

**Prof Thio Li-ann (Nominated Member)**

**Dr Loo Choon Yong (Nominated Member):**

Mr Speaker Sir, I beg to move

PARLIAMENTARY ELECTIONS: That this House affirms the importance of representative democracy and calls on the Government to fine-tune the electoral system by introducing amendments to the Parliamentary Elections Act such that (a) a writ for by-election shall be issued in the event (i) a Member of a Group Representation Constituency (GRC) belonging to a minority community within the terms of section 8A(1) of the Act vacates his or her seat for any reason; (ii) half or more of the Members elected on a group basis in relation to a GRC vacate their seats for any reason; or (iii) a Member of a single member constituency vacates his or her seat for any reason; and (b) all by-elections shall be called within 3 months from the date of vacancy unless the parliamentary term is due to expire within 6 months from the date of vacancy.

***Democratic Values are at the heart of this debate over by-elections***

1. Mr. Speaker Sir, I am recently come out of Africa where I attended a conference on “Constitutional Democracy in Africa in the 21<sup>st</sup> century”. The Kenyan President and Prime Minister graced the opening ceremony. Aside from the spirited dancing and ululating by a native choir, I was struck by the lyrics of the official conference theme song. Harmonising voices filled the towering Kenyatta International Conference Centre, singing for “prosperity, peace and unity,” the goal of many former colonies in Africa and Asia, aspiration not always actualized.
2. The chorus arrested my attention, as it spoke to the very heart of today’s motion which addresses the law governing by-elections in Singapore. The choir chimed repeatedly “We must, we must, embrace democracy and the rule of law.” Charming lyrics I thought, perhaps the government can commission a national song along these lines celebrating shared political values.
3. Sir, how we think through the question of what type of rules should regulate by-elections is shaped by the theory and practice of democracy in Singapore.
4. Today, democracy has the quality of an almost sacred creed whose central tenet is that government authority is based on the will of the people, as article 21 of the Universal Declaration of Human Rights declares. Elections as a method for choosing government are a sacred ritual though democracy is not exhausted by elections; the participation of citizens in public policy-making in between elections is also an important democratic indicator.
5. Democracy as ideology is easy enough to grasp although it does not prescribe a uniform ‘off the rack’ solution in terms of implementation; the institutional expression of democracy must

be tailor-made to suit the relevant local conditions of a country; you must put on the trousers that fit you.

6. However, there are universal core democratic principles like popular accountability, effective representation and legitimacy, which we should take to heart. For example, when we tailor-make a suit, we should ask: who wears the suit? In a democracy, this must be the people, as the ultimate source of political authority. The People's representatives derive their authority and legitimacy from voters and are accountable to them.
7. However, democracy is not a panacea for all social ills or a blueprint for surefire economic success. Economic development is not born of pretty speeches. This needs both principles of good government as well as good governors. Providentially, Singapore has enjoyed good governance.
8. On 12 September 1965, when newborn Singapore was barely out of her swaddling clothes, Prime Minister Lee Kuan Yew said: "Over 100 years ago, this was a mud-flat, swamp. Today this is a modern city. Ten years from now, this will be a metropolis. Never Fear." Sir, he made good on this prophetic promise; this government has delivered the socio-economic goods. We, the Beneficiaries, are grateful.
9. Law and the finest constitutional devices that mind of man can conceive of and hand of man can create have their limits. We cannot legislate honest, capable governors into existence. As a political system, democracy alone cannot engender social resilience and economic success. It is not an ultimate value. Indeed, Winston Churchill famously quipped "Democracy is the worst form of government, except for all the others."
10. However, democracy is better than autocracy, where the people cannot remove a despotic, corrupt and inefficient government. A functioning democracy has "the capacity for self-correction". Karl Popper in *The Open Society and its Enemies* said: "In a democracy, the rulers can be dismissed by the ruled without bloodshed."
11. Despite its occidental roots, we value the role democracy plays in good government; article 2 of the ASEAN Charter espouses the promotion of human rights, social justice, rule of law, good governance and "the principles of democracy and constitutional government". The 1991 shared values white paper states that "not everything Asian is good, just as not everything Western is bad"; among the "Western" values Singapore adopted are "parliamentary democracy and the rule of law."
12. This approach to foreign models is sensible – they may provide useful models to emulate or to reject. We must be discerning: what counts is not the origins of an idea but its merits. As PM Lee observed when debating the NCMP scheme in 1984, the Chinese Emperor's mandate

to rule did not rest on the “counting of heads” but “on the chopping of heads.” Thankfully, we have disavowed this cultural model.

13. From this Republic’s inception, the political leadership endorsed democracy as a principle of government and bulwark against the communists. Our Constitution today, based on the Westminster model of parliamentary government, is a foreign export with home-grown modifications, such as multi-member constituencies and unelected, non-partisan MPs.

***The Original By-Election Clause and its Removal in 1965***

14. Sir, this motion draws attention to when by-elections must be held, to fill vacant parliamentary seats between general elections.
15. Historically speaking, Singapore used to have a by-elections clause in its Constitution, the genesis of which dates back to the time we were part of the Malaysian Federation. The Malaysian government required that the federal constitutional clause on by-elections be incorporated into the Singapore State Constitution, to harmonise Singapore law with that of the other federal states. Singapore protested, to no avail.
16. After our traumatic exodus from the Federation, Parliament amended the Constitution, revoked the Malaysian provision on by-elections and reverted back to the previous state of affairs under the 1958 state Constitution which “did not contain an injunction of holding a by-election within 3 months.” PM Lee stated that given Singapore’s experience of elections and government, the limitation imposed by the Malaysian clause should no longer apply.
17. Undoubtedly, this view was shaped by the PAP government’s tenuous hold on power then. In 1961-1962, the PAP only had a majority of one in the legislative assembly; in 1962-1963, one PAP member died, resulting in a tie between 25 PAP and 25 Opposition assemblymen. In such situations, by-election results can determine the fortunes of a political party, for good or ill.
18. Sir, under the current legal framework - there is no constitutional or statutory requirement to call by-elections within a specified time period, or at all, when a parliamentary seat of any elected MP is vacated. The regulating statute, the Parliamentary Elections Act was adopted pursuant to article 49(1) of the Constitution. Section 24(1) of the Act provides that the President shall issue writs of election, when he thinks it “expedient”. In actual fact, following Westminster convention which article 21(1) of the Constitution codifies, the President is acting on the advice of Cabinet in this matter.
19. Thus, the Cabinet alone decides whether to call or not to call a by-election. If desired, the Cabinet can keep a vacant seat vacant until the next General Election. This is clear law.

20. This motion, then, is not about the correct interpretation of the law. The law is clear - but we should not succumb to bare legalism and stop here. Rather, this motion calls for a reexamination of the content of the law, to see if any legal gaps need filling or to explore ways to strengthen existing processes to better vindicate the practice of representative democracy.
21. Comparatively, parliamentary systems have adopted various approaches towards regulating by-elections. Some constitutions require by-elections to be held within a specified time period after a parliamentary seat is determined vacated. This may range from 6 months (Canada) to 4 Months (Antigua) to 3 months (Zambia, Gambia) to 2 months (Kenya and Malaysia) to 21 days (New Zealand).
22. Other Constitutions like the Bahamas do not specify time limits but call for the issuance of writs of election "as soon as is practicable." Expediency alone is not reason enough for failing to hold by-elections.
23. Elsewhere, a political convention drawn from past practice provides guidance in the absence of legal rules. In the United Kingdom, a writ of election will usually be executed within 3 months. In the Australian commonwealth, the guiding principle is that by-elections should be held 'as early as possible,' so electors are not left without representation any longer than necessary.
24. Sir, there is no discernible consistent convention from an examination of Singapore practice. The last by-election was called in 1992 for Marine Parade and the ostensible reason was to bring in new talent. Varied reasons for not calling by-elections included the promise to call early general elections, the need to focus on economic recovery, or to await pending laws on town councils.
25. I believe Mr. Chiam See Tong argued in 1986 that by-elections should be held before a reasonable time had elapsed; the ministerial reply was that this was a question of government discretion.
26. Should principle or convenience determine whether and when by-elections are called?

***Rules or Discretion? The Regime Governing By-Elections***

27. Sir, the question before us is whether the calling of by-elections should be governed by a rules-based regime, or left to unconditioned discretion. Should we continue to confide absolute discretion to our political leaders, trusting in their perspicacity, their sagacity? Would it be unwise to trust in the audacity of hoping politicians will resist partisan temptations and that fair play will triumph? I fear it may, I fear it might, I hope we can put things to right. I think the best legal tool, is to adopt a clear rule.

28. Sir, in urging the Parliamentary Elections Act be amended to provide a time frame for calling by-elections, I am not calling for an absence of discretion but the regulation of discretion, consistent with a rule of law based state. Absolute discretion too easily degenerates into arbitrary abuse without oversight. The rule of law is served where precise rules able to guide future behaviour are known; A political party able to unilaterally decide when to have an election is advantaged; clear rules help level the electoral playing field.
29. In suggesting that by-elections be called within 3 months, Singapore would be following best practices, to ensure citizens do not have to wait too long to choose their representatives. However, if a seat becomes vacant when general elections are due within 6 months, the recommendation is that no by-election need be called, to avoid having two elections within a short time period.
30. In our legal system, the rule of law is pivotal to sustaining a sound commercial environment. It seems incongruent not to have a precise rule regulating the calling of by-elections which can shape the composition of this very House, within a fixed period, to promote certainty. . It may be expedient not to have such a requirement, but does this not allow pragmatism to trump principle, just once too often? Our Court of Appeal in defining the rule of law declared that “all power has legal limits.” Time limits are a form of legal limit.
31. Some argue that by-elections are a waste of time and cost, a distraction or luxury we can ill afford; in multi-member constituencies especially, other team members can stand in or ‘cover’ for their erstwhile colleague. However, in single member wards, a glaring gap is evident when a parliamentary seat is vacated. Without by-elections, electors are left without representation in Parliament. This is undesirable.
32. In addition, having progressed from third to first world, we are thankfully not a poor country. I don’t think cost can be said to be an issue, as far poorer countries regularly hold by-elections.
33. Sir, it is important for Parliament, in debating by-elections legislation, to examine the spirit behind the law, otherwise we might miss the wood for the trees if the purpose of rules are glossed over. As Russian Nobel Prize laureate Alexander Solzhenitsyn stated in an address at Harvard University in 1978: “A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society.” Thus, legalism begets “an atmosphere of moral mediocrity, paralyzing man’s noblest impulses.”
34. In other words, law and justice have to be in conversation with each other, because alone, one may be too harsh, and the other, too redolent of utopian naïvete.

35. I note that Mr. Charles Chong in an interview with Today considered it “worthwhile” to go through the arguments again, since many had forgotten them or a younger generation would be unfamiliar with reasons given during the last century.
36. However, I hope this debate transcends the mere rehearsal of old views, which would not add value to the issue.
37. Sir, Thomas Jefferson once stated that each generation should have a “revolution”, not in the sense of a violent break from the past, as we may understand it, but a thoughtful recurrence to fundamental principles of government, to ratify what is good and worthwhile in the system and to make necessary alterations. In this spirit, I hope the government will seriously rather than summarily revisit the issues raised in the motion.
38. Sir, I am sensible of the irony of having two unelected MPs sponsor a motion concerning elected MPs, as public interest over by-elections has been sparked following the loss of a Jurong GRC MP last month.
39. Politically speaking, what can be more fundamental to democratic society than ensuring effective representation? Dr. Loo and I believe the law regulating by-elections is important to Singaporeans and that this national issue should be debated before this august chamber, this August. After all, elections have come to symbolize ‘democracy’ and voting is the periodic exercise of that slice of sovereignty a citizen wields, to remind governors they hold power on trust and to dissuade authoritarian hubris.
40. It is appropriate for non-partisan MPs to bring this motion, as a partisan MP wanting to debate by-elections law might be accused of political opportunism. This matter should transcend party politics.
41. In some jurisdictions, winning a by-election can be the first step in the long march to high political office; in others, losing a by-election in a safe seat can trigger off a motion of no confidence in the government.
42. There is no such risk in Singapore today, given the government’s strong electoral mandate. As general elections are far off, the matter can be discussed with sober rationality, with a view to the long-term good rather than short-term partisan gain.
43. Sir, while elections are free, we eventually pay in the results. As by-elections differ from general elections in having little influence on general governance, voters may feel freer to vote against the ruling government and to give the incumbent a bloody nose for whatever political reasons. However, a bloody nose is not a broken back.

44. If the government lost a by-election and up to six parliamentary seats today, its' formal status would not be affected. However, the psychological effect of the government losing a GRC might parallel the significance of Mr. JB Jeyaretnam breaching the PAP's parliamentary monopoly when he won the 1981 Anson by-election. Many a keyboard would be furiously pounded in speculating about future voting trends.
45. Critics have argued that the GRC scheme and expanding team sizes are a strategy to 'fix' the opposition unable to muster sufficient troops to contest GRC wards. In October 1996, Prime Minister Mr. Goh Chok Tong responded by pointing out that GRCs were "objectively", even "scientifically neutral". The issue was who could produce a better team, whether for singles or doubles badminton. Should an opposition party win a GRC, whether in a general or by-election, it would prove Mr. Goh's thesis that the GRC scheme is neutral and indeed, a double-edged sword as 6 seats may be lost in one fell swoop.
46. Voters may either punish or reward the party in power in by-elections, which is their prerogative. They should be trusted to vote responsibly, as befits a maturing democracy. We need to look at the principle of the thing, which is that it would be undemocratic to deny voters their voice through their representative in Parliament. Why not allow a team of sitting MPs to replenish their numbers and also, to earn a mid-term mandate?
47. Even if the government loses a by-election, this is not a total loss; by-elections are a good barometer for grassroots sentiment and can be a wake-up call, an important feedback mechanism; but unlike Meet the People Sessions or REACH, by-elections pack a punch in calling MPs to account. This strengthens representative democracy. The government can take responsive steps to 'sweeten' the ground before General Elections. It is healthy to have a variety of channels, including by-elections, for the accurate communication of local public opinion.
48. Sir, let me turn to the 3 situations the motion identifies and explain the logic behind why by-elections should be called in these instances.

### **# 1 By Elections and Single Member Constituencies**

49. First, in relation to single member constituencies or SMCs. The electoral system used to be based exclusively on SMCs, contested on a first past the post system. When GRCs were introduced in 1988, only 50% of the total number of MPs could come from GRC wards. There were 42 SMCs to ensure that opposition parties unable to field multi-racial teams would not be shut out from electoral contests. In 1988 there were thirteen 3 member GRC teams, yielding 39 MPs. In 1991, the law reduced the number of SMCs to 21 and today, the Parliamentary Elections Act only requires a minimum of 8 SMC seats to ensure SMCs do not go the way of the dinosaur.

50. Voters pick candidates whom they feel can represent their interests. If a SMC seat is vacated – it leaves that ward without representation. There is no one to ‘take over’ or the MP’s functions not only as representative of constituents but as town council chairman. This is a clear lacuna in the law.
51. If a PAP MP from a SMC vacates his seat, perhaps the PAP MP in the neighbouring ward can take over his functions, so, no need to call by-elections, if practicalities are our sole consideration. However, this would not be the case for Hougang or Potong Pasir. Should an opposition ward suddenly find itself without its MP, as a matter of law, the government need not call by-elections until the next General Elections. As a matter of basic fairness, the law should not favour one political reality and should provide for all contingencies, to ensure that voters in a ward are not denied parliamentary representation, do not suffer ‘MPlessness.’
52. In proportional representation or ‘party list’ systems, by-elections are redundant as the next person on the ‘list’ who shares the same party affiliation as the MP who vacates his seat, becomes the new MP. But this is not our system. Formally, we vote for the person, not the party. Therefore, the Parliamentary Elections Act should be amended to require that by-elections be held within 3 months after a SMC seat is vacated. This is fair to both sides and promotes certainty.

## ***# 2 By-Elections and Multi-Member or Team Constituencies***

53. The second situation relates to Multi-Member Constituencies or GRCs which are contested as teams, even though team members act individually and do not vote as a bloc within Parliament. Of course, MPs are subject to party discipline via the Whip.
54. The motion recommends that where half or more of GRC MPs vacate their seats, by-elections should be called within 3 months.
55. In explaining why no by-election was to be held in Jalan Besar in 1999, the official reply was that it was not a legal requirement to hold a by-election when one team member resigns. The rationale was that this was to be fair to other MPs in a GRC, to prevent them from being held to ransom by an MP who may threaten to resign for whatever reason. Should such a situation arise, this would denote a breakdown in party discipline. A maverick MP faces the sanction of being dropped from the team come the next elections, which promotes fidelity to the party. Nonetheless, if a GRC team MP threatens to resign, let him. By-elections will allow that team to replace that MP with a team player.
56. Some may argue that as a ‘package deal’, GRC MPs stand together and should fall together as a team. Thus, when a GRC loses one or more members, a by-election should be called;

since a GRC MP enjoys the security in numbers when contesting elections as a team, he should take the risk of losing his seat when the team is no more.

57. A practical counter-reason may be that a 6 man GRC can still function minus a member. The voters elected that team, minus one, and that team still can function by the remaining members taking on a heavier load.
58. However, when does a team stop being a team? When does teamwork become unacceptably impaired owing to reduced numbers? If you went to see a Beatles concert, it might be bearable if Ringo was missing from the line-up, but would it be the Beatles if John or Paul were absent? One of my favourite rock groups is the Bangles, the female version of the Beatles. I had occasion to see them in concert down under but only 3 of the original 4 Bangles were touring; 3 out of the 4 were good, but 4 out of 4 would be excellent.
59. Since service excellence is a Singapore aspiration, voters from a GRC ward should be served by a fully-staffed rather than short-handed team. This is an important consideration as the reason for increasing the size of GRC teams from 3 to 4 and later 6, was unrelated to the constitutional reason of ensuring minority legislative representation. Instead, it was argued that flexibility was needed to deal with GRCs with growing populations; the intent was to keep the GRC intact rather than breaking it up into smaller wards, while allowing it to be adequately serviced by an additional MP and also, to reap greater economies of scale in town council management.
60. The size of a constituency is proportional to the MP's ability to effectively represent his constituents; size matters, geography and demography count. If a GRC becomes too large, an MP or group of MPs may not be able to effectively represent and administer it.
61. In a nutshell, expanding GRC team sizes was rationalized on the basis that more MPs were needed to serve larger wards with greater number of constituents, to ensure optimal service and sufficient human resources. If you need larger teams to run larger GRCs, it is inconsistent not to require by-elections within a set period where there is a vacancy, which diminishes team strength.
62. When a GRC team loses a member, the current practice is to for remaining GRC MPs to cover the duties of their former colleague. This increases their burden. The preference is for stability, rather than holding by-elections to give voters a chance to exercise their democratic rights, to reaffirm the incumbent team or, to choose another one; at any rate, not holding by-elections may compromise the right of GRC residents to be represented by a full slate of MPs.
63. Sir, in from short sojourn in Parliament, I have come to better appreciate what hard work it is to be an MP; elected MPs have to tend to their constituents' concerns, tussle with bureaucrats,

scrutinize bills, sit on committees, attend public functions; this involves a great sacrifice of time, effort and privacy. Diligent MPs embody the finest ideals of public service.

64. MPs have punishing schedules. Although the Constitution provides for unelected MPs in the form of NCMPs and NMPs, the primacy of the elected MP remains. They play an important role beyond just making up the numbers to form the government. Real power resides in elected MPs, who, unlike unelected MPs, have the power to vote on supply bills or motions of no confidence which can end a government. In 1997, when the government decided that NMPs and NCMPs were no longer eligible to claim allowances for a legislative assistant, the reason was “because their duties are not as heavy and onerous as those of an elected MP. They have no constituencies to look after and they do not represent any constituent.”
65. Given the onerous burden of MPs and the importance of their constitutional role, do we really want them to take on more work and add to their many serious responsibilities? 5 MPs may be able to carry the work of 6, but there will be a strain rather than peak performance; I do not doubt their dedication, but we are all mortal and finite beings, and fatigue will set in at some stage. I am sure we all agree that Singapore citizens deserve the best of their representatives, with a full house and all hands on deck.
66. Furthermore, what if more than one GRC MP vacates his seat? Life is a fragile thing; no one knows for sure how many days we have left; what if there is a tragic plane crash or something and a 6 member GRC loses 2, 3, up to 5 members within a short time frame? Under current law, no GRC by-elections may be called unless all members vacate their seat.
67. Technically, could this not encompass a situation where a 6 person GRC is manned only by 1 or 2 MPs, without legal requirement to call a by-election within a definite time period? If the last man standing does not resign, a writ for by election cannot be issued. Something is awry. This cannot be the original intent, or, is it?
68. The current system is unbalanced because the primary reason for not requiring by-elections to be called when a GRC team is not at full numerical strength is that GRC members should not be held hostage when a dissenting member in their ranks threatens to vacate his seat and provoke a by-election. This only looks at the perspective of GRC MPs in one particular situation.
69. Let me offer another problematic hypothetical: let’s say an opposition party wins a GRC and then loses a team member. What if that opposition party wants a by-election because it desires to have a full team of MPs to serve constituents and to occupy their parliamentary seats, but the government declines to call one? Should they have absolute power in this case?

70. Further, if a GRC team is diminished and no by-election is called, the wishes of the electorate to live in a ward serviced by a full team of MPs may be discounted, even if the remaining MPs are shoulder the additional workload.
71. What if a GRC team wins marginally, performs badly and then some team members quit. Having a by-election requirement is one way of giving the people the opportunity to oust an incompetent team, rather than suffer them until General Elections.
72. To be fair rather than expedient, law must consider and address these hypothetical issues on a principled basis.<sup>1</sup>
73. The current rationale for not holding by-elections within definite time periods when a GRC team loses a member or members, caters to the concern of GRC MPs not to lose their seats, in a lop-sided fashion. A more balanced approach would considers not only the concerns of MPs but of voters. After all, voters in electing GRC teams have to forego some degree of choice as they may like 5 out of 6 MPs while disliking one who fails to represent their views, but they cannot pick and choose as it is a set menu rather than a la carte. So, it's a question of give and take, and both sides should share the load.
74. Rather than the “all stand together all fall together” approach to GRCs and by-elections, a more calibrated approach is proposed; by-elections should be called within 3 months only when half or more GRC MPs vacate their seats, that is, 2 for a 4 man GRC and 3 for a 5 and 6 man GRC.
75. The working assumption is that a team at half-strength cannot adequately manage a GRC, which hurts the voters' interests. To prevent voter alienation, they are given some say in having a new, full GRC team. As Thomas Jefferson noted, “The government is the strongest of which every man feels himself a part.” By-elections can strengthen a sense of stake-holding in matters of government.

### ***# 3 By-Elections and Minority Representation in a GRC***

76. The third situation is where the GRC team MP who vacates his parliamentary seat happens to be the designated minority MP. Sir, if by-elections are not held within a time certain, or not at all, which is now legally permissible, this would defeat the constitutional purpose for having GRCs in the first place.

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<sup>1</sup> One could hold by-elections to fill a vacated seat without requiring the other team MPs to stand down. However, this is not viable in Singapore where GRC MPs are elected as a team and expected to share the same political values and to work together as a team.

77. Article 39A(1) of the Constitution states the GRC scheme was designed “to ensure the representation in Parliament” of member of the minority communities. No specific numbers are stipulated but section 8(3) of the Parliamentary Elections Act provides for approximate race ratios reflecting the factual sizes of minority communities – 60% of the number of minority GRC MPs must be persons belonging to the Malay community while the remaining 40% must belong to “the Indian or other minority communities.”
78. Gandhi once said that “A country should be judged on the basis of how it treats its minorities.” Sir, article 152 of the Constitution identifies “racial and religious minorities” as those groups which the government is obliged to care for, in addition to recognizing the indigenous status of Malays. Singapore has adopted an interesting approach to protecting minorities, who by dint of their numerical numbers, might find themselves perpetually in a numerical minority and shut off from the corridors of power and representation.
79. Sir I have just completed a book project celebrating 40 Years of the Singapore Constitution and sent off a manuscript entitled *The Evolution of a Revolution* to my publishers in England. In my research, I was struck by how solicitous we have been over the question of minorities since Independence. Indeed, in the throes of young nationhood, the Prime Minister considered it important enough in December 1965 to appoint Chief Justice Wee Chong Jin to head a constitutional commission. This was tasked with addressing long-standing minority concerns and to consider “how the rights of the racial, linguistic and religious minorities can be adequately safeguarded in the Constitution”.
80. The Commission’s philosophical approach towards minorities stands in stark contrast with the rationale underlying the GRC scheme which marks a paradigm shift, a ‘sea change into something rich and strange’. Philosophy is not the exclusive language of the Ivory Tower as ideas have consequences and philosophy shapes both law and politics. Philosophy has a more practical dialect and in Singapore then, the philosophy towards minorities actually paralleled the prevalent approach in international human rights law in the 1960s.
81. This focused on the rights of individuals and not group rights, as there was a fear that groups would start demanding greater rights and autonomy and threaten state unity. The memory of Hitler inciting the Germans in North Czechoslovakia to make claims of maltreatment before the league of nations, giving him the opportunity to sweep in as saviour of oppressed Germans abroad, were still fresh.
82. When Foreign Minister S. Rajaretnam, debated the Commission report in this House in March 1967, he spoke from the stream of this philosophy: that if the rights of all individuals are protected, the rights of members of minority groups would be protected, ergo, the interests of minority groups would be secured, without needing minority rights. This was influenced by the melting pot theory, that different races would eventually

assimilate and adopt a homogenous civic identity as citizens united by shared political ideals, rather than divided by primordial blood-ties of race or language.

83. Mr. Rajaretnam noted that the Commission made “very little reference” to specific minorities questions; indeed, the bulk of the 86 paragraphs in the 37 page Report related to the fundamental freedoms of citizens in general. He endorsed the Commission’s view that “in a democracy, there can be no distinction between majority rights and minority rights” only the “equality of rights, the same rights for all”. He thought it was “short-sighted and suicidal” for minorities to clamour for special rights as majorities might make similar claims. Minorities should “stop thinking of themselves as minorities” and “stop acting politically as minorities”. Success would be achieved when “a minority no longer is conscious of the fact that it is a minority”.
84. The only minority-specific proposal the government adopted then was the Presidential Council of Minority Rights which was supposed to vet legislation to prevent differentiating measures. This mainly provided psychological assurance that no group was excluded from the top institutions of power.
85. The government specifically rejected early proposals for the legislative representation of minorities. These included schemes to allow minorities to directly elect minority representatives to a second chamber and proportional representation. The fear was that these schemes would accentuate communalism by promoting race-based voting and would produce weak coalition governments. In a proportional representation system, race-based groups were almost certain to get some seats in parliament, if indeed race-based voting was in fact practiced. By-elections would be redundant as a party could fill a vacated seat with one of its affiliates.
86. The government preferred to stick with the ‘first past the post system organized around single member constituencies. The key point was that race was not to be a factor which shaped the law governing elections; the electoral system would be “non-racial” or colour-blind. Race accentuates division and thus was to be muted to advance the goal of fashioning society on the basis of a multiracial, secular state where none could say “satu bangsa, satu bahasa, satu ugama.”
87. Times have changed. The GRC scheme makes “race” an explicit component in the architectural design of the electoral system. Minorities do not merely want equal treatment or to be assimilated into mainstream society; they want their distinct identity protected. The task became to allow them space to live separate lives while sharing in the common life of the nation.
88. As mindsets shifted in Singapore of the late 1980s, similar rumblings were apparent on the international scene in the post Berlin Wall era, when the end of the Cold War inaugurated the

flurry of many small hot wars. Cautionary tales were drawn from the phenomenon of “balkanization”, postmodern tribalism and resurgent ethnic conflict. Ethnicity could no longer be ignored. The new orthodoxy was that it was important to protect not only the rights of individuals, but the rights of ethno-cultural groups through adopting special measures for their distinct needs.

### ***Beyond Majoritarianism***

89. Democracy is often equated with majority rule; Singapore has moved away from an unqualified majoritarian democracy based on the ‘first past the post model’ of legislative representation: this is the “winner takes it all the loser has to fall” model - its simple and its plain / why should we complain?
90. Well, because the idea of democracy as majority rule is a “counting heads” model which is a limited decision-making model. For example, moral questions cannot be solved by mathematics. In addition, if majorities oppress minorities, social conflict beckons. That is why Constitutions place certain things like entrenched individual rights beyond the reach of majority will.
91. Our Constitution was amended to guarantee minority legislative representation, to ensure all colours of the CMIO rainbow were present in Parliament. This appreciates that democracy must be something more than two wolves and a sheep voting on what to have for dinner even though government authority turns on retaining the confidence of the majority of MPs. The GRC scheme would give racial minorities access to political influence, which the Westminster model of “one man one vote” did not.
92. The thinking behind the GRC scheme was that race played a part in politics and affected voter preference, that younger voters were unawares of the need “to return a racially balanced slate of candidates”,
93. The GRC scheme would correct minority under-representation through constitutionally entrenching the right for all communities to always be represented in Parliament. To run GRC teams, political parties have to practice a moderate multi-racial brand of politics.
94. Race thus has become an overt factor in structuring the electoral process, to ensure a multi-racial Parliament. One can agree that the principle of minority protection through guaranteeing minority legislative representation is essential, while differing of the best means of implementing the principle.
95. I might add that as a doctoral student at Cambridge, I spent many wearying hours huddled over dusty legal tomes with a comforting chocolate croissant and instant Nescafe coffee mix, studying how minorities were protected, from the Middle Ages to our Modern Age. I

am happy to report that schemes protecting the right of minorities to participate effectively in public life and in national and local decision-making accord with best international practices, as set out in the 1992 UN Declaration on the Right of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

96. Nonetheless, the GRC scheme further complicates the idea of representative democracy in Singapore. Who does an MP represent? This is no longer self-evident.
97. Traditionally, one would assume that an MP represents his constituency. However, this is not entirely accurate, given the loyalty MPs owe to their political parties.
98. The ruling party view of representation is that an MP is no mere delegate who simply mouths his constituents' views. Instead, an MP is chosen for his "mature judgment" and "enlightened conscience." This view is commonly associated with Edmund Burke, the great British MP and philosopher who considered that an MP owed his constituents both his "industry" and "judgment", but that an MP should live in the "closest correspondence" with his constituents and to give their concerns close attention. Prime Minister Lee apparently is of the same mind as Burke, having in 2001 described the Singapore brand of democracy as one "in which the people elect the Government and the Government...governs as it judges wise and best" and stands up to defend its judgment.
99. What form of representation accords best with our current ideas about democracy?
100. An elected MP has to represent his constituents in tending to municipal affairs; as an MP of Singapore, he must be concerned with national affairs; as a party member, he has to toe the party line. Now if this MP happens to be the minority MP, he has to carry the concerns of his particular minority community as well. All these have to be balanced.
101. Through the GRC scheme, what is made clear is that the voice of the minority representative should always be present at the parliamentary table, together with opposition and non-partisan voices in the form of the NCMP and NMP scheme. Representation in Singapore entails not ignoring minority concerns.

### ***GRC as Derogation from Article 12***

102. Sir, the GRC scheme actually derogates from article 12 of the Constitution which safeguards equality under the law. Section 42(1) of the PEA maintains the form of 'one man one vote' while section 42(1A) states that a voter in a GRC "shall have one vote and may vote for any one group of candidates...".
103. While voters in GRCs and SMCs each get one vote, these differ in voting strength; the weight of your one vote depends on where you live as your vote may potentially help elect

1, 4, 5 or 6 MPs. This is a form of discrimination based on geographical residence. Clearly, the disparity in individual voting power raises article 12 equal protection concerns.

104. The GRC scheme is thus prima facie unconstitutional. Indeed, its drafters recognised this by appending a notwithstanding clause embodied in article 39A(3). This provides that even if the GRC scheme violates article 12, it is exempt from its application and immunised from judicial challenge. A potentially unconstitutional scheme is thus rendered constitutional. Is this justifiable?
105. Sir, equality is not an absolute value. All constitutional lawyers worth their salt know that aside from the freedom of conscience, no liberty is absolute and can be qualified by compelling reasons. Indeed, article 12(3) provides that the equality clause is restricted as it does not invalidate personal and religious laws.
106. It could be argued that the GRC, by providing for minority legislative representation, is a fulfillment of the government obligation under article 152 to constantly care for the interests of racial and religious minorities. Because the GRC scheme under article 39A serves a purpose under article 152, read harmoniously, the GRC scheme insofar as it is tailored to serve the goal of minority representation is a justified exception to article 12.
107. The importance of the constitutional purpose of the GRC scheme is underscored by the fact that it is immunized from constitutional challenges by a notwithstanding clause, and there are only 2 notwithstanding clauses in the Constitution – the other one is found in article 149(3) which exempts security laws like the ISA from a slew of fundamental constitutional liberties. And notwithstanding clauses should be rare, as they render constitutional provisions, which are presumptively the supreme law of the land, inoperative in specified instances.
108. Given that the GRC scheme as a mechanism for guaranteeing minority representation is important enough to justify derogating from a fundamental liberty, how can there be no legal requirement to call a by-election to ensure that minorities in Parliament are at their maximum strength, where a minority GRC MP vacates his seat?
109. Thus the PEA should be amended to require by-elections when the GRC minority MP vacates his parliamentary seat. This is to ensure that the constitutional purpose, the *raison d'être* for having GRCs, is not thwarted.
110. It has been said before that the GRC scheme does not require a fixed number of minority MPs – this is too imprecise an arrangement. For example, if there are 20 minority MPs and some of these parliamentary seats later became vacant, what quantitative threshold must be crossed before the situation becomes unacceptable? Say, if 25% of minority MP seats

became vacated, leaving only 15 from the original 20? These things should not be left unspecified; the rule of law would be strengthened by specific legal rules.

111. In addition, there is a related issue of the Constitution not specifying the number of minority MPs. If the team sizes of GRC keep ballooning upwards, from the prototypical 3 to a current ceiling of 6, the net number of minority candidates that must be fielded falls. Something needs to be done, to deal with this contingency. The law needs to be tightened up.

### *Conclusion*

112. Sir, the legal regulations by which we choose and legitimate our rulers is an issue of national importance, raised by Singaporeans, for Singaporeans to debate.
113. We are a pragmatic, efficient and rational people, fluent in the language of “deliverables” and “KPIs”; but we are not devoid of soul nor higher ideals; “democracy” is not a foreign tongue to us in a cosmopolitan world.
114. It is healthy to interrogate rationales for laws and processes at regular intervals, to test their cogency. This is part and parcel of authentic intellectual pluralism or viewpoint diversity and reflects the opening up of political space in Singapore, in both the literal ‘can hold demonstrations at Speakers Corner’ and metaphorical ‘dare to disagree’ with political orthodoxy sense. Today’s heresy can become tomorrow’s orthodoxy.
115. The government holds no monopoly on wisdom and while keeping its hand firmly on the rudder, has shown it is willing to consult, hear and assess views and even slaughter sacred cows, if necessary.
116. With filled rice bowls, and a government ever-solicitous of our rice stockpiles, citizens has shifted from concern with needs, to wants, from the tangible to intangible values. This situates today’s motion of how to consolidate representative democracy in Singapore, by ensuring there are no gaps in representation, no democratic deficit.
117. Democracy is not a mere institutional form, its success is predicated on a state of mind. Ideals like constitutional democracy must be written on the heart of governors and governed, if they are not to be paper tigers or parchment barriers. The reason and conscience of citizens need to be engaged on matters of state. We all hold shares in Singapore Incorporated and want it to do well and succeed but we also want the freedom to debate what success is. Beyond economic indicators. All the more, as Singapore opens up, we should not abandon our bearings but be anchored by fundamental values of integrity, civility and decency, to realise the ideals of constitutional democracy and human rights.

118. I hope the subject of the motion will not receive the “if it ain’t broke, why fix it” response. Quite apart from the issue of who decides what is broken, I might say, if you can upgrade, if you have the will and wherewithal<sup>2</sup> why ever not?
119. If there is a flaw in the institutional design, swift correction will inspire confidence in the responsive and responsible quality of government. We want not just a serviceable electoral systems but one that resonates with our innate sense of justice.

***From Politics to law***

120. If this House decides that these proposed amendments are worth legislating, this would place the issue of by-elections beyond the shifting sands of political discretion to the solid rock of legally conditioned discretion. Politics is about power, Law tames power.
121. Nothing can be achieved without people and nothing endures without institutions: good people and good institutions complement each other in building a constitutional state where a basic value is to remind those holding political authority that they are public servants, not overlords.
122. As the line dividing good and evil cuts through the heart of every human being, as Solzhenitsyn observed, we sometimes need rules to restrain our self-interest and worst excesses. Sir, I hope this House will support this motion.

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<sup>2</sup> **Luxury?** Proposed council of state “a luxury Singapore can ill-afford.” Debating constitutional commission report – “*our Republic with its limited resources of incomes, cannot afford the luxury of a two-House system*” entailing annual costs in allowances of “*more than \$100,000 every year.*” Ho Cheng Chon e.g. 21 Councillors, \$500 per month allowances – more than \$100,000 a year: 25 SPR 14 March 1967