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## Electoral Nullification: The Reasons Behind Voting for a Dead Candidate

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### ABSTRACT

Voting for a candidate that is no longer alive at the time of election may be considered a wasted vote. Nevertheless, there are instances in which such a vote means to overcome the legal limitations and choose how to be represented. This article aims to illustrate how such a behavior can be calculated when citizens vote for a dead candidate to nullify an electoral law that they consider unfair. This is driven by what we call electoral process nullification, which is the political equivalent of jury nullification. We use evidence from the local elections organized in September 2020 in a Romanian commune of approximately 3,000 inhabitants. A dead candidate won the elections with 64% of the votes. Our results draw on semi-structured interviews with people who voted for that candidate.

### KEYWORDS

Elections; candidate; nullification

## Introduction

Jury nullification is a court procedure established in the seventeenth century Britain through which a jury refuses to follow the law and convict in spite of all the evidence pointing in that direction (Weinstein, 1993). Used in contemporary times mainly, in the US, this procedure means that the jury does not convict based on a law that it considers to be unjust. The jury assesses the validity or fairness of the law and returns an independent verdict that is not prescribed by that law. This procedure rarely has an equivalent outside the criminal law system. Our paper argues and shows that this concept can have applicability in elections.

We propose the concept of electoral process nullification and we illustrate how this can take place in the special circumstances of a candidate's death two weeks prior to elections, without the possibility to be replaced on the ballot. In this case, the electorate of a local constituency acts as a jury, while their vote for a dead candidate is the action through which they nullify an electoral law that they consider unfair. Voting for a candidate who is no longer alive at the time of election may be difficult to understand in the first place and be considered as a wasted vote. However, things change when considering the legal provisions according to which (a) candidates cannot be replaced after the ballots

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are printed and (b) the victory of a dead candidate leads to the reorganization of elections. This article shows that the electorate considers the legal provision unfair and refuses to choose from the remaining alternatives of living candidates. This concept is different from that of election nullification, which refers to the invalidation of electoral results due to law violation (ACE, 2020). The electoral process nullification proposed in this article refers to voters' choice who use the available legal procedures to annul the results of elections. As such, our concept focuses on the process and not on the procedures.

We bring evidence from the local elections organized in September 2020 in Deveselu, a commune (conglomerate of villages) in Romania with roughly 3,000 inhabitants. The locality has military relevance for the European shield since NATO activated there an \$800 m land-based missile defense station (BBC, 2016). Local elections in Romania are simultaneously organized for the mayor (first past the post) and local council (proportional representation on closed lists). Usually, citizens vote the same party for both offices and that is why the mayor often has strong support in the local council. In 2020, the incumbent mayor – who won his first election in 2012 and then got re-elected in 2016 – died 10 days before the local elections due to hepatitis and COVID-19 infection. The incumbent won roughly 64% of the votes and the elections were reorganized in 2021. In Romania, the candidates for mayor elections are nominated and selected by the local branch of the party with the approval of the central office (Chiru & Gherghina, 2020). The mayors are the prominent political figures of localities – especially in communes and small towns – that are often considered by voters in charge of solving problems. According to the Administrative Code, modified through the Government Emergency Ordinance no. 57/2019, the mayor in Romania ensures the respect of citizens' rights and liberties, enforces constitutional provisions, and applies the law, the Presidential decrees, the Government ordinances and decisions, and the local council decisions.

The following section outlines previous accounts of voting for dead candidates. In the absence of literature seeking to explain such a vote, the discussion reviews newspaper articles referring to similar cases. The third section presents the data and method with emphasis on the case selected for analysis and respondents' profile. The fourth section covers the central arguments of the article and the evidence brought to support it. The conclusions summarize the key findings and discuss the main implications for the broader field of elections and representation.

### Earlier Accounts

Against all odds, dead candidates sometimes win elections. While this is very rare, there are several instances in which candidates passed away before votes were cast and won. One of the most covered topics is the posthumously victory of Mel Carnahan for the Missouri seat in the 2000 Senate elections. He won almost 40 days after he passed away in a plane crash. His wife, who filled in the spot in the Senate until a special election was organized, carried out an emotional campaign on behalf of her late husband (CNN, 2000). However, he was not the first one to gain a seat in Congress after passing away. The California seat in the 1962 Senate elections, and the Louisiana and Alaska seats in the 1972 House elections were filled with candidates who either died in

plane crashes or disappeared and were later declared dead. Another well-known case is that of the late winner of the Hawaii seat in the 2002 House election (Bukspan, 2018).

Late candidates were also successful in local elections. One case covered in the media is that of the incumbent mayor of Winfield, a town in Missouri, who got re-elected for the fourth time in 2009, one month after he died of a heart attack (NBC News, 2009). Similarly, the mayor of Tracy City (Tennessee) was elected after passing away from a heart attack one month before the 2010 elections (Bukspan, 2018). Other well-known cases are the 2010 California State Senate re-election of Jenny Oropeza (Huffington Post, 2011) or the victory of Dennis Hof in the 2018 elections for the Nevada state legislature. More recently, the 2020 elections for the state legislature of North Dakota were won by a candidate who died one month before the vote after being infected with COVID-19 (Armus, 2020).

One reason why many examples come from the US is because the legislation allows the elections to carry on if the candidates pass away. If they win, their party can provide a replacement until special elections are called. In many countries, the death of candidates involves their replacement before the ballots are cast. For example, in the UK, unless the deceased candidate runs an independent, their death results in the election being postponed. The general reasons for which dead candidates win elections are mainly related to their popularity and party endorsement. The popularity has its origins either in good performance in office or in extensive media coverage after death, which sometimes increases their popularity. For example, the murder of Pim Fortuyn before the 2002 Dutch parliamentary elections was covered extensively by the media (Pantti & Wieten, 2005) and very likely contributed to important political support for his party, which was founded half a year before that year's election. Although Fortuyn was not formally running in the election, his name was included in the official label of his party (List Pim Fortuyn). The party got second in the election with 17% of the votes. This takes us to the second general reason for which deceased candidates sometimes win: their parties seek to mobilize the electorate making emotional appeals and focusing on the candidates' achievements or image.

As we illustrate in the analysis section, these two factors contribute to the decisions of voters to support the deceased candidate. However, the picture is more complex and nuanced. It involves a broader calculus – that is often independent from the party and originates in people's beliefs – seeking to avoid the legal constraints. Let us now turn to the overview of the case, legal provisions and brief description of the method of data collection.

## Data and Method

We use evidence from the local elections organized in the Deveselu commune in Romania. The elections took place on 27 September 2020 and were won by Ion Aliman, who was running for a third consecutive term in office. The candidate died 10 days before the elections and according to the Romanian legislation the candidate cannot be replaced once the ballot is printed. According to article 63 of the law regulating local elections (Law 115/2015) the ballot is printed at least 10 days before the election. All ballots were printed when the candidate died and thus the party to which the candidate was affiliated (PSD, Social Democratic Party) could not replace him. The dead candidate

received 1,057 out of the 1,657 valid votes (roughly 64%) in the elections for the mayor (Permanent Electoral Authority, 2020), which are organized according to the first-past-the-post system. For the local council elections, organized in one round according to the closed list proportional representation system, the PSD list of councilors received exactly the same number of votes as the dead candidate (1,057). The distribution of votes at the polling station level is very similar (e.g. in station no. 179 there were 387 votes for Aliman and 377 votes for the PSD), which indicates that it is likely that most people who voted for the mayor also voted for the PSD in the local council elections. However, we cannot know for sure since there is a risk of ecological fallacy, but the matching numbers suggest a high probability of an identical vote.<sup>1</sup> The PSD's landslide victory in the local council elections meant that the vice-mayor was elected from its ranks and served as caretaker until new elections were organized in 2021.

To understand the voters' motivations behind their preference for the dead candidate at the polls, we conducted 25 semi-structured interviews (see Appendix 1 for the guide) with people who voted for this candidate in the 2020 local elections. The respondents were selected using snowball sampling that started with a handful of voters that we knew from previous interactions. The sample was gradually expanded to include respondents with different characteristics in terms of income, education, gender and age (Table 1) until we reached the saturation point. We organized the interviews three weeks after the elections (October 2020) to minimize the incidence of memory bias. The respondents differ greatly in terms of income, education, gender and age (see Table 1). All respondents voted with the PSD for the local council and they all expressed positive emotions

**Table 1.** An overview of respondents' profile.

Respondent	Income	Education	Gender	Age
R1	2,000	College	M	60
R2	2,000	High school	M	48
R3	2,200	College	F	47
R4	2,000	High school	M	66
R5	2,000	Secondary	F	63
R6		High school	F	36
R7	1,500	High school	F	32
R8	4,000	University	M	44
R9		High school	M	40
R10	1,000	Secondary	M	55
R11	1,000	Secondary	F	43
R12	1,000	Vocational	F	43
R13	1,000	Vocational	M	46
R14		High school	F	35
R15	4,000	College	M	60
R16	700	Vocational	F	60
R17	1,500	Vocational	F	54
R18	1,400	Vocational	M	60
R19	2,500	College	M	66
R20	1,500	Vocational	M	79
R21	1,000	Secondary	F	77
R22		Secondary	M	54
R23		Secondary	M	52
R24	2,500	High school	M	42
R25	2,000	Vocational	M	86

Notes: The respondents are listed chronologically, in the order of interviews.

The income is expressed in the national currency (RON) with the following exchange rate at the time of the interviews: 1 RON = \$0.25 or 0.20€.

towards the dead candidate (e.g. likeability, appreciation). The average length of an interview was 20 min.

All interviews were conducted face-to-face, in Romanian, respecting the norms of social distancing. In some cases, when the respondents were suspicious and did not allow recording, we took notes and transcribed them immediately after the interview to make sure that details are not omitted. The voters' suspicions about the motives of the interviewers were aroused by the articles written in the national print media that often mocked the situation. The media covered the event mainly as a curiosity, which was also picked up by international media (e.g. BBC), and referred extensively to the unusual decision of voters to support a dead candidate. The ad-hoc interviews with several Deveselu inhabitants conducted by journalists were mainly aimed at revealing their emotionality (attachment to the candidate) and limited rationality in dealing with the situation.

To identify the reasons for which respondents voted with a dead candidate, we use an inductive thematic analysis that relies on themes identified in their answers (Nowell, Norris, White, & Moules, 2017). The thematic analysis is appropriate for this study because it allows the identification of common themes that point in the direction of motives behind their vote choice. This type of analysis provides several ways to interpret meaning from the answers provided by respondents.

## A Calculated Vote

Our central argument is that those voters who supported the dead candidate at the polls proceeded voluntarily to nullify the effects of the existing legislation. Under these special circumstances, the legislation forced voters to choose between other candidates when their first preference was no longer available and there was no possibility for a replacement. Voters' answer led to the elections' cancelation and the following lines illustrate that this was a voluntary act.

Two pieces of information are relevant for the analysis and for the general argument. First, all voters knew that Aliman died. In spite of less campaigning than usual due to COVID-19 restrictions, the knowledge of voters about the candidates was very high. Deveselu is a small community in which news travels fast. Although the funeral ceremony was limited to several participants as required by law during the COVID-19 pandemic, this was public and the casket traveled throughout most of the commune before reaching the cemetery (R18). Furthermore, PSD was well-prepared for an unusual campaign due to COVID-19 and sent their members for a door-to-door campaign to inform their supporters to come to the polls (R4).

The awareness of voters about the passing away of the candidate is indicated by their answers either directly through 'of course we knew' (R3, R25) or indirectly by references to the general mood: 'the entire village cried at the funerals' (R21). Second, all respondents cast a vote for the PSD both for the mayor and for the local council. Very few of them (only four) voted due to partisan reasons<sup>2</sup>, which confirms more general findings in the literature indicating that partizanship / traditional ties to political parties are relatively weak in Romania (Gherghina, 2014). Two respondents (R4 and R15) occupied public office under the PSD label. In several instances, the respondents explicitly stated that they did not cast an ideological vote. They voted for PSD because

it is the party supporting the deceased incumbent candidate (R12) and a vote for the party can ensure continuity in the mayor's projects (R5). As one interviewee explicitly claims 'I do not care about the PSD, but I liked Aliman. He fought for us, he started many projects' (R1).

All respondents indicate that their vote was intended to honor the deceased candidate. In office since 2012, Aliman was greatly appreciated and respected by his voters both professionally and personally. At the professional level, he is praised for many achievements and initiatives such as the renovation of the kindergarten and local hospital, the development of sports facilities, the creation of playground for children (R17), road consolidation (R15, R17), gas supply for homes (R1) and the development of a functional sewage system (R4). His commitment and perceived dynamism is praised by most respondents. For example, R2 provides a concrete example and explains that he used to meet the mayor outside daily at 6 AM, being busy with different tasks for the community.

At a personal level, the mayor showed understanding for daily problems, using his own resources to help people. For example, Aliman was the only person in the local public sector that has ever listened to the problems outlined by R16 and helped beyond his public office duties:

My husband is an alcoholic, he drinks all the money from the pension, and this is how we ended up with debts for home facilities. I went to the mayor, we met, and he listened to me. Aliman talked to my husband and persuaded him to allow the town hall to block for a while a certain amount from the pension to cover the expenses with home facilities. My husband accepted and this is how we paid our debts.

In another situation the mayor moved beyond his responsibilities in office and aided one voter in the case of health emergency:

I live thanks to mayor Aliman. He took me to Fundeni<sup>3</sup> by his personal car. I was ready to die, I no longer thought about living, I was very bad ... There are several years since I got a surgery, and this is how I live and he is dead. (R20)

All these answers suggest that local politics in Deveselu was highly personalized and the leadership was legitimized through the personal and professional qualities of the former mayor. These observations are consistent with what is revealed in the literature (McGregor, 2018) and suggest that a great deal of the voting was not ideological or programmatic but oriented towards the deceased leader.

### **Campaign, Protest and Control**

Nevertheless, the vote for the dead candidate was not only a reflection of voters' tribute of sorts to his political achievements and personal qualities. On the contrary, many respondents explicitly argue that they know the candidate's positive features are a matter of the past and are not relevant in the present. There are three mechanisms at work that indicate a strategic approach of voters towards altering the outcomes allowed by the law: the PSD campaign, a protest vote, and a desire to maintain the PSD in control with the hope of continuing Aliman's projects.

First, after Aliman passed away, the PSD carried on its campaign asking people to vote for this candidate. The goal was straightforward and emphasized by the campaigners in their communication with the electorate: if Aliman wins the elections will be repeated,



and their replacement candidate will be able to run. This replacement candidate is the vice-mayor who worked in the past with Aliman and who is familiar with the projects started by the former mayor. One of the interviewees (R4) was an active campaigner and provided insider information about how the campaign was created. The territorial PSD branch sought legal advice and when they learned that the elections would be repeated if Aliman won, they implemented this strategy. They conducted a door-to-door campaign in which people were asked to vote for the deceased candidate so that his projects could continue with the PSD's new mayor. According to the interviewee, the campaign targeted especially the old and / or less educated voters who had lower access to information.

Most interviewees closely followed the campaign and were all familiar with the PSD strategy. Roughly one third declared that this had an influence on their voting behavior. Among these, some respondents acknowledge that the influence of the PSD campaign was high (R5), others explained that the campaign contributed quite a lot to their decision to vote for the dead candidate (R6, R7, R8, R9). The other respondents explained that the campaign did not influence them. For example, R22 calls it propaganda with no influence on his decision, R17 explains that the vote was in line with her wishes 'not because the PSD told us, not because we received any gifts from them'. R25 makes a clear statement in line with what other respondents shared with us: 'The PSD guys came, many of them, they invited us every day during the campaign to go voting (...) They did not influence me at all, the vote is secret. I voted and went back to my business'. The statements indicate that electoral clientelism, which is a characteristic of the Romanian local elections in the last decade, does not play a role in voter's choice at the polls. Our guide for semi-structured interviews included one question that explicitly asked the respondents about the incidence of electoral clientelism and its importance during the campaign and voting process. All respondents indicated that clientelism played no role in this specific election.

Second, more than one third of respondents argued that their vote was a protest vote against the other candidates. They voted for Aliman to make sure that none of the two main competitors would win the elections. Among these, only two respondents (R4 and R19) overlap with campaign influence, the others went for protest on their own. With one exception (R16) interviewees indicated that they knew who the candidates were. The protest was mainly oriented against the candidate who got second in the September 2020 elections, the one who was considered as having real chances of winning. Some respondents characterize him as unprepared for politics: too young, without experience, very soft, unprepared for the office (R1, R4, R17, R25) or 'those around him wanted to trick him into illegal stuff. If he got elected, I am sure he would have ended up in prison' (R4). Others have a problem with the pursuit of his own interest and the general approach in campaign:

"this candidate said 'Vote for me because the PSD candidate dies anyway'. Is this how you build a campaign message? In addition, he told everyone that he would shut down all stores and bars with problems and debts, hoping to win the votes of those who are indebted to those stores' (R19) or 'he has that bar and all the scums gather there". (R12)

Third, many voters explained that their vote was strategic to keep the PSD in control and have the vice-mayor succeed. Several quotes are illustrative for this behavior. On the



one hand, there are respondents who refer to their own behavior: ‘I voted knowing that new elections will be organized and the vice-mayor will be the next mayor, he must continue what Aliman did’ (R25). This idea of continuity is explicitly mentioned in the answers of many interviewees (R1, R4, R5, R9, R15). On the other hand, several respondents refer to the generalized behavior around them: ‘people were aware about why they vote like this, to an equal extent those who were old, lack education or have high education’ (R24) or

the people knew exactly why they voted the dead candidate: to avoid having someone else winning. If the laws do not allow the replacement of the candidate, we voted the dead person to cancel the result. When we have new elections, we will vote for the vice-mayor. (R22)

Some interviewees made it obvious that there was communication between voters prior to elections and agreed how to vote (R14).

## Conclusions

This article illustrates how elections can sometimes produce an outcome similar to jury nullification. Electoral process nullification is a phenomenon in which voters judge the law as unjust and their vote allows a change in the outcomes prescribed by the law. Our study illustrates that when the incumbent candidate died during the campaign and could not be replaced on the ballot, the people voted for him in order to cancel the election and have a new contest. They avoided having one of the other candidates as the winner and ensured continuity for the projects of the incumbent candidate. The 25 semi-structured interviews point in the direction of calculated reasoning driving the vote for the dead candidate. This happened without any electoral clientelistic incentives. The electoral outcome at the by-election held in June 2021 illustrates that this strategy worked: the PSD candidate won against the PNL candidate (Aliman’s son).

Beyond the emotional attachment with the incumbent candidate and the desire to honor a person that they considered highly competent in office, the vast majority of interviewed voters knew what their vote would produce. Their actions were rooted in the party campaign, protest voting or the idea that a solution must be found to continue what the dead candidate started. The results are more robust if we consider that such a reasoning occurs among people with weak partizanship and with varying degrees of political participation. According to the self-reported voting histories gauged by the interviews, some of them vote on a regular basis, others quite a lot, while some of them rarely. On this occasion, all these voters mobilized to circumvent the limitations of the law.

These findings have relevant implications for the study of elections and representation beyond the investigated case-study. They show that it is possible for citizens to overcome the legal limitations and choose how to be represented. The voters in Deveselu acted as judges of public affairs in line with what they can do in a democracy: citizens have the power to protect themselves if they consider something to be unfair (Mill, 1958). Equally important, in spite of an apparent emotional and rushed decision, their voting behavior was calculated and well-reasoned. In broader terms, this was embedded in ‘the logic of equality’ (Dahl, 1998). Voters acted as the equal members of a forum that could nullify the legal norms – considered unfair and unjust – and push for the

representatives that they wanted. This behavior is also in line with rational choice theory: they acted strategically to maximize their expected utility of maintaining the local power for the party that could ensure the legacy of the dead candidate survives.

## Notes

1. We conducted eight interviews with voters who did not support the dead candidate in the local election and none of them voted for PSD. This type of evidence provides some more empirical support to the idea of a vote for the dead candidate and for the party who had him on the ballot.
2. By partisan ties we understand voting loyalty or attachment to a political party on a continuous basis. The four respondents indicating traditional ties with the parties explicitly claimed that they have always voted PSD.
3. Fundeni is a hospital in the capital city Bucharest, well-known to Romanians for its high-quality expertise. The distance between Deveselu and this hospital is roughly 200 km, which is more than a three hours drive due to the relatively poor conditions of the roads.

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## Appendix

### Appendix 1: The Guide Used for the Semi-Structured Interviews

- 1 In your opinion, what is the direction of recent developments in Deveselu?
- 2 How closely did you follow the campaign for the local elections in September (2020)?
- 3 Why did you vote in the local elections?
- 4 Why did you vote with the dead candidate?
  - To what extent your vote was a sign of appreciation for the mayor's achievements?
  - Did the quality of other candidates matter when you voted?
  - To what extent was this vote a sign of protest or disapproval?
  - In your opinion, to what extent there was a better option than Mr. Aliman?
- 5 At the time of the vote, were you aware of Mr. Aliman's death?
- 6 Who else was running in the mayor elections?
- 7 Who conducted campaign for Mr. Aliman?
- 8 To what extent did the PSD message influence you when you casted your vote?
- 9 Who did you vote in the election for the local council?
- 10 How much do you usually participate in elections?

Notes: The main questions are numbered, while the follow-up questions are with bullet points (not asked when the respondent answered comprehensively to main questions). The age, education, income and gender were recorded for each respondent. We interviewed only people who voted in this election .