{Are \u00u8216{\u00u8217}{ (WPR

9 Carol Bacchi, ‘Introducing the “What’s the Problem Represented to Be?” Approach’ in Angelique Bletsas and Chris Beasley (eds), *Engaging with Carol Bacchi Strategic Interventions and Exchanges* (University of Adelaide Press 2015).

10 Carol Bacchi, ‘Why Study Problematizations? Making Politics Visible’ (2012) 02 *Open Journal of Political Science* 1.

11 Carol Lee Bacchi, *Analysing Policy: What’s the Problem Represented to Be?* (Pearson Education 2009).

The primary method used in this research is document analysis. While document analysis generally accompanies other research methods, it is also recognized as an independent, stand-alone, and self-supporting method for specialized forms of qualitative research, such as in problem representations analysis.¹²

1.2. Scope and limitations

In order to determine how and why the constitutional provision of equal access to opportunities for public service been defined, represented, and problematized in the Philippines, *i.e.*, the first research question, the paper provides an overview of campaign finance laws, policies, and regulations insofar as these facilitate or impede the objectives of the 1987 Constitution and the amended Omnibus Election Code (OEC) of the Philippines. To address the three subsequent questions, relevant Supreme Court jurisprudence, which forms part of the Philippine legal system,¹³ and secondary sources, which include election law textbooks and manuals, academic journal articles, news articles involving campaign finance issues, and think pieces by legal experts and academics, shall form the bases for identifying the historical and other contextual factors; examining gaps, limitations, and silences of these problem representations; and providing identifying policy representations or what the government aims to change, or not change.¹⁴

While the WPR is a practical methodology because it provides six guiding questions that may be answered step by step, this paper did not pursue a linear approach to ensure brevity, avoid repetitiveness, and address time constraints and word count limits.¹⁵ This paper focuses on two main thematic areas of campaign expenditure limits and prohibited campaign contribution sources to determine how these impact equal access to opportunities for public service in the Philippines. Finally, as discussed in the preceding section, this paper solely uses document analysis because this is a self-supporting method in problem representations research.

2. A SNAPSHOT OF THE PHILIPPINES' CAMPAIGN FINANCE LEGAL FRAMEWORK

The Philippines, officially the Republic of the Philippines, has a presidential form of government where power is intended to equally reside in its three branches – *i.e.*, executive, legislative, and judicial – under the principle of checks and balances.¹⁶ The legal system is based mainly on Western models and ideas, a blend of both the Anglo-American and Spanish systems.¹⁷ Elections and other democratic processes were imposed by American colonizers who introduced electoral and party politics nearly a century ago.¹⁸

Through a plurality system, all elective officials from the executive and legislative branches – *i.e.*, *president, vice-president, senators, members of the House of Representatives, local chief*

12 Glenn Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 *Qualitative Research Journal*; Brian W Head, 'Reconsidering Evidence-Based Policy: Key Issues and Challenges' (2010) 29 *Policy and Society* 77; Bacchi, "'Are "problem representations" (WPR) problematizations?" (n 8).
 13 Article 8 of the New Civil Code; Republic of the Philippines v. Prieto (1963), https://lawphil.net/judjuris/juri1963/apr1963/gr_1-17946_1963.html

14 See Carol M Bast and Ransford C Pyle, 'Legal Research in the Computer Age: A Paradigm Shift' (2001) 93 *Law Libr J* 285; Steven M Barkan and others, 'Fundamentals of Legal Research, Tenth Edition' (SSRN Scholarly Paper, Social Science Research Network 7 April 2015).

15 This paper was developed and written amid a pandemic and in a highly securitized context.

16 Gonzalez v. Office of the President, 679 SCRA 614 (2012); Justice Carpio, Concurring Opinion: "The constitutional principle of independence does not obviate the possibility of a check from another body. After all, one of the constitutive principles of our constitutional structure is the system of checks and balances- a check that is not within a body, but outside of it. *This is how our democracy operates - on the basis of distrust.*" (Emphasis supplied.)

17 Julio Teehankee, 'Electoral Politics in the Philippines' [2002] *Electoral Politics in Southeast and East Asia* 149.

18 Teehankee (n 4); Teehankee (n 17).

*executives, and local legislators – are chosen by a direct vote of the people through a ‘first-past-the-post system’ where the candidate with the highest number of votes is declared the winner.*¹⁹ This system is found in the United Kingdom and countries once part of the British Empire, including the United States, Canada, and India.²⁰

The 1987 Constitution also introduced the party-list system to promote inclusion by broadening the representation in the House of Representatives and facilitating access to representation of minority or marginalized groups who may not have access to sufficient funding or political machinery.²¹ However, according to the Philippine Commission on Women, the plurality system affects political parties or groups’ preference to finance male candidates who are perceived to have higher probabilities of winning the election.²²

The plurality system coupled with the real democratic threat of exclusion due to access barriers to power and resources underscore the links between electoral integrity and campaign finance in the Philippines. When elections are free, fair, and credible, voters continue to have faith in electoral and democratic processes even when their candidates do not win.²³

The Omnibus Election Code (OEC) of the Philippines defines campaign finance as electoral contributions raised or received, and expenditures made, to promote candidates or political parties in all elections, referendums, or plebiscites.²⁴ The OEC, enacted into law in 1985, remains the basic code on elections and codifies all previous election laws and regulations.²⁵ While it has undergone amendments through the 1987 Constitution, particularly on the powers of the Commission on Elections (COMELEC) to enforce and administer all electoral laws and regulations, this voluminous piece of legislation has remained mostly the same over the decades with additional amendments and repeals from around seven laws issued between 1987 to 2013.²⁶ The term “any election,” as used in both the OEC and 1987 Constitution of the Philippines, includes all current forms of electoral and political exercises in the country, as well as those that future laws may require.²⁷ The COMELEC, one of the Philippines’ three constitutional commissions, is identified to be the competent body to regulate and oversee campaign finance.²⁸

Further, other laws and policies that substantially impact the scope and coverage of campaign finance include recent amendments to the Corporation Code in 2019,²⁹ which enables domestic corporations to give donations in aid of any political party or candidate or for purposes of partisan political activity.³⁰ Before, Section 36(9) of Batas Pambansa Bilang 68, or the old Corporation Code

19 Teehankee (n 17); Ben Reilly and Andrew Reynolds, ‘Electoral Systems and Conflict in Divided Societies’ in *International Conflict Resolution After the Cold War* (National Research Council 2000).

20 Reilly and Reynolds (n 19).

21 Fritzie P Tangkia and Ma Araceli Habaradas, ‘Party-List System: The Philippine Experience’ [2001] Manila: Friedrich Ebert Stiftung.

22 Philippine Commission on Women, ‘Women’s Political Participation and Representation’ (February 2021) <<https://pcw.gov.ph/womens-political-participation-and-representation/>> accessed 10 February 2021.

23 See Marlene Mauk, ‘Electoral Integrity Matters: How Electoral Process Conditions the Relationship between Political Losing and Political Trust’ [2020] Qual Quant.

24 OEC, Sections 94 to 112; also known as Batas Pambansa Bilang 881.

25 COMELEC, ‘Campaign Finance’ (*Republic of the Philippines Commission on Elections*, 2020) <<https://www.comelec.gov.ph/?r=CampaignFinance>> accessed 22 October 2020.

26 See 2001 – RA 9006 – Fair Election Act; 1997 – RA 8436 – authorizing COMELEC to use an automated election system; 1996 – RA 8189 – establishing a voter’s registration act; – RA 7166 – Synchronized national and local elections; 1995 – RA 7941 – Party-List System Act; and 1987 – RA 6646 – Electoral Reform Law.

27 Ruben E Agpalo, *Comments on the Omnibus Election Code* (Rex Book Store 2004) ; citing *Gatchalian v. Comelec*, 35 SCRA 435 (1970).

28 1987 Constitution, Article IX, Section 1.

29 Official Gazette (2019). Available at: <https://www.officialgazette.gov.ph/downloads/2019/02feb/20190220-RA-11232-RRD.pdf>. accessed 22 October 2020.

30 See Richelle Dianne Patawaran, ‘Corporations’ Political Contributions under Revised Corporation Code’ (*Manila Times*, 2019) <<https://www.manilatimes.net/2019/03/21/business/columnists-business/corporations-political-contributions->

of the Philippines, absolutely prohibits both foreign and domestic corporations from donating to any political party or candidate or for any partisan political activity. Read together with Section 95 of the OEC, a domestic corporation, as long as it does not fall under the exemptions (*e.g.*, public or private financial institutions; contractors or sub-contractors of government goods or services; grantees of government franchises; juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation, among others),³¹ can donate to any political party or candidate during elections or contribute to any partisan political activity.³²

Another example would be tobacco control policies, according to the WHO Framework Convention on Tobacco Control (FCTC), which prohibit tobacco industry participation and sponsorships. This includes banning political contributions and donations, with no exceptions,³³ to protect the Philippine government from industry interference in tobacco control and public health policies.

For both examples, the prohibition imposed on specific corporations and industries covers both direct or indirect contributions, the purpose is to prevent both the actuality and perception of corruption resulting from large individual financial contributions.³⁴

3. DEFINING, REPRESENTING, AND PROBLEMATIZING EQUAL ACCESS TO OPPORTUNITIES FOR PUBLIC SERVICE

The main objective for regulating campaign finance can be found in the 1987 Constitution, specifically Article II, Section 26, which reads:

“The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.” (Emphasis supplied.)

The Supreme Court recognized the significance of this policy in *Chavez v. COMELEC* (1992), which reiterated that the ability to run for public office “without regard to the level of financial resources” is vital public interest, which the State must safeguard.³⁵ While the Supreme Court also ruled that the provision does not represent a constitutional right but is merely a privilege subject to limitations imposed by law,³⁶ it nevertheless an essential declaration of policy that sets directions for action.

Read together with the declaration of principle in the *Fair Election Act* (2001), the “equal opportunity for public service” includes access to media time and space, and the equitable right to reply for public information campaigns and fora among candidates and assure “free, orderly, honest, peaceful and credible elections.”³⁷ Additionally, the law aims to protect candidates running in good faith for any public office from any form of harassment and discrimination.³⁸

The explicit identification of equal access to opportunities for public service as a positive indicator for a democratic and fair elector process spotlights the historically persistent problem of inequality and disadvantage, which mar electoral contests. For example, it has been found that more than half of elected Philippine members of Congress and governors have a relative who has

under-rc/528679/> accessed 22 October 2020.

31 Agpalo (n 27). See contributions prohibited under Sections 89, 95, 96, 97 and 104 of the OEC.

32 Patawaran (n 30).

33 Civil Service Commission-Department of Health Joint Memorandum Circular 2010-01.

34 See *Ejercito v. COMELEC*, G.R. No. 212398, 25 November 2014.

35 *Chavez v. Comelec*, 211 SCRA 315 (1992).

36 *Pamatong v. COMELEC*, 427 SCRA 96 (2004).

37 *Fair Election Act*, Section 2.

38 *Fair Election Act*, Section 2.

been previously elected into office,³⁹ which provides additional evidence that state monopoly and capture by powerful and wealthy families are enduring challenges which our laws and policies have not been able to curb. Thus, interventions that promote equal access to opportunities mean a level playing field for all candidates, regardless of their financial capacity.⁴⁰ These can contribute to ending inequitable representation of elite interests and values in political affairs which is characteristic of dynastic or elite-dominated democracies.⁴¹

3.1. Campaign expenditure limits

The imposition of a maximum limit on campaign expenditures is an important measure in campaign finance. However, failure to review and update expenditure limits, coupled with implementation gaps, have posed challenges to leveling the political playing field. In particular, marginalized groups are prevented from fully participating in the political arena because they will have limited access to the political influence and sustained funding needed to amplify campaign messages and commitments during the election campaign.⁴²

39 Pablo Querubin, 'Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2012), potentially undermining the effectiveness of institutional reforms. One particular form of elite persistence is illustrated by the existence of political dynasties. A natural question is whether certain political reforms can break dynastic patterns and open up the political system. In this paper I study the extent to which the introduction of term limits by the 1987 Philippine Constitution effectively broke the hold of incumbent families on power. The ability of term limits to dismantle political dynasties is not obvious, as term-limited incumbents may be replaced by relatives or may run for a different elected office. Whether these strategies undermine the direct effects of term-limits in reducing the time an individual can hold office is an empirical question. I find no evidence of a statistically significant impact of term limits on curbing families' persistence in power. Moreover, term limits deter high-quality challengers from running prior to the expiration of an incumbent's term. Challengers prefer to wait for the incumbent to be termed-out and run in an open-seat race. As a consequence, incumbents are safer in their early terms prior to the limit. These results suggest that political reforms that do not modify the underlying sources of dynastic power may be ineffective in changing the political equilibrium.", "event-place": "Rochester, NY", "genre": "SSRN Scholarly Paper", "language": "en", "number": "ID 2108036", "publisher": "Social Science Research Network", "publisher-place": "Rochester, NY", "source": "papers.ssrn.com", "title": "Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines", "title-short": "Political Reform and Elite Persistence", "URL": "https://papers.ssrn.com/abstract=2108036", "author": [{"family": "Querubin", "given": "Pablo"}], "accessed": {"date-parts": [[2021, 1, 20]]}, "issued": {"date-parts": [[2012]]}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

40 Francis Tom Temprosa, 'A Human Rights Discourse on Campaign Finance in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2013).

41 See Bing Baltazar C Brillo, 'A Theoretical Review on Philippine Policy-Making: The Weak State-Elitist Framework and the Pluralist Perspective' (2011) 39 *Philippine Quarterly of Culture and Society* 54; Querubin (n 39), potentially undermining the effectiveness of institutional reforms. One particular form of elite persistence is illustrated by the existence of political dynasties. A natural question is whether certain political reforms can break dynastic patterns and open up the political system. In this paper I study the extent to which the introduction of term limits by the 1987 Philippine Constitution effectively broke the hold of incumbent families on power. The ability of term limits to dismantle political dynasties is not obvious, as term-limited incumbents may be replaced by relatives or may run for a different elected office. Whether these strategies undermine the direct effects of term-limits in reducing the time an individual can hold office is an empirical question. I find no evidence of a statistically significant impact of term limits on curbing families' persistence in power. Moreover, term limits deter high-quality challengers from running prior to the expiration of an incumbent's term. Challengers prefer to wait for the incumbent to be termed-out and run in an open-seat race. As a consequence, incumbents are safer in their early terms prior to the limit. These results suggest that political reforms that do not modify the underlying sources of dynastic power may be ineffective in changing the political equilibrium.", "event-place": "Rochester, NY", "genre": "SSRN Scholarly Paper", "language": "en", "number": "ID 2108036", "publisher": "Social Science Research Network", "publisher-place": "Rochester, NY", "source": "papers.ssrn.com", "title": "Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines", "title-short": "Political Reform and Elite Persistence", "URL": "https://papers.ssrn.com/abstract=2108036", "author": [{"family": "Querubin", "given": "Pablo"}], "accessed": {"date-parts": [[2021, 1, 20]]}, "issued": {"date-parts": [[2012]]}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

42 Temprosa (n 40); Clarita Carlos and others, 'Democratic Deficits in the Philippines' in *A Future For Democracy* (Konrad-Adenauer-Stiftung, Singapore 2011).

For example, a local candidate can only spend Philippine Pesos (PhP) 3⁴³ per registered voter in their jurisdiction, according to Republic Act (RA) No. 7166 that synchronized the local and national elections. However, since these unrealistic limits remain at 1991 standards, virtually unchanged for the past three decades, there is barely any incentive for candidates to properly declare the actual expenses and contributions needed to run a campaign today.⁴⁴ This, in turn, fast tracks the inevitability of graft and corruption.

In *Ejercito v. COMELEC* (2014), the Philippine Supreme Court cites American jurisprudence to explain the purpose of expenditures limits:

“First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money.”⁴⁵

In the *Ejercito* case, the COMELEC held that gubernatorial candidate Ejercito spent up to PhP 23,563,365.28⁴⁶ for his campaign even if he is only authorized by law to spend PhP 4,576,566,⁴⁷ or PhP 3 for every voter registered voter in his province. The Supreme Court upheld Ejercito’s disqualification and stated that “to rule otherwise would practically result in an unlimited expenditure for political advertising, which skews the political process and subverts the essence of a truly democratic form of government.”⁴⁸

More recently, during the 2019 Midterm Elections, the Philippine Center for Investigative Journalism (PCIJ) tracked senatorial candidates’ spending on political advertisements and compared each candidates’ net worth, as declared in their Statement of Assets, Liabilities and Net Worth (SALN), to the ad placement data from a global market research firm specializing in broadcast media.⁴⁹ The filing of SALN, which is constitutionally enshrined,⁵⁰ promotes transparency in the civil service and serves as an effective mechanism for the public to scrutinize undisclosed properties and wealth.⁵¹ The PCIJ’s findings revealed that all the top spenders’ expenses exceeded their net worth declared in the SALN.

The rationale for filing truthful and comprehensive SALNs, as well as the assumption of dishonesty and lack of integrity when candidates fail to disclose their wealth, underpins the requirement that candidates and parties to submit “full, true and itemized” statements of contributions and expenditures (SOCs) concerning their electoral campaigns.⁵² At the core of these regulations is the need to prevent actual and perceived corruption “spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and their

43 Approximately 0.062 US Dollars (calculated 10 February 2021).

44 Vicente Reyes, ‘Can Public Funding Overcome Corruption? A View from the Philippines’ in *Money, Corruption, and Political Competition in Established and Emerging Democracies* (Lexington Books 2012); Emil Marañon III, ‘Is It Time to Amend the Philippines’ Campaign Finance Law?’ (2019) <<https://www.rappler.com/voices/thought-leaders/is-it-time-amend-philippines-campaign-finance-law>> accessed 21 October 2020.

45 *Buckley v. Valeo*, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam); cited in *Ejercito v. COMELEC*, G.R. No. 212398, November 25, 2014.

46 Approximately 490,297.32 US Dollars. (calculated 10 February 2021).

47 Approximately 95,227.40 US Dollars. (calculated 10 February 2021).

48 *Ejercito v. COMELEC*, G.R. No. 212398, November 25, 2014.

49 Malou Mangahas, ‘P2.4-B Pre-Campaign Ads: Bong Go, Marcos, Roxas, Roque Top Spenders’ (*Philippine Center for Investigative Journalism*, 13 February 2019) <<https://pcij.org/article/1379/p24-b-pre-campaign-ads-bong-gobrmarcos-roxas-roque-top-spenders>> accessed 10 February 2021.

50 1987 Constitution, Article XI, Section 17.

51 *Casimiro v. Rigor*, 749 Phil. 917, 929-930 (2014).

52 RA 7166, Section 14.

actions if elected to office.”⁵³ Thus, regardless of the elections’ results, candidates or parties are required to file their SOCE with the COMELEC, even in contexts where they did not receive any contribution or spend on their campaign.⁵⁴

The Philippine Congress continues to tackle the issue of outdated and unreasonably low campaign expenditure limits. Amid the Covid-19 pandemic lockdown last year, hope sparked anew as the House of Representatives approved on third reading a measure proposing an increase in candidates and political parties’ electoral spending limits.⁵⁵ These limits were made in consultation with the Bangko Sentral ng Pilipinas, the National Economic and Development Authority, and the Philippine Statistics Authority.⁵⁶ This bill further requires the COMELEC to adjust the amount of authorized election campaign expenses every six years based on the inflation rate and consumer price index.⁵⁷ While this is a positive step forward, it is critical to determine whether these proposals address both the gaps created by laws and the poor implementation of campaign finance; otherwise, these will only continue to create democratic deficits and promote exclusion.

3.2. Prohibited campaign contribution sources

In the Philippines, regulatory measures exist to prevent conflicts of interest between political aspirants and powerful or wealthy donors. Disclosure requirements contribute to ensuring transparency and encourage candidates to accept only legitimate funding sources because these can be scrutinized or verified by the public.⁵⁸

Aside from being an election offense, soliciting and receiving prohibited campaign contributions are also grounds for disqualification under Section 68 of the OEC. The prohibition includes campaign contributions made by foreign governments and their agencies. It is constitutionally enshrined that such contributions shall be seen as constituting interference in national affairs.⁵⁹

The prohibition against soliciting or receiving political donations or contributions from certain kinds of persons or companies are listed in Section 95 of the OEC, which includes any direct or indirect contributions by public or private financial institutions; natural and juridical persons operating a public utility or in possession of or exploiting any nation’s natural resources; entities holding contracts or sub-contracts to supply the government with goods or services or to perform construction or other works; or who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government; and those granted government loans or other accommodations, among others.

Further, laws and policies that substantially impact campaign finance scope and coverage, but are not traditionally associated with election law or campaign finance, include recent amendments to the Corporation Code in 2019, which enable domestic corporations to donate to candidates and parties during elections.⁶⁰ The full impacts of this revision will most likely be

⁵³ Buckley v. Valeo, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (per curiam); cited in Ejercito v. COMELEC, G.R. No. 212398, November 25, 2014.

⁵⁴ See *Pilar vs. COMELEC*, G.R. No. 115245, 11 July 1995)

⁵⁵ David Tristan Yumul, ‘House Approves Bill on Increasing Candidates’ Campaign Expenditures Limit’, *CNN Philippines* (no date) <<https://www.cnn.ph/news/2020/6/2/House-approves-bill-on-increasing-candidates--campaign-expenditures-limit.html>> accessed 10 February 2021; Mikee Cervantes Filane, ‘Bill Raising Spending Limit for Candidates Gets House Nod’, *Philippine News Agency* (1 June 2020) <<https://www.pna.gov.ph/articles/1104576>> accessed 21 January 2021.

⁵⁶ Filane (n 54).

⁵⁷ *ibid.*

⁵⁸ Cigane and Ohman (n 6).

⁵⁹ 1987 Constitution, Article IX, Section 2.

⁶⁰ Patawaran (n 30).

seen in the upcoming 2022 general elections in the Philippines.

The legal framework governing tobacco control in the Philippines, drawing from the first global health treaty, the WHO Framework Convention on Tobacco Control (FCTC), and the Civil Service Commission-Department of Health Joint Memorandum Circular, which provides a blanket prohibition to tobacco industry participation and sponsorships, including a ban on political contributions and donations.⁶¹ The aim is to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of tobacco control policies. Based on Article 5.3 of the FCTC and additional policy commitments by the Philippine government, even with the relaxing of the rule on corporate donations in Revised Corporation Code 2019, tobacco corporations, whether domestic or foreign, are not legally allowed to make campaign contributions, nor could these be accepted by candidates, more so when they are also holding public office.

4. RECOMMENDATIONS AND FUTURE RESEARCH

In *Chavez v. COMELEC* (1992), the Supreme Court reiterated the significance of equal opportunity to “proffer oneself for public office, without regard to the level of financial resources” on public interest grounds.⁶² While a well-financed campaign does not, on its own, always guarantee electoral victory, there is ample evidence in the Philippines and elsewhere⁶³ that access to campaign funding helps scale-up the quantity and intensity of campaign activities, and convey messages to a broader voter base. The ability of a candidate to run political advertisements, maintain social media sites and ‘boost’ and sponsor posts,⁶⁴ employ staff and volunteers, and support door-to-door canvassing efforts; or, on the manifestly illegal side of the spectrum of actions and norms, engaging in vote-buying and bribery,⁶⁵ can turn the electoral tide even for candidates facing, or who have faced, charges of plunder, graft and corruption, and other criminal offenses involving misuse of public funds.⁶⁶

Thus, this section addresses the last question of the WPR approach enumerated earlier in this paper. It aims to envision strategies that can be used to question, disrupt, and address challenges to electoral integrity, political participation, and representation. The assumption is that setting realistic spending limits according to what candidates can presumably afford benefits those with limited finances and redistribute power away from the entrenched elites.⁶⁷ By exploring how equal access to opportunities for public service is problematized, and examining the challenges arising from issues on campaign expenditure limits and prohibited campaign contribution sources, we can see the importance placed on accountability and transparency.

61 K Alechnowicz and S Chapman, ‘The Philippine Tobacco Industry: “The Strongest Tobacco Lobby in Asia”’ (2004) 13 *Tobacco Control* ii71; Allan Chester Nadate and others, ‘Characterising Tobacco Industry Interference Tactics in the Philippines towards Preemptive Advocacy and Policy Design’ (2018) 4 *Tob Prev Cessation*.

62 *Chavez v. Comelec*, 211 SCRA 315 (1992).

63 Marañon III (n 44); Mangahas (n 49).

64 John Rieger, ‘Social Media: A Game Changer in Philippine Elections’ (*The Asia Foundation*, 27 April 2016) <<https://asiafoundation.org/2016/04/27/social-media-a-game-changer-in-philippine-elections/>> accessed 20 January 2021.

65 See Amer Laut and others, ‘Graft and Corruption Practices Among Selected Public Officials in Mindanao, Southern Philippines’ (2013) 4 *Journal of Government and Politics* 237. Southern Philippines (n 8217) (2013)

66 ABS-CBN News, ‘Revilla Credits Plunder Acquittal, “Budots” Ad Campaign for “Magic 12” Ranking’ (*ABS-CBN News*, 17 May 2019) <<https://news.abs-cbn.com/news/05/17/19/revilla-credits-plunder-acquittal-budots-ad-campaign-for-magic-12-ranking>> accessed 20 January 2021; Nathan Gilbert Quimpo, ‘THE PHILIPPINES: Political Parties and Corruption’ [2007] *Southeast Asian Affairs* 277; Laut and others (n 65). THE PHILIPPINES: Political Parties and Corruption (n 8217) [2007] *Southeast Asian Affairs* 277; Laut and others (n 65)

67 Reyes (n 44).

Current bills in Congress should not be allowed to languish as these can help counter political monopolies and anti-competitive behavior, and close the loopholes created by the absence of proper auditing mechanisms and poor enforcement of penalties for violations.⁶⁸ However, more than a fair, accountable, and equitable formula for setting these expenditure limits, there should also be a heightened focus on ensuring laws are implemented, compliance is monitored, and whether disclosures are comprehensive and accurate.

This paper also surfaces new avenues for future research. Specifically, it is important to assess the extent to which commitments and other international standards for democratic elections are reflected in Philippine campaign finance law and policy. Additionally, deeper applications of Bacchi's 'WPR' approach to problematizations of expenditure limits and prohibited sources of contributions can focus on how campaign finance regulations to promote gender equality and women's participation. Most campaign finance regulations, including from the Philippines, have not been formulated with gender equality and women's participation considerations.⁶⁹ Instead, it has focused on (theoretically) reducing the advantages of powerful and wealthy candidates. However, in practice, and as discussed in this paper, elites continue to dominate electoral contests in the Philippines.

A way forward is to build the evidence base that will support law with specific provisions on campaign finance and gender equality,⁷⁰ including proposals from the Philippine Commission Women to create a women's campaign fund for aspiring women candidates, especially those belonging to marginalized sectors.⁷¹

5. CONCLUSION

This paper contends that challenges to electoral integrity, accountability, and transparency in campaign financing are not solely due to ineffective implementation and enforcement. The WPR approach informs us how existing policy interventions or responses to what the law identifies as problematic (or not problematic) can also entrench elite power and replicate uneven power dynamics evident in Philippine society. Thus, for campaign finance laws to promote, rather than block, political participation and representation, additional attention must be given to the assumptions, policy gaps, and silences that give rise to anti-competitive, corrupt, and disempowering practices and norms.

An assumption weaving across Philippine campaign finance law and policy is that a mode of leveling the political playing field is by setting spending limits according to what less-moneyed candidates can presumably afford. Law and jurisprudence show that the rationale is straightforward: the State is charged with safeguarding people and parties' ability to run for public office "without regard to the level of financial resources" as a matter of public interest. However, in practice, failure to account for realistic limits, lack of transparency, and weak sanctions for non-compliance with these limits, enable elites to continue dominating electoral contests. Failure to address the gaps in the law, as helpfully surfaced by the WPR approach, means electoral contests will continue to exclude candidates and groups with limited access to funding or political machinery.

On a final note, implementation is not enough. When the law itself creates and replicates unfairness, injustice, and avenues for corruption, the constitutional aim of ensuring equality of opportunity for parties and candidates will be perpetually at risk. The resulting analysis from the WPR is useful for outlining avenues for future law reform and

68 Marañon III (n 44).

69 Cigane and Ohman (n 6).

70 *ibid.*

71 Philippine Commission on Women (n 22).

policy advocacy efforts, such as the pending bills in Congress, and inviting the imagining of alternative and inclusive proposals.

The ability to run for public office should not be predicated on financial influence and resources. The challenge now is to ensure proposed strategies and interventions will lead to more balanced and equal political participation, which can only occur when we remove the stranglehold of money in determining electoral success.

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