

Facebook Election: The Effect of Social Media on the 2016 Elections

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#ChangeIsComing¹

In the 2016 Philippine Elections, the social media was the lifeblood of information dissemination, which is why many deem it to be the first social media election.² With over 49 Million active facebook users, election candidates took a page out of The Playbook and applied the Lorenzo Von Matterhorn³ using facebook, twitter, and other online accounts as a new form of personal marketing, making deep emotional connections with followers, and tweeting their way into public service⁴. Through social media, election candidates were able to reach a wide population of possible voters and were able to influence their decisions at a low cost, and at times at no cost at all which changed the traditional way of campaign elections. Facebook has helped voters to be prepared about the coming election and it has deepened their political involvement in the process.

However, the effect of social media cannot be said to be purely beneficial. Social media has been a source not only of information, but also misinformation, harassment and discrimination under the guise of freedom of speech and expression. But it is not just the candidates who are being the subject of harassment. On March 22, 2016 Renee Karunungan posted a meme describing now president elect Rodrigo Duterte as a “lazy choice” which went viral. It garnered 13,000 reactions and 4,000 shares.⁵ As a result she received death threats and other forms of online harassment. Under the declaration of principles of the Fair Election Act⁶: *“the State shall ensure that bona fide candidates for any public office shall be free from any form or discrimination and harassment.”* – The issue that heretofore arises is whether the use of social media as a tool for election propaganda is violative of the Fair Election Act, and whether the prohibition against discrimination and harassment is limited only to bona fide candidates.

Philippine Fair Elections Act

The rising popularity of social media during elections as an effective tool for promotional political activities poses new challenges to the existing regulatory framework. A major advantage of social media over traditional media is its potential to reach a large mass of people instantly at almost any time with negligible cost. Messages posted on social media can be multiplied when shared, and this multiplying effect allows candidates who are subject

¹ This was the campaign message of the Duterte-Cayetano tandem, available at <http://asianjournal.com/lifestyle/change-is-coming-a-warm-welcome-to-the-newly-elected-ph-president/>

² Social Media: A Game Changer in Philippine Elections; by Maria Isabel T. Buenaobra; April 27, 2016; asia foundantion.org

³ A play originally designed to lure women to sleeping with men by generating a series of websites devoted to the incredible life of the man’s fake persona which is uploaded to the World Wide Web [Barney Stinson’s The Playbook; The Lorenzo Von Matterhorn, p. 78]

⁴ The April 24 presidential forum generated over 1.9 million tweets using #PilipinasDebates2016, the highest engagement on Twitter for a presidential debate this year.[Social Media: A Game Changer in Philippine Elections; by Maria Isabel T. Buenaobra; April 27, 2016; asia foundantion.orgs]

⁵ Anti-Duterte voter files a complaint vs. Internet Bullies; Voltaire Tupaz; May 2, 2016; Rappler

⁶ Republic Act No. 9006

to restrictions on election spending to communicate faster and easier but at a much lower cost.⁷ However, despite said benefits, the increasing use of social media such as Facebook, Twitter, personal blogs and video-sharing sites during elections raises serious concern as to its regulation. The Commission on Elections (COMELEC) has been pressed with controversial issues on regulation of social media campaigning without crossing the line of freedom of expression.⁸ Also, question such as whether or not social media use constitutes as violation of Fair Election Act now comes into picture. In this paper, we stand on the negative.

The passage of the Republic Act (RA) 9006, an act otherwise known as the Fair Elections Act, on 12 February 2001 aims to supervise or regulate the enjoyment and utilization of all franchises or operation of media communication to guarantee or ensure equal opportunity for public service including access to media time and space.⁹ While the passage of the “Fair Elections Act” was enacted to ensure free, orderly, and credible elections, the Comelec is now facing another dilemma now brought by the rise of digital age. How the Comelec monitors and at the same time limit the use of the aspiring public servants the resources available on social media for their campaign became pressing ordeals that needed to be resolved.¹⁰

Although digital media could fall under the catch-all phrase “all other forms of election propaganda not prohibited by the Omnibus Election Code or this Act,” the campaign regulations focus on radio, TV and print media. Broadcast ads are regulated on the basis of airtime, and print ads on the basis of size and frequency of release.¹¹ The law is silent as to social media campaign. This may be used by some politicians to their advantage while circumventing the law on Fair Elections Act to the detriment of other candidates who may be financially challenged.

In an attempt to cover online campaign ads, the Comelec provided for some safety nets and issued COMELEC Resolution 9615¹² on January 15, 2013 and Resolution 10049¹³ on February 1, 2016.

Under the auspices of the Fair Elections Act or Republic Act 9006, new online campaign regulations, specifically on direct online advertising is now in place nationwide. Resolution 9615 contains in very specific detail all the implementing rules and regulations. It covers both donated advertisements as well as those paid for by the bona fide candidates themselves. There are also provisions on online campaigning through blogs and micro-blogs, and sharing of opinion through social networking platforms. For example, online propaganda may only be published three times a week at the most per website.¹⁴

⁷ Cheung, C. & Leung, A. (30 October 2015) “Regulation Of The Use Of Social Media In Election In Selected Places.” Research Office Legislative Council Secretariat.

⁸ Santos, T. (November 8, 2015). “Comelec Eyes Profit From Cyber Campaigns”. Inquirer. Retrieved from: <http://newsinfo.inquirer.net/737873/comelec-eyes-profit-from-cyber-campaigns#ixzz4Bid4dv4q>

⁹ R.A. 9006, Sec. 2.

¹⁰ Pates, K. (November 15, 2015). “Social Media and Elections”. Sunstar. Retrieved from: <http://newsinfo.inquirer.net/737873/comelec-eyes-profit-from-cyber-campaigns#ixzz4Bid4dv4q>

¹¹ Habito, C. (June 2, 2016). “Social Media As Campaign Tool.” Inquirer. Retrieved from: <http://opinion.inquirer.net/95036/social-media-as-campaign-tool#ixzz4Bij058F9>

¹² Rules And Regulations Implementing Republic Act No. 9006, Otherwise Known As The “Fair Elections Act”, In Connection With The 13 May 2013 National And Local Elections And Subsequent Elections. January 15, 2013.

¹³ Rules And Regulations Implementing Republic Act No. 9006, Otherwise Known As The “Fair Elections Act”, In Connection With The 09 May 2016 National And Local Elections. February 1, 2016.

¹⁴ Regulating online campaign with COMELEC Resolution 9615. (February 8, 2016).

Resolution 10049 also provides rules for ad sizes and frequency of online publication. Online advertisement, whether procured by purchase or given free of charge, shall not be published more than three times a week per website during the campaign period. For this purpose, the exhibition or display of the online advertisement for any length of time, regardless of frequency, within a 24-hour period, shall be construed as one instance of publication. Broadcast programs which are the main content of online streaming or video website pages shall not be considered online election propaganda.¹⁵ However, in recognition of freedom of expression, the resolution exempted anything that fell “within the scope of personal opinion” from the definition of election propaganda subject to regulation. The Commission on Elections (Comelec) has maintained that it will not regulate the use of social media as potential medium of campaign in the 2016 elections by reason of online accounts being “personal spaces.”¹⁶

While noting that the use of social media is free, Jimenez, Comelec spokesperson, said that the poll body is mainly concerned on the cost of campaign material being uploaded online, as these may be included in a politician’s total cost of campaign.¹⁷ Concern about sharing of election messages via social media by any individual or group, or any feedback or commentaries generated thereof should be deemed as publication or distribution of election advertisements and hence any expenses so incurred by the individual or group should have the prior authorization from the candidate or his agent and be counted towards the candidate’s expense limit.¹⁸ Indeed, although using the online world as a distribution network has to be free, but the cost that comes with producing online election propaganda may be counted as part of campaign expenses.¹⁹ Cost could include several and many things from Internet real estate – like websites, design, hosting, and management services; consultants; digital influencers; event organizing and even advertorials through bloggers, twitters and almost anyone in Cyberspace.²⁰ Accounting all of them properly irrespective of the fact that the materials are placed online, boils down to the ultimate goal of keeping things in check and leveling playing field.

Recommendations

As society continues to immerse itself deeper into the “digital age” social media is no longer a simple medium for expressing ones own ideas and political beliefs. Given the accessibility and anonymity that sites such as Facebook, Twitter and Instagram generally provide, social media may be used as a tool to evade the otherwise strict regulations imposed on politicians during the campaign. While existing regulations provide limitations regarding online publications, the rules are not so broad as to encompass the advertisements that appear on social media accounts especially because COMELEC has expressed its unwillingness to regulate social media, dubbing it as relating to “personal spaces”. However, it is common knowledge that companies have already been taking advantage of social media as a tool to reach a wider audience by paying the website a particular amount so that the users are compelled to see their advertisement on the screen. The ease with which an individual can do this allows

¹⁵ Comelec Resolution No. 10049, Sec 9(c),

¹⁶ Habito, C. (June 2, 2016). “Social Media As Campaign Tool.” *Inquirer*. Retrieved from: <http://opinion.inquirer.net/95036/social-media-as-campaign-tool#ixzz4Bij058F9>

¹⁷ Gonzales, Y. (November 10th, 2015). “Comelec won’t regulate social media campaigns, but...”. *Inquirer*. Retrieved from: <http://newsinfo.inquirer.net/738410/comelec-wont-regulate-social-media-campaigns-but>

¹⁸ Cheung, C. & Leung, A. (30 October 2015) “Regulation Of The Use Of Social Media In Election In Selected Places.” Research Office Legislative Council Secretariat

¹⁹ Comelec: Policing poll ads on FB, Twitter difficult. ANC News. Retrieved from: <http://news.abs-cbn.com/halalan2016/nation/v1/02/10/16/comelec-policing-poll-ads-on-fb-twitter-difficult>

²⁰ Sonido, J. (January 29, 2013). “Social Media and the Elections: Comelec Resolution No 9615”. Baratillo Pamphlet. Retrieved from: <http://baratillo.net/2013/01/social-media-and-the-elections-comelec-resolution-no-9615/>

politicians the luxury of simply paying the website to ensure that their ads or propaganda will be seen by its users. Considering the sheer number of individuals who use social media today, the politician will thus be able to disseminate his platform and garner support by posting online and by paying less than he would if he had advertised in regulated mediums such as print or television ads. The problem arises from the fact that since these ads appear on social media, they can be done under the guise of “personal opinion” and the ads can be made to appear as if they were made by mere supporters and not by the politician’s actual campaign team. Through this, the campaign team may effectively circumvent the rules regarding the limitations on expenses.

Thus, the researchers recommend that COMELEC broaden the scope of the above-mentioned resolutions to specifically include advertisements that were posted on social media. The COMELEC may delineate online activity that can properly be classified as personal opinion as against the paid political ads that intermittently appear on people’s “home page/s” or “news feed/s” regardless of whether or not they follow the politician involved. In order for COMELEC to correctly determine the overall expenses paid by each politician, it is imperative that it regulates expenses for social media as this has proven to now be an integral part of every campaign trail. It should thus specifically require in its resolutions that the politicians declare the expenses paid, if any, for the use of social media as a medium for promotion, propaganda and/or advertisements. The standards imposed regarding television and print ads should likewise be applied to social media ads such as the size and frequency of release.

Further, the researchers submit that a specific and detailed procedure be implemented by COMELEC for the specific purpose of verifying the afore-mentioned expenses. For example, the COMELEC may require direct confirmation of the declared expenses from the sites themselves, without which the politician may be reprimanded and penalized. It may also require certification from the politician that he shall not use social media as a means of paid promotion and advertising under the guise of any other private citizen or corporation, under pain of penalty. The penalties for violations of the expense limit or the non-compliance with the verification and/or certification may be adopted from the existing penalties in the Fair Elections Act and from the above-stated resolutions of COMELEC.

Conclusions

All told, the researchers have found that the existing regulations that govern social media vis-à-vis elections are sparse and leave much room for circumventing the other regulations that are presently in place. Given the fact that social media is not directly addressed by the rules themselves, the most important step to be taken is to provide a strictly demarcated procedure whereby COMELEC may effectively uphold the existing regulations covering elections such as expense limits and prevention of harassment. However, it must also take into consideration the freedom of speech of individuals and must take pains not to infringe on their right to express their views on their own social media accounts. The result of imposing a procedure to regulate paid promotion, propaganda and advertisements will serve to maintain the equal playing field that the COMELEC seeks to establish amongst candidates and to promote the state policy which ensures that bona fide candidates for any public office shall be free from any form of discrimination and harassment.