103 Phil. 1051

[G. R. No. L-10520. February 28, 1957]

LORENZO M. TAÑADA AND DIOSDADO MACAPAGAL, PETITIONERS, VS. MARIANO JESUS CUENCO, FRANCISCO A. DELGADO, ALFREDO CRUZ, CATALINA CAYETANO, MANUEL SERAPIO, PLACIDO REYES, AND FERNANDO HIPÓLITO, IN HIS CAPACITY AS CASHIER AND DISBURSING OFFICER, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

Petitioner Lorenzo M. Tañada is a member of the Senate of the Philippines, and President of the Citizens Party, whereas petitioner Diosdado Macapagal, a member of the House of Representatives of the Philippines, was one of the official candidates of the Liberal Party for the Senate, at the general elections held in November, 1955, in which Pacita Madrigal Warns, Lorenzo Sumulong, Quintín Paredes, Francisco Rodrigo, Pedro Sabido, Claro M. Recto, Domocao Alonto and Decoroso Rosales, were proclaimed elected. Subsequently, the election of these Senators-elect —who eventually assumed their respective seats in the Senate—was contested by petitioner Macapagal, together with Camilo Osias, Geronima Pecson, Macario Peralta, Enrique Magalona, Pio Pedrosa and William Chiongbian— who had, also, run for the Senate, in said election—in Senate Electoral Case No. 4, now pending before the Senate Electoral Tribunal.

The Senate, in its session of February 22, 1956, upon nomination of Senator Cipriano Primicias, on behalf of the Nacionalista Party, chose Senators Jose P. Laurel, Fernando Lopez and Cipriano Primicias, as members of the Senate Electoral Tribunal. Upon nomination of petitioner Senator Tañada, on behalf of the Citizens Party, said petitioner was next chosen by the Senate as member of said Tribunal. Then, upon nomination of Senator Primicias, on behalf of the Committee on Rules of the Senate, and over the objections of Senators Tañada and Sumulong, the Senate choose respondents Senators Mariano J. Cuenco, and Francisco A. Delgado as members of the same Electoral Tribunal.

Subsequently, the Chairman of the latter appointed: (1) Alfredo Cruz and Catalina Cayetano, as technical assistant and private secretary, respectively, to Senator Cuenco, as supposed member of the Senate Electoral Tribunal, upon his recommendation of said respondents; and (2) Manuel Serapio and Placido Reyes, as technical assistant and private secretary, respectively to Senator Delgado, as supposed member of said Electoral Tribunal, and upon his recommendation.

Soon, thereafter, Senator Lorenzo M. Tañada and Congressman Diosdado Macapagal instituted the case at bar against Senators Cuenco and Delgado, and said Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes, as well as Fernando Hipólito, in his capacity as Cashier and Disbursing Officer of the Senate Electoral Tribunal. Petitioners alegge that on February 22, 1956, as well as at present, the Senate consists of 23 Senators who belong to the Nacionalista Party, and one (1) Senator—namely, petitioner, Lorenzo M. Tañada—belonging to the Citizens Party; that the Committee on Rules for the Senate, in nominating Senators Cuenco and Delgado, and the Senate, in choosing these respondents, as members of the Senate Electoral Tribunal, had "acted absolutely without power or color of authority and in clear violation * * * of Article VI, Section 11 of the Constitution"; that "in assuming membership in the Senate Electoral Tribunal, by taking the corresponding oath of office therefor", said respondents had "acted absolutely without color of appointment or authority and are unlawfully, and in violation of the Constitution, usurping, intruding into and exercising the powers of members of the Senate Electoral Tribunal"; that, consequently, the appointments of respondents, Cruz, Cayetano, Serapio and Reyes, as technical assistants and private secretaries to Senators Cuenco and Delgado—who caused said appointments to be made—as members of the Senate Electoral Tribunal, are unlawful and void; and that Senators Cuenco and Delgado "are threatening and are about to take cognizance of Electoral Case No. 4 of the Senate Electoral Tribunal, as alleged members thereof, in nullification of the rights of petitioner Lorenzo M. Tañada, both as a Senator belonging to the Citizens Party and as representative of the Citizens Party in the Senate Electoral Tribunal, and in deprivation of the constitutional rights of petitioner Diosdado Macapagal and his co-protestants to have their election protest tried and decided by an Electoral Tribunal composed of not more than three (3) senators chosen by the Senate upon nomination of the party having the largest number of votes in the Senate and not more than three (3) Senators upon nomination of the party having the second largest number of votes therein, together with three (3) Justices of the Supreme Court to be designated by the Chief Justice, instead of by an Electoral Tribunal packed with five members belonging to the Nacionalista Party, which is the rival party of the Liberal Party, to which the petitioner

Diosdado Macapagal and his co-protestants in Electoral Case No. 4 belong, the said five (5) Nacionalista Senators having been nominated and chosen in the manner alleged * * * herein-above."

Petitioners pray that:

> "1. Upon petitioners' filing- of a bond in such amount as may be determined by this Honorable Court, a writ of preliminary injunction be immediately issued directed to respondents Mariano J. Cuenco, Francisco A. Delgado, Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes, restraining them from continuing to usurp, intrude into and/or hold or exercise the said public offices respectively being occupied by them in the Senate Electoral Tribunal, and to respondent Fernando Hipólito restraining him from paying the salaries of respondents Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes, pending this action.
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> "2. After hearing, judgment be rendered ousting respondents Mariano J. Cuenco, Francisco A. Delgado, Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes from the aforementioned public offices in the Senate Electoral Tribunal and that they be altogether excluded therefrom and making the preliminary injunction permanent, with costs against the respondents."

Respondents have admitted the main allegations of fact in the petition, except insofar as it questions the legality and validity of the election of respondents Senators Cuenco and Delgado, as members of the Senate Electoral Tribunal, and of the appointment of respondent Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes as technical assistants and private secretaries to said respondents Senators. Respondents, likewise, allege, by way of special and affirmative defenses, that: (*a*) this Court is without power, authority of jurisdiction to direct or control the action of the Senate in choosing the members of the Electoral Tribunal; and (*b*) that the petition states no cause óf action, because "petitioner Tañada has exhausted his right to nominate after he nominated himself and refused to nominate two (2) more Senators", because said petitioner is in estoppel, and because the present action is not the proper remedy.

I. Respondents assail our jurisdiction to entertain the petition, upon the ground that the power to choose six (6) Senators as members of the Senate Electoral Tribunal has been

expressly conferred by the Constitution upon the Senate, despite the fact that the draft submitted to the constitutional convention gave to the respective political parties the right to elect their respective representatives in the Electoral Commission provided for in the original Constitution of the Philippines, and that the only remedy available to petitioners herein "is not in the judicial forum", but "to bring the matter to the bar of public opinion."

We cannot agree with the conclusion drawn by respondents from the foregoing facts. To begin with, unlike the cases of Alejandrino *vs.* Quezon (46 Phil., 83) and Vera *vs.* Avelino (77 Phil., 192)—relied upon by the respondents— this is not an action against the Senate, and it does not seek to compel the latter, either directly or indirectly, to allow the petitioners to perform their duties as members of said House. Although the Constitution provides that the Senate shall choose six (6) Senators to be members of the Senate Electoral Tribunal, the latter is part neither of Congress nor of the Senate. (Angara *vs.* Electoral Commission, 63 Phil., 139: Suanes *vs.* Chief Accountant, 81 Phil., 818; 46 Off. Gaz., 462.)

Secondly, although the Senate has, under the Constitution, the exclusive power to choose the Senators who shall form part of the Senate Electoral Tribunal, the fundamental law has prescribed *the manner* in which the authority shall be exercised. As the author of a very enlightening study on judicial self-limitation has aptly put it:

> "The courts are called upon to say, on the one hand, *by whom* certain powers shall be exercised, and on the other hand, to determine whether the powers thus possessed have been *validly exercised*. *In performing the latter function, they do not encroach upon the powers of a coordinate branch of the government,* since the determination of the validity of an act is not the same thing as the *performance* of the act. In the one case we are seeking to ascertain *upon whom* devolves the duty of the particular service. In the other case we are merely seeking to determine *whether the Constitution has been violated* by anything done or attempted by either an executive official or the legislative." (Judicial Self-Limitation by Finkelstein, pp. 221, 224, 244, Harvard Law Review, Vol. 39; italics supplied.)

The case of Suanes *vs.* Chief Accountant (*supra*) cited by respondents refutes their own pretense. This Court exercised its jurisdiction over said case and decided the same on the merits thereof, despite the fact that it involved an inquiry into the powers of the Senate and its President over the Senate Electoral Tribunal and the personnel thereof.

Again, under the Constitution, "the legislative power" is vested exclusively in the Congress of the Philippines. Yet, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress[1] And, since judicial power includes the authority to inquire into the legality of statutes enacted by the *two* Houses of Congress, and approved by the Executive, there can be no reason why the validity of an act of *one* of said Houses, like that of any other branch of the Government, may not be determined in the proper actions. Thus, in the exercise of the so-called "judicial supremacy", this Court declared that a resolution of the defunct National Assembly could not bar the exercise of the powers of the former Electoral Commission under the original Constitution.[2] (Angara *vs.* Electoral Commission, *supra*), and annulled certain acts of the Executive[3] as incompatible with the fundamental law.

In fact, whenever the conflicting claims of the parties to a litigation cannot properly be settled without inquiring into the validity of an act of Congress or of either House thereof, the courts have, not only jurisdiction to pass upon said issue, but, also, the *duty* to do so, *which cannot be evaded* without violating the fundamental law and paving the way to its eventual destruction.[4]

Neither are the cases of Mabanag *vs.* Lopez Vito (78 Phil., 1) and Cabili *vs.* Francisco (88 Phil., 654), likewise, invoked by respondents, in point. In the Mabanag case, it was held that the courts could not review the finding of the Senate to the effect that the members thereof who had been suspended by said House should not be considered in determining whether the votes cast therein, in favor of , a resolution proposing an amendment to the Constitution, sufficed to satisfy the requirements of the latter, such question being a political one. The weight of this decision, as a precedent, has been weakened, however, by our resolutions in Avelino *vs.* Cuenco (83 Phil., 17), in which this Court proceeded to determine the number essential to constitute a *quorum* in the Senate. Besides, the case at bar does not hinge on the number of votes needed for a particular act of said body. The issue before us is whether the Senate—*after acknowledging that the Citizens Party is the party having the second largest number of votes in the Senate*, to which party the Constitution gives the right to nominate three (3) Senators for the Senate Electoral Tribunal—could validly choose therefor two (2) *Nacionalista* Senators, upon nomination by the floor leader of the Nacionalista Party in the Senate, Senator Primicias, claiming to act on behalf of the *Committee on Rules for the Senate*.

The issue in the Cabili case was whether we could review a resolution of the Senate reorganizing its representation in the Commission on Appointments. This was decided in the

negative, upon the authority of Alejandrino *vs.* Quezon (*supra*) and Vera *vs.* Avelino (*supra*), the main purpose of the petition being "to force upon the Senate the reinstatement of Senator Magalona in the Commission on Appointments," one-half (1/2) of the members of which is to be elected by each House on the basis of proportional representation of the political parties therein. Hence, the issue depended mainly on the determination of the political alignment of the members of the Senate at the time of said reorganization and of the necessity or advisability of effecting said reorganization, which is a political question. We are not called upon, in the case at bar, to pass upon an identical or similar question, it being conceded, impliedly, but clearly, that the Citizens Party is the party with the second largest number of votes in the Senate. The issue, therefore, is whether a right vested by the Constitution in the Citizens Party may validly be exercised, either by the Nacionalista Party, or by the Committee on Rules for the Senate, over the objection of said Citizens Party.

The only ground upon which respondents' objection to the jurisdiction of this Court and their theory to the effect that the proper remedy for petitioners herein is, not the present action, but an appeal to public opinion, could possibly be entertained is, therefore, whether the case at bar raises merely a political question, not one justiciable in nature.

In this connection, respondents assert in their answer that "the remedy of petitioners is not in the judicial forum, but, to use petitioner Tañada's own words, 'to bring the matter to the bar of public opinion' (p. 81, Discussion on the Creation of the Senate Electoral Tribunal, February 21, 1956)." This allegation may give the impression that said petitioner had declared, on the floor of the Senate, that his only relief against the acts complained of in the petition is to take up the issue before the people—which is not a fact. During the discussions in the Senate, in the course of the organization of the Senate Electoral Tribunal, on February 21, 1956, Senator Tañada was asked what remedies he would suggest if he nominated two (2) Nacionalista Senators and the latter declined the nomination. Senator Tañada replied.

> "There are two remedies that occur to my mind right now, Mr. Senator; one is the remedy open to all of us that *if we feel aggrieved and there is no recourse in the court of justice,* we can appeal to public opinion. Another remedy is an action in the Supreme Court. Of course, as Senator Rodriguez, our President here, has said one day; 'If you take this matter to the Supreme Court, you will lose, because until now the Supreme Court has always ruled against any action that would constitute interference in the business of anybody pertaining to the

> Senate. The theory of separation of powers will be upheld by the Supreme Court.' But that learned opinion of Senator Rodriguez, our President, notwithstanding, *I may take the case to the Supreme Court if my right herein is not respected*. I may lose, Mr. President, but who has not lost in the Supreme Court? I may lose because of the theory of the separation of powers, but that does not mean, Mr. President, that what has been done here is pursuant to the provision of the Constitution." (Congressional Record, Vol. Ill, p. 339; italics supplied.)

This statement did not refer to the nomination, by Senator Primicias, and the election, by the Senate, of Senators Cuenco and Delgado as members of said Tribunal. Indeed, said nomination and election took place the day *after* the aforementioned statement of Senator Tañada was made. At any rate, the latter announced that he might "take the case to the Supreme Court if my right here is not respected."

As already adverted to, the objection to our jurisdiction hinges on the question whether the issue before us is political or not. In this connection, Willoughby lucidly states:

> "Elsewhere in this treatise the well-known and well-established principle is considered that it is not within the province of the courts to pass judgment upon *the policy* of legislative or executive action. Where, therefore, *discretionary* powers are granted by the Constitution or by statute, the *manner* in which those powers are exercised is not subject to judicial review. The courts, therefore, concern themselves only with the question as to the *existence and extent of these discretionary powers.*
>
> "As distinguished from the judicial, the legislative and executive departments are spoken of as the *political* departments of government because in very many cases their action is necessarily dictated by considerations of public or political policy. *These considerations of public or political policy of course will not permit the legislature to violate constitutional provisions, or the executive to exercise authority not granted him by the Constitution or by statute, but, within these limits,* they do permit the departments, separately or together, to *recognize that a certain set of facts exists* or that a given status exists, and these determinations, together with the consequences that flow therefrom, may not be traversed in the courts." (Willoughby on the Constitution of the United States, Vol. 3, p. 1326; italics supplied.)

To the same effect is the language used in Corpus Juris Secundum, from which we quote:

> "It is well-settled doctrine that political questions are not within the province of the judiciary, except to the extent that power to deal with such questions has been conferred upon the courts by express constitutional or statutory provisions.
>
> "It is not easy, however, to define the phrase 'political question', nor to determine what matters fall within its scope. It is frequently used to designate all questions that the outside the scope of the judicial questions, which under the constitution, are to be *decided by the people in their sovereign capacity,* or in regard to which *full discretionary authority* has been delegated to the *legislative or* executive branch of the government." (16 C.J.S., 413; *see*, also Geauga Lake Improvement Ass'n. *vs.* Lozier, 182 N. E. 491, 125 Ohio St. 565; Sevilla *vs.* Elizalde, 112 P. 2d 29, 72 App. D. C, 108; italics supplied.)

Thus, it has been repeatedly held that the question whether certain amendments to the Constitution are invalid for non-compliance with the *procedure* therein prescribed, is *not* a political one and may be settled by the Courts.[5]

In the case of In re McConaughy (119 N.W. 408), the nature of political question was considered carefully. The Court said:

> "At the threshold of the case we are met with the assertion that the questions involved are political, and not judicial. If this is correct, the court has no jurisdiction as the certificate of the state canvassing board would then be final, regardless of the actual vote upon the amendment. The question thus raised is a fundamental one; but it has been so often decided contrary to the view contended for by the Attorney General that it would seem, to be finally settled.
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> "* * * What is generally meant, when it is said that a question is political, and not judicial, is that *it is a matter which is to be exercised by the people in their primary political capacity,* or that it has been specifically delegated to some other department or particular officer of the government, *with discretionary power to*

> *act*. *See* State *vs.* Cunningham, 81 Wis. 497, 51 L. R. A. 561; In Re Gunn, 50 Kan. 155; 32 Pac. 470, 948, 19 L. R. A. 519; Green *vs.* Mills, 69 Fed. 852, 16, C. C. A. 516, 30 L. E. A. 90; Fletcher *vs.* Tuttle, 151 111. 41, 37 N. E. 683, 25 L. R. A. 143, 42 Am. St. Rep. 220. Thus the *Legislature may in its discretion* determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts have no judicial control over such matters, not merely because *they involve political question*, but because they are matters which the people have by the Constitution delegated to the Legislature. The Governor may exercise the powers delegated-to him, free from judicial control, *so long as he observes the laws and acts within the limits of the power conferred.* His discretionary acts cannot be controllable, not primarily because they are of a political nature, but because the Constitution and laws have placed the particular matter under his control. *But every officer under a constitutional government must act according to law and subject him to the restraining and controlling power of the people, acting through the courts, as well as through the executive or the Legislature.* One department is just as representative as the other, and *the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.* The recognition of this principle, unknown except in Great Britain and America, is necessary, to 'the end that the government may be one of laws and not men'—words which Webster said were the greatest contained in any written constitutional document." (pp. 411, 417; italics supplied.)

In short, the term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum (*supra*), it refers to "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary* authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the *wisdom,* not legality, of a particular measure.

Such is not the nature of the question for determination in the present case. Here, we are called upon to decide whether the election of Senators Cuenco and Delgado, by the Senate, as members of the Senate Electoral Tribunal, upon nomination by Senator Primicias—a member and spokesman of the party having *the largest* number of votes in the Senate—on behalf of its Committee on Rules, contravenes the constitutional mandate that said members of the Senate Electoral Tribunal shall be chosen "upon nomination * * * of the party having

the second largest number of votes" in the Senate, and hence, is null and void. This is not a political question. The Senate is not clothed with "full discretionary authority" in the choice of members of the Senate Electoral Tribunal. The exercise of its power thereon is subject to constitutional limitations which are claimed to be mandatory in nature. It is clearly within the legitimate province of the judicial department to pass upon the validity of the proceedings in connection therewith.

> "* * * whether an election of public officers has been in accordance with law is *for the judiciary*. Moreover, where the legislative department has by statute prescribed election procedure in a given situation, the judiciary *may* determine whether a particular election has been in conformity with such statute, and, particularly, whether such statute has been applied in a way to deny or transgress on *constitutional* or statutory rights * * *." (16 C. J. S., 439; italics supplied.)

It is, therefore, our opinion that we have, not only jurisdiction, but, also, the duty, to consider and determine the principal issue raised by the parties herein.

II. Is the election of Senators Cuenco and Delgado, by the Senate, as members of the Electoral Tribunal, valid and lawful?

Section 11 of Article VI of the Constitution, reads:

> "The Senate and the House of Representatives *shall* each have an Electoral Tribunal which *shall* be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal *shall* be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The Senior Justice in each Electoral Tribunal *shall* be its Chairman." (Italics supplied.)

It appears that on February 22, 1956, as well as at present, the Senate of the Philippines

consists of twenty-three (23) members of the Nacionalista Party and one (1) member of the Citizens Party, namely, Senator Tañada, who is, also, the president of said party. In the session of the Senate held on February 21, 1956, Senator Sabido moved that Senator Tañada, "the President of the Citizens Party, be given the privilege to nominate * * * three (3) members" of the Senate Electoral Tribunal (Congressional Record for the Senate, Vol. Ill, pp. 328-329), referring to those who, according to the provision above-quoted, should be nominated by "the party having the second largest number of votes" in the Senate. Senator Tañada objected formally to this motion upon the ground: (*a*) that the right to nominate said members of the Senate Electoral Tribunal belongs, not to the Nacionalista Party— of which Senator Sabido and the other Senators are members—but to the Citizens Party, as the one having the second largest number of votes in the Senate, so that, being devoid of authority to nominate the aforementioned members of said Tribunal, the Nacionalista Party cannot give it to the Citizens Party, which, already, has such authority, pursuant to the Constitution; and (*b*) that Senator Sabido's motion would compel Senator Tañada to nominate three (3) Senators to said Tribunal, although as representative of the minority party in the Senate he has "the right to nominate one, two or three to the Electoral Tribunal," in his discretion. Senator Tañada further stated that he reserved the right to determine how many he would nominate, after hearing the reasons of Senator Sabido in support of his motion. After some discussion, in which Senators Primicias,Cea, Lim, Sumulong, Zulueta, and Rodrigo took part, the Senate adjourned until the next morning, February 22, 1956 (Do., do., pp. 329, 330, 332-333, 336, 338, 339, 343).

Then, said issues were debated upon more extensively, with Senator Sumulong, not only seconding the opposition of Senator Tañada, but, also, maintaining that "Senator Tañada should nominate only one" member of the Senate, namely, himself, he being the only Senator who belongs to the minority party in said House (Do., do., pp. 360-364, 369). Thus, a new issue was raised—whether or not one who does not belong to said party may be nominated by its spokesman, Senator Tañada—on which Senators Paredes, Pelaez, Rosales and Laurel, as well as the other Senators already mentioned, expressed their views (Do., do-, pp. 345, 349, 350, 354, 358, 364, 375). Although the deliberations of the Senate consumed the whole morning and afternoon of February 22, 1956, a satisfactory solution of the question before the Senate appeared to be remote. So, at 7:40 p. m., the meeting was suspended, on motion of Senator Laurel, with a view to seeking a compromise formula (Do., do., pp. 377). When session was resumed at 8:10 p. m., Senator Sabido withdrew his motion above referred to. Thereupon, Senator Primicias, on behalf of the Nacionalista Party, nominated, and the Senate elected, Senators Laurel, Lopez and Primicias, as members of

the Senate Electoral Tribunal. Subsequently, Senator Tañada stated:

> "On behalf of the Citizens Party, the minority party in this Body, I nominate the only Citizens Party member in this Body, and that is Senator Lorenzo M. Tañada."

Without any objection, this nomination was approved "by the House. Then, Senator Primicias stood up and said:

> "Now, Mr. President, in order to comply with the provision in the Constitution, the Committee on Rules of the Senate—and I am mow making this proposal not on behalf of the Nacionalista Party but on behalf of the Committee on Rules of the Senate—I nominate two other members to complete the membership of the Tribunal: Senators Delgado and Cuenco."

What took place thereafter appears in the following quotations from the Congressional Record for the Senate.

> " Mr. President.
>
> "EL PRESIDENTE INTERINO. Caballero de Quezon.
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> "SENATOR TAÑADA. *I would like to record my opposition to the nominations of the last two named gentlemen,* Senators Delgado and Cuenco, not because I don't believe that they do not deserve to be appointed to the tribunal but because of my sincere and firm conviction that these additional nominations are *not sanctioned by the Constitution*. The Constitution only permits the Nacionalista Party or the party having the largest number of votes to nominate three.
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> "SENATOR SUMULONG. Mr. President.
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> "EL PRESIDENTE INTERINO. Caballero de Rizal.
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> "SENATOR SUMULONG. For the reasons that I have stated a few-moments ago when I took the floor, / also wish to record my objection to the last nominations,

to the nomination of two additional NP's to the Electoral Tribunal.

"EL PRESIDENTE INTERINO. Está dispuesto el Senado a votar? (*Varios Senadores: Si.*) Los que estén conformes con la nominación hecha por el Presidente del Comité de Reglamentos a favor de los Senadores Delgado y Cuenco para ser miembros del Tribunal Electoral, digan, sí. (*Varios Senadores: Sí.*) Los que no lo estén digan, *no* (*Silencio.*) *Queda aprobada."* (Congressional Record for the Senate, Vol. Ill, p. 377; italics supplied.)

Petitioners maintain that said nomination and election of Senators Cuenco and Delgado—who belong to the Nacionalista Party—as members of the Senate Electoral Tribunal, are null and void and have been made without power or color of authority, for, after the nomination by said party, and the election by the Senate, of Senators Laurel, Lopez and Primicias, as members of said Tribunal, the other Senators, who shall be members thereof, must necessarily be nominated by the party having the *second* largest number of votes in the Senate, and such party is, admittedly, the Citizens Party, to which Senator Tañada belongs and which he represents.

Respondents allege, however, that the constitutional mandate to the effect that "each Electoral Tribunal shall be composed of nine (9) members," six (6) of whom "shall be members of the Senate or of the House of Representatives, as the case may be", is mandatory; that when—after the nomination of three (3) Senators by the majority party, and their election by the Senate, as members of the Senate Electoral Tribunal—Senator Tañada nominated himself only, on behalf of the minority party, he thereby "waived his right to nominate two more Senators;" that, when Senator Primicias nominated Senators Cuenco and Delgado, and these respondents were chosen by the Senate, as members of the Senate Electoral Tribunal, said Senator Primicias and the Senate merely complied with the aforementioned provision of the fundamental law, relative to the number of members of the Senate Electoral Tribunal; and, that, accordingly, Senators Cuenco and Delgado are *de jure* members of said body, and the appointment of their co-respondents, Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes, is valid and lawful.

At the outset, it will be recalled that the proceedings for the organization of the Senate Electoral Tribunal began with a motion of Senator Sabido to the effect that "the distinguished gentleman from Quezon, the President of the Citizens Party, be given the privilege to nominate the three Members" of said Tribunal. Senator Primicias inquired why

the movant had used the word "privilege". Senator Sabido explained that the present composition of the Senate had created a condition or situation which was not anticipated by the framers of our Constitution; that although Senator Tañada formed part of the Nacionalista Party before the end of 1955, he subsequently '"parted ways with" said party; and that Senator Tañada "is the distinguished president of the Citizens Party," which "approximates the situation desired by the framers of the Constitution" (Congressional Record for the Senate Vol. Ill, pp. 329-330). Then Senator Lim intervened, stating:

> "At present *Senator Tañada is considered as forming the only minority or the one that has the second largest number of votes in the existing Senate,* is not that right? And if this is so, he should be given this as a matter of right, not as a matter of privilege. * * * I don't believe that we should be allowed to grant this authority to Senator Tañada only as a privilege but *we must grant it as a matter of right.*" (Id., id., p. 332; italics supplied.)

Similarly, Senator Sumulong maintained that "Senator Tañada, as Citizens Party Senator, has the right and not a mere privilege to nominate," adding that:

> "* * * the question is whether *we have a party here having the second largest number of votes, and it is clear in my mind that there is such a party, and that is the Citizens Party* to which the gentleman from Quezon belongs. * * * We have to bear in mind, * * * that when" Senator Tañada was included in the Nacionalista Party ticket in 1953, it was by virtue of a coalition or an alliance between the Citizens Party and the Nacionalista Party at that time, and I maintain that when Senator Tañada as head of the Citizens Party entered into a coalition with the Nacionalista Party, *he did not thereby become a Nacionalista because that was a mere coalition, not a fusion. When the Citizens Party entered into a mere coalition, that party did not lose its personality as a party separate and distinct from the Nacionalista Party.* And we should also remember that the certificate of candidacy filed by Senator Tañada in the 1953 election was one to the effect that he belonged to the Citizens Party * * *." (Id., id., p. 360; italics supplied.)

The debate was closed by Senator Laurel, who remarked, referring to Senator Tañada:

> "* * * *there is no doubt that he does not belong to the majority* in the first place, and that, therefore, *he belongs to the minority.* And whether we like it or not, that is the reality of the actual situation—that *he is not a Nacionalista now,* that *he is the head and the representative of the Citizens Party.* I think that on equitable ground and from the point of view of public opinion, his situation * * * *approximates or approaches what is within the spirit of that Constitution.* * * * and *from the point of view of the spirit of the Constitution* it would be a good thing if we grant the opportunity to Senator Tañada to help us in the organization of this Electoral Tribunal * * *." (Id., id., p. 376; italics supplied.)

The foregoing statements and the fact that, thereafter, Senator Sabido withdrew his motion to grant Senator Tañada the "privilege" to nominate, and said petitioner actually nominated himself "on behalf of the Citizens Party, *the minority party in this Body"—not only without any objection whatsoever, but, also, with the approval of the Senate*—leave no room for doubt that the Senate has regarded the Citizens Party, represented by Senator Tañada, as the party having the second largest number of votes in said House.

Referring, now, to the contention of respondents herein, their main argument in support of the mandatory character of the constitutional provision relative to the number of members of the Senate Electoral Tribunal is that the word "shall", therein used, is imperative in nature and that this is borne out by an opinion of the Secretary of Justice dated February 1, 1939, pertinent parts of which are quoted at the footnote.[6]

Regardless of the respect due its author, as a distinguished citizen and public official, said opinion has little, if any, weight in the solution of the question before this Court, for the "practical construction of a Constitution is of little, if any, unless it has been *uniform* * * *."[6a] Again, "as a general rule, it is only in cases of substantial doubt and ambiguity that the doctrine of contemporaneous or practical construction has any application". As a consequence, "where the meaning of a constitutional provision is clear, a contemporaneous or practical * * * executive interpretation thereof is *entitled to no weight*, and will not be allowed to distort or in any way change its natural meaning." The reason is that "the application of the doctrine of contemporaneous construction is *more restricted* as applied to the interpretation of *constitutional* provisions than when applied to statutory provisions", and that, "except as to matters committed by the Constitution itself to the discretion of some other department, contemporary or practical construction is *not necessarily binding* upon the courts, *even in a doubtful case*." Hence, "if in the judgment of the court, such

construction is erroneous and its further application is not made imperative by any paramount considerations of public policy, it may be rejected." (16 C. J. S., 71-72; italics supplied.)[6b]

The aforementioned opinion of the Secretary of Justice is not backed up by a "uniform" application of the view therein adopted, so essential to give thereto the weight accorded by the rules on contemporaneous constructions. Moreover, said opinion tends to change the natural meaning of section 11 of Article VI of the Constitution, which is clear. What is more, there is not the slightest doubt in our mind that the purpose and spirit of said provisions do not warrant said change and that the rejection of the latter is demanded by paramount considerations of public policy.

The flaw in the position taken in said opinion and by respondents herein is that, while, it relies upon the compulsory nature of the word "shall", as regards the *number* of members of the Electoral Tribunals, it ignores the fact that the same term is used with respect to the *method prescribed* for their election, and that both form part of a *single sentence and must be considered, therefore, as integral portions of one and the same thought.* Indeed, respondents have not even tried to show—and we cannot conceive—why "shall" must be deemed *mandatory* insofar as the number of members of each Electoral Tribunal, and should be considered *directory* as regards the *procedure* for their selection. More important still, the history of section 11 of Article VI of the Constitution and the records of the Convention, refute respondents' pretense, and back up the theory of petitioners herein.

Commenting on the frame of mind of the delegates to the Constitutional Convention, when they faced the task of providing for the adjudication of contests relating to the election, returns and qualifications of members of the Legislative Department, Dr. Jose M. Aruego, a member of said Convention, says:

> "The experience of the Filipino people under the provisions of the organic laws which left to the lawmaking body, the determination of the elections, returns, and qualifications of its members was not altogether satisfactory. *There were many complaints against the lack of political justice* in this determination; for in a great number of cases, *party interests controlled* and dictated the decisions. The undue delay in 'the dispatch of election contests for legislative seats, the irregularities that characterized the proceedings in some of them, and *the very apparent injection of partisanship* in the 'determination of a great number of the cases

were decried by a great number of the people as well as by the organs of public opinion.

"The faith of the people in the uprightness of the lawmaking body in the performance of this function assigned to it in the organic laws was *by no means great.* In fact so *blatant was the lack of political justice* in the decisions that there was gradually built up a camp of thought in the Philippines inclined to leave to the courts the determination of election contests, following the practice in some countries, like England and Canada.

"Such were the conditions of things at the time of the meeting of the convention." (The Framing of the Philippine Constitution by Aruego, Vol. I, pp. 257-258; italics supplied.)

This view is shared by distinguished members of the Senate. Thus, in its session of February 22, 1956, Senator Sumulong declared:

"* * * when you leave it to either House to decide election protests involving its own members, that is virtually placing the majority party in a position to. dictate the decision in those election cases, because each House will be composed of a majority and a minority, and when you make each House the judge of every election protest involving any member of that House, you place the majority in a position to dominate and dictate the decision in the case and result was, there were so many abuses, there were so many injustices' committed by the majority at the expense and to the prejudice of the minority protestants. Statements have been made here that justice was done even under the old system, like that case involving Senator Mabanag, when he almost became a victim of the majority when he had an election case, and it was only through the intervention of President Quezon that he was saved from becoming the victim of majority injustices.

"It is true that justice had *sometimes* prevailed under the old system, *but the record will show that those cases were few and they were the rare exceptions. The overwhelming majority of election protests decided under the old system was that the majority being then in a position to dictate the decision in the election protest, was tempted to commit as it did commit many abuses and injustices."*

(Congressional Record for the Senate, Vol. Ill, p. 361; italics supplied.)

Senator Paredes, a veteran legislator and former Speaker of the House of Representatives, said:

> *"* * * what was intended in the creation of the electoral tribunal was to create a sort of collegiate court composed of nine members: three of them belonging to the party having the largest number of votes, and three from the party having the second largest number of votes so that these members may represent the party, and the members of said party who will sit before the electoral tribunal as protestees. For when it comes, to a party, Mr. President, there is ground to believe that decisions will be made along party lines."* (Congressional Record for the Senate, Vol. Ill, p. 351; italics supplied.)

Senator Laurel, who played an important role in the framing of our Constitution, expressed himself as follows:

> "Now, with reference to the protests or contests relating to the election, the returns and the qualifications of the members of the legislative bodies, I heard it said here correctly that there was a time when that was given to the corresponding chamber of the legislative department. So the election, returns and qualifications of the members of the Congress or legislative body was entrusted to that body itself as the exclusive body to determine the election, returns and qualifications of its members. There was some doubt also expressed as to whether that should continue or not, and the greatest argument in favor of the retention of that provision was the fact that that was, among other things, the system obtaining in

the United States under the Federal Constitution of the United States, and there was no reason why that power or that right vested in the legislative body should not be retained. But it was thought that that would make the determination of this contest, of this election protest, purely political *as has been observed in the past."* (Congressional Record for the Senate, Vol. Ill, p. 376; italics supplied.)

It is interesting to note that not one of the members of the Senate contested the accuracy of the views thus expressed.

Referring particularly to the philosophy underlying the constitutional provision quoted above, Dr. Aruego states:

> "The defense of the Electoral Commission was based *primarily upon the hope and belief that the abolition of party lines because of the equal representation in this body of the majority and the minority parties* of the National Assembly and the intervention of some members of the Supreme Court who, under the proposed constitutional provision, would also be members: of the same, would insure greater political justice in the determination of election contests for seats in the National Assembly than there would be if the power had been lodged in the lawmaking body itself. Delegate Francisco summarized the arguments for the creation of the Electoral Commission in the following words;
>
> "I understand that from the time that this question is placed in the hands of members not only of the majority party but also of the minority party, there is already a condition, a factor which Would make protests decided in a non-partisan manner. We know from experience that many times in the many protests tried in the House or in the Senate, *it was impossible to prevent the factor of party from getting in*. From the moment that it is required that *not only the majority but also the minority should intervene in these questions,* we have already enough guarantee that there would be no tyranny on the part of the majority.
>
> ' But there is another more detail which is the one which satisfies me most, and that is the intervention of three justices. So that with this intervention of three justices if there would be any question as to the justice applied by the majority or the minority, if there would be any fundamental disagreement, or if there would be nothing but questions purely, of party in which the members of the majority as well as those of the minority should wish to take lightly a protest because the protestant belongs to one of said parties, we have in this case, *as a cheek upon the two parties*, the actuations of the three justices. In the last analysis, what is really applied in the determination of electoral cases brought before the tribunals of justice or before the House of Representatives or the Senate? Well, it is

nothing more than the law and the doctrine of the Supreme Court. If that is the case, there will be greater skill in the application of the laws and in the application of doctrines to electoral matters having as we shall have three justices who will act impartially in these electoral questions.

'I wish to call the attention of my distinguished colleagues to the fact that *in electoral protests it is impossible to set aside party interests.* Hence, the best guarantee, I repeat, for the administration of justice to the parties, for the fact that the laws will not be applied improperly or incorrectly as well as for the fact that the doctrines of the Supreme Court will be applied rightfully, *the best guarantee which we shall have, I repeat, is the intervention of the three justices.* And with the formation of the Electoral Commission, I say again, the protestants as well as the protestees could remain tranquil in the certainty that they will receive the justice that they really deserve. If we eliminate from this precept the intervention of the party of the minority and that of the three justices, then *we shall be placing protests exclusively in the hands of the party in power.* And I understand, gentlemen, that *in practice that has not given good results. Many have criticized, many have complained against, the tyranny of the majority in electoral cases* * * *. I repeat that the best guarantee lies in the fact that these questions will be judged not only by three members of the majority but also by three members of the minority, with the additional guarantee of the impartial judgment of three justices of the Supreme Court." (The Framing of the Philippine Constitution by Aruego, Vol. I, pp. 261-263; italics supplied.)

The foregoing was corroborated by Senator Laurel. Speaking for this Court, in Angara *vs.* Electoral Commission (63 Phil., 139), he asserted:

"The members of the Constitutional Convention who framed our fundamental law were in their majority men mature in years and experience. To be sure, many of them were familiar with the history and political development of other countries of the world. When, therefore, they deemed it wise to create an Electoral Commission as a constitutional organ and invested it with the exclusive function of passing upon and determining the election, returns and qualifications of the members of the National Assembly, they must have done so not only in the light of their own experience but also having in view the experience of other

enlightened peoples of the world. The creation of the Electoral Commission was designed to remedy certain evils of which the framers of our Constitution were cognizant. Notwithstanding the vigorous opposition of some members of the Convention to its creation, the plan, as hereinabove stated, was approved by that body by a vote of 98 against 58. All" that can be said now is that, upon the approval of the Constitution, the creation of the Electoral Commission is the expression of the wisdom 'ultimate justice of the people'. (Abraham Lincoln, First Inaugural Address, March 4, 1861.)

"From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long-felt need of *determining legislative contesta devoid of partisan considerations* which prompted the people acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to *off-set partisan influence* in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court." (Pp. 174-175.)[7]

As a matter of fact, during the deliberations of the convention, Delegates Conejero and Roxas said:

"El Sr. CONEJERO. Antes de votarse la enmienda, quisiera pedir información del Subcomité de Siete.

"El Sr. PRESIDENTE. Que dice el Comité?

"El Sr. ROXAS. Con mucho gusto.

"El Sr. CONEJERO. Tal como está el *draft, dando tres miembros a la mayoría, y otros tres a la minoría y tres a la Corte Suprema,* no cree su Señoría que este equivale prácticamente a dejar el asunto a los miembros del Tribunal Supremo?

"El Sr. ROXAS. Sí y no. Creemos que si *el tribunal a la Comisión está constituido*

> *en esa forma*, tanto los miembros de la mayoría como los de la minoría así como los miembros de la Corte Suprema considerarán la cuestión sobre la base de sus méritos, *sabiendo que el partidismo no es suficiente para dar el triunfo.*
>
> 'El Sr. CONEJERO. Cree Su Señoría que en un caso como ese, podríamos hacer que tanto los de la mayoría como los de la minoría prescindieran del partidismo?
>
> "El Sr. ROXAS. Creo que sí, porque el partidismo no les daría el triunfo." (Angara *vs.* Electoral Commission, *supra,* pp. 168-169; italics supplied.)

It is clear from the foregoing that the main objective of the framers of our Constitution in providing for the establishment, first, of an Electoral Commission,[8] and then [9] of one Electoral Tribunal for each House of Congress, was to insure the exercise of judicial impartiality in the disposition of election contests affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely: (*a*) the party having the *largest* number of votes, and the party having the *second* largest number of votes, in the National Assembly or in each House of Congress, were given the same number of representatives in the Electoral Commission or Tribunal, so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (*b*) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal with judicial temper. This is obvious from the very language of the constitutional provision under consideration. In fact, Senator Sabido—who had moved to grant to Senator Tañada the "privilege" to make the nominations on behalf of the party having the second largest number of votes in the Senate—agrees with it. As Senator Sumulong inquired:

> "* * * I suppose Your Honor will agree with me that the framers of the Constitution precisely thought of creating- this Electoral Tribunal so as *to prevent the majority from ever having a preponderant majority in the Tribunal."* (Congressional Record for the Senate, Vol. Ill, p. 330; italics supplied.)

Senator Sabido replied:

> "That is so, * * *." (*Id.*, p. 330.)

Upon further interpelation, Senator Sabido said:

> "* * * *the purpose of the creation of the Electoral Tribunal and of its composition is to maintain a balance between the two parties and make the members of the Supreme Court the controlling power so to speak of the Electoral Tribunal or hold the balance of power. That is the ideal situation."* (Congressional Record for the Senate, Vol. Ill, p. 349; italics supplied.)

Senator Sumulong opined along the same line. His words were:

> "* * * The intention is that when the three from the majority and the three from the minority become members of the Tribunal it is hoped that they will become aware of their judicial functions, not to protect the protestants or the protestees. It is hoped that they will act as judges; because to decide election cases is a judicial function. But the framers of the Constitution besides being learned were *men of experience.* They knew that even Senators like us are not angels, that we are human beings, that if we should be chosen to go to the Electoral Tribunal *no one can say that we will entirely be free from partisan influence to favor* our party, so that in case that hope that the three from the majority and the three from the minority who will act as judges should result in disappointment, in case they do not act as judges but they go there and vote along party lines, still there Is the guarantee that they will offset each other and the result w|ill be that *the deciding vote will reside in the hands of the three Justices who have no partisan motives* to favor either the protestees or the protestants. In other words, *the whole idea is to prevent the majority from controlling* and dictating the decisions of the Tribunal and to make sure that *the decisive vote will be wielded not by the Congressmen or Senators who are members of the Tribunal but will be wielded by the Justices who*, by virtue of their judicial offices, will have no partisan motives to serve, either protestants or protestees. That is my understanding of the intention of the framers of the Constitution when they decided to create the Electoral Tribunal.
>
> * * * * * * *
>
> "My idea is that the intention of the framers of the constitution in creating the

> Electoral Tribunal is to insure *impartiality and independence in its decision,* and that is sought to be done by never *allowing the majority party to control the Tribunal, and secondly by seeing to it that the decisive vote in the Tribunal will be left in the hands of persons who have no partisan interest or motive to favor either protestant or protestee."* (Congressional Record for the Senate, Vol. Ill, pp. 362-363, 365-366; italics supplied.)

So important in the "balance of powers" between the two political parties in the Electoral Tribunals, that several members of the Senate questioned the right of the party having the second largest number of votes in the Senate— and, hence, of Senator Tañada, as representative of the Citizens Party—to nominate for the Senate Electoral Tribunal any Senator *not belonging to said party.* Senators Lim, Sabido, Cea and Paredes maintained that the spirit of the Constitution would be violated if the nominees to the Electoral Tribunals did not belong to the parties respectively making the nominations.[10]

It is not necessary, for the purpose of this decision, to determine whether the parties having the largest, and the second largest, number of votes in each House may nominate, to the Electoral Tribunals, those members of Congress who do not belong to the party nominating them. It is patent, however, that the most vital feature of the Electoral Tribunals is the *equal representation* of said parties therein, and the resulting equilibrium, to be *maintained by the Justices of the Supreme* Court as members of said Tribunals. In the words of the members of the present Senate, said feature reflects the "intent" "purpose", and "spirit of the Constitution", pursuant to which the Senate Electoral Tribunal should be organized (Congressional Record for the Senate, pp. 330, 337, 348-9, 350, 351, 355, 358, 362-3, 364, 370, 376).

Now then, it is well settled that "the purpose of all rules or maxims as to the construction or interpretation of statutes is to *discover the true intention of the law"* (82 C. J. S., 526) and that

> "As a general rule of statutory construction, *the spirit or intention of a statute prevails over the letter thereof,* and whatever is within the spirit of a statute is within the statute although it is not within the letter thereof, while that which is within the letter, but not within the spirit of a statute, is not within the statute; but, where the law is free and clear from ambiguity, the letter of it is not to be disregarded on the pretext of pursuing its spirit." (82 C. J. S., 613.)

"There is no universal rule or absolute test by which directory provisions in a statute may in all circumstances be distinguished from those which are mandatory. However, in the determination of this question, as of every other question of statutory construction, *the prime object is to ascertain the legislative intent*. The legislative intent must be obtained *from all the surrounding circumstances,* and the determination does not depend on the form of the statute. *Consideration must be given to the entire statute, its nature, its object, and the consequences which would result from construing it one way or the other,* and the statute must be construed in connection with other related statutes. Words of permissive character may be given a mandatory significance in order to *effect the legislative intent,* and, when the terms of a statute are such that they cannot be made effective to the extent of giving each and all of them some reasonable operation, without construing the statute as mandatory, such construction should be given; * * * On the other hand, the language of a statute, however mandatory in form, may be deemed directory *whenever legislative purpose can best be carried* out by such construction, and the legislative intent does not require a mandatory construction; but *the construction of mandatory words as directory should not be lightly adopted and never where it would in fact make a new law instead of that passed by the legislature. * * * Whether a statute is mandatory or directory depends on whether the thing directed to be done is of the essence of the thing required,* or is a mere matter of form, and what is a matter of essence can often be determined only by judicial construction. Accordingly, when a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, it is generally regarded as directory, unless followed by words of absolute prohibition; and a statute is regarded as directory where no substantial rights depend on it, *no injury can result from ignoring it, and the purpose of the legislature can be accomplished* in a manner other than that prescribed, *with substantially the same result.* On the other hand, *a provision relating to the essence of the thing to be done, that is, to matters of substance, is mandatory,* and when a fair interpretation of a statute, which directs acts or proceedings to be done in a certain way; shows that the legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, or *when same antecedent and prerequisite conditions must exist prior to the exercise of power, or must be performed before*

> *certain other powers can be exercised, the statute must be regarded as, mandatory.* (Id., pp. 869-874.) (See, also, Wiords and Phrases, Vol. 26, pp. 463-467; italics supplied.)

What has been said above, relative to the conditions antecedent to, and concomitant with, the adoption of section 11 of Article VI of the Constitution, reveals clearly that its framers intended to prevent the majority party from controlling the Electoral Tribunals, and that the structure thereof is founded upon the equilibrium between the majority and the minority parties therein, with the Justices of the Supreme Court, who are members of said Tribunals, holding the resulting balance of power. The procedure prescribed in said provision for the selection of members of the Electoral Tribunals is *vital* to the role they are called upon to play. It constitutes the essence of said Tribunals. Hence, *compliance with said procedure is mandatory*, and acts performed in violation thereof are null and void.[11]

It is true that the application of the foregoing criterion would limit the membership of the Senate Electoral Tribunal, in the case at bar, to seven (7), instead of nine (9), members; but, it is conceded that the present composition of the Senate was not foreseen by the framers of our Constitution (Congressional Record for the Senate, Vol. Ill, pp. 329, 342, 349, 354, 359, 375). Furthermore, the spirit of the law prevails over its letter, and the solution herein adopted maintains the spirit of the Constitution, for partisan considerations can not be decisive in a tribunal consisting of three (3) Justices of the Supreme Court, three (3) members nominated by the majority party and either one (1) or two (2) members nominated by the party having the second largest number of votes in the House concerned.

Upon the other hand, what would be the result of respondents' contention if upheld? Owing to the fact that the Citizens Party[12] has only one member in the Upper House, Senator Tañada felt he should nominate, for the Senate Electoral Tribunal, only said member of the Citizens Party. The same is, thus, numerically handicapped, *vis-a-vis* the majority party, in said Tribunal. Obviously, Senator Tañada did not nominate other two Senators, because, otherwise, he would worsen the already disadvantageous position, therein, of the Citizens Party. Indeed, by the aforementioned nomination and election of Senators Cuenco and Delgado, if the same were sanctioned, the Nacionalista Party would have five (5) members in the Senate Electoral Tribunal, as against one (1) member of the Citizens Party and three members of the Supreme Court. With the *absolute majority* thereby attained by the majority party in said Tribunal, *the philosophy underlying the same would be entirely upset.* The equilibrium between the political parties therein would be destroyed. What is worst, *the*

decisive moderating role of the Justices of the Supreme Court would be wiped out, and, in lieu thereof, the door would be thrown wide open for the predominance of political considerations in the determination of election protests pending before said Tribunal, which is precisely what the fathers of our Constitution earnestly strove to forestall.[13]

This does not imply that the honesty, integrity or impartiality of Senators Cuenco and Delgado are being questioned. As a matter of fact, when Senator Tañada objected to their nomination, he explicitly made of record that his opposition was based, not upon their character, but upon the principle involved. When the election of members of Congress to the Electoral Tribunal is made dependent upon the nomination of the political parties above referred to, the Constitution thereby indicates its reliance upon the *method of selection* thus established, regardless of the individual qualities of those chosen therefor. Considering the wealth of experience of the delegates to the Convention, as lawyers of great note, as veteran politicians and as leaders in other fields of endeavor, they could not, and did not, ignore the fact that the Constitution must limit itself to giving general patterns or norms of action. In connection, particularly, with the composition of the Electoral Tribunals, they believed that, even the most well meaning individuals often find it difficult to shake off the bias and prejudice created by political antagonisms and to resist the demands of political exigencies, the pressure of which is bound to increase in proportion to the degree of predominance of the party from which it comes. As above stated, this was confirmed by distinguished members of the present Senate. (See pp. 25-28, 33, 34, *supra*.)

In connection with the argument of the former Secretary of Justice to the effect that when "there is no minority party represented in the Assembly, the necessity for such a check by the minority disappears", the following observations of the petitioners herein are worthy of notice:

> "Under the interpretation espoused by the respondents, the very frauds or terrorism committed by a party would establish the legal basis for the final destruction of minority parties in the Congress at least. Let us suppose, for example, that in the Senate, the 15 or 16 senators with unexpired terms belong to the party A. In the senatorial elections to fill the remaining 8 seats, all the 8 candidates of party A are proclaimed elected through alleged fraud and/or terrorism. (The ouster of not less than 3 senators-elect in the elections held since liberation attests to the reality of election frauds and terrorism in our country.) There being no senator or only one senator belonging to the minority, who would

sit in judgment on the election candidates of the minority parties? According to the contention of the respondents, it would be a Senate Electoral Tribunal made up of three Supreme Court Justices and 5 or 6 members of the same party A accused of fraud and terrorism,. *Most respectfully, we pray this Honorable Court to reject an interpretation that would make of a democratic constitution the very instrument by which a corrupt and ruthless party could intrench itself in power in the legislature and thus destroy democracy in the Philippines.*

* * * * * * *

"* * * *When there are no electoral protests filed by the minority party,* or when the only electoral protests filed are by candidates of the majority against members-elect of the same majority party, *there might be no objection to the statement*. But *if electoral protests are filed by candidates of the, minority party,* it is at this point that a need for a check on the majority party is *greatest*, and contrary to the observation made in the above-quoted opinion, such a cheek is a function that cannot be successfully exercised by the 3 Justices of the Supreme Court, for the obvious and simple reason that they could easily be outvoted by the 6 members of the majority party in the Tribunal.

* * * * * * *

"In the case of the cited opinion of Secretary Abad Santos rendered in 1939, *it did not appear that there were minority party candidates who were adversely affected by the ruling of the Secretary of Justice and who could liave brought a test case to court*." (Italics supplied.)

The defenses of waiver and estoppel set up against petitioner Tañada are untenable. Although "an individual may waive constitutional provisions intended for his benefit", particularly those meant for the protection of his property, and, sometimes, even those tending "to secure his personal liberty", the power to waive does not exist when "public policy or public morals" are involved. (11 Am. Jur. 765; I Cooley's Constitutional Limitations, pp. 368-371). The procedure outlined in the Constitution for the organization of the Electoral Tribunals was adopted in response to the demands of the common weal, and it has

been held that "where a statute is founded on public policy, those to whom it applies should not be permitted to waive its provisions" (82 C. J. S., 874). Besides, there can be no waiver without an *intent* to such effect, which Senator Tañada did not have. Again, the alleged waiver or exhaustion of his rights does not justify the exercise thereof by a person or party other than that to which it is vested exclusively by the Constitution.

The rule on estoppel is that "whenever a party has, by his declaration, act or omissions, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in a litigation arising out of such declaration, act or omission, be permitted to falsify it" (Rule 68, sec. 68 [*a*], Rules of Court). In the case at bar, petitioner Senator Tañada did not lead the Senate to believe that Senator Primicias could nominate Senators Cuenco and Delgado. On the contrary, said petitioner repeatedly asserted that his was the exclusive right to make the nomination. He, likewise, specifically contested said nomination of Senators Cuenco and Delgado. Again, the rule on estoppel applies to questions of *fact, not of law*, about the truth of which the *other party* is ignorant (see Moran's Comments on the Rules of Court, Vol. 3, pp. 490, 495). Such is not the nature of the situation that confronted Senator Tañada and the other members of the Senate. Lastly, the case of Zandueta *vs.* De la Costa (66 Phil., 615), cited by respondents, is not in point. Judge Zandueta assumed office by virtue of an appointment, the legality of which he later on assailed. In the case at bar, the nomination and election of Senator Tañada as member of the Senate Electoral Tribunal was separate, distinct and independent from the nomination and election of Senators Cuenco and Delgado.

In view of the foregoing, we hold that the Senate may not elect, as members of the Senate Electoral Tribunal, those Senators who have not been nominated by the political parties specified in the Constitution; that the party having the largest number of votes in the Senate may nominate not more than three (3) members thereof to said Electoral Tribunal; that the party having the second largest number of votes in the Senate has the exclusive right to nominate the other three (3) Senators who shall sit as members in the Electoral Tribunal; that neither these three (3) Senators, nor any of them, may be nominated by a person or party other than the one having the second largest number of votes in the Senate or its representative therein; that the Committee on Rules for the Senate has no standing to validly make such nomination and that the nomination of Senators,Cuenco and Delgado by Senator Primicias, and the election of said respondents by the Senate, as members of said Tribunal, are null and void *ab initio*.

As regards respondents Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido

Reyes, we are not prepared to hold, however, that their appointments were null and void. Although recommended by Senators Cuenco and Delgado, who are not lawful members of the Senate Elecr toral Tribunal, they were appointed by its Chairman, presumably, with the consent of the majority of the de jure members of said body[14] or, pursuant to the Rules thereof. At any rate, as held in Suanes *vs.* Chief Accountant (*supra*), the selection of its personnel is an internal matter falling within the jurisdiction and control of said body, and there is every reason to believe that it will, hereafter, take appropriate measures, in relation to the four (4) respondents abovementioned, conformably with the spirit of the Constitution and of the decision in the case at bar.

Wherefore, judgment is hereby rendered declaring that respondents Senators Mariano Jesus Cuenco and Francisco A. Delgado have not been duly elected as Members of the Senate Electoral Tribunal, that they are not entitled to act as such and that they should be, as they are hereby, enjoined from exercising the powers and duties of Members of said Electoral Tribunal and from acting in such capacity in connection with Senate Electoral Case No. 4 thereof. With the qualification stated above, the petition is dismissed, as regards respondents Alfredo Cruz, Catalina Cayetano, Manuel Serapio and Placido Reyes. Without special pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B. L., and *Félix, JJ.,* concur.

DISSENTING

PARAS, *C. J.,*

In 1939, Section (4) of Article VI of the Philippine Constitution provided that "There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein." As all the members of the National Assembly then belonged to the Nacionalista Party and a belief arose that it was impossible to comply with the constitutional requirement that three members of the Electoral Commission should be nominated by the party having the second largest number of votes, the opinion of the

Secretary of Justice was sought on the proper interpretation of the constitutional provision involved. Secretary of Justice Jose A. Santos accordingly rendered the following opinion:

> "Sir:
>
> "I have the honor to acknowledge the receipt of your letter of January 24, 1939, thru the office of His Excellency, the President, in which you request my opinion as 'to the proper interpretation of the following provision of Section (4) of Article VI of the Philippine Constitution':
>
> 'There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein.'
>
> "You state that 'as all the members of the present National Assembly belong to the Nacionalista Party, it is impossible to comply with the last part of the provision which requires that three members shall be nominated by the party having the second largest number of votes in the Assembly.'
>
> "The main features of the constitutional provision in question are: (1) that there shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six members chosen by the National Assembly; and that (2) of the six members to be chosen by "the National Assembly, three shall be nominated by the party having the largest number of votes and three by the party having the second largest number of votes.
>
> "Examining the history of the constitutional provision, I find that in the first two drafts it was provided that the Electoral Commission shall be composed of 'three members *elected* by the members of the party having the largest number of votes, three *elected* by the members of the party having the second largest number of votes, and three justices of the Supreme Court * * * (Aruego, The Framing of the Phil. Const., pp. 260-261). But as finally adopted by the Convention, the Constitution explicitly states that there sh,all be '*six members chosen by the National Assembly*, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second

largest number of votes' (Aruego, The Framing of the Phil. Const., pp. 271-272).

"From the foregoing changes in the phraseology of the provision, it is evident that the intention of the framers of our Constitution was that there should invariably be six members from the National Assembly. It was also intended to create a non-partisan body to decide any partisan contest that may be brought before the Commission. The primary object was to avoid decision based chiefly if not exclusively on partisan considerations.

"The procedure or manner of nomination cannot possibly affect the constitutional mandate that the Assembly is entitled to six members in the Electoral Commission. When for lack of a minority representation in the Assembly the power to .nominate three minority members cannot be exercised, it logically follows that the only party in the Assembly may nominate three others, otherwise the explicit mandate of the Constitution that there shall be six members from the National Assembly would be nullified.

"In other words, fluctuations in the total membership of the Commission were not and could not have been intended. We cannot say that the Commission should have nine members during one legislative term and six members during the next. Constitutional provisions must always have a consistent application. The membership of the Commission is intended to be fixed and not variable and is not dependent upon the existence or non-existence of one or more parties in the Assembly.

> " 'A cardinal rule in dealing with Constitutions is that they should receive a consistent and uniform interpretation, so they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstances may have so changed as to make a different rule seem desirable (11 Am. Jur. 659).

"It is undisputed of course that the primary purpose of the Convention in giving representation to the minority party in the Electoral Commission was to safeguard the rights of the minority party and to protect their interests, especially when the election of any member of the minority party is protested. The basic philosophy behind the constitutional provision was to enable the

> minority party to act as a check on the majority in the Electoral Commission, with the members of the Supreme Court as the balancing factor. Inasmuch, however, as there is no minority party represented in the Assembly, the necessity for such a check by the minority party disappears. It is a function that is expected to be exercised by the three Justices of the Supreme Court.
>
> "To summarize, considering the plain terms of the constitutional provision in question, the changes that it has undergone since it was first introduced until finally adopted by the convention, as well as the considerations that must have inspired the Constitutional Convention in adopting it as it is, I have come to the conclusion that the Electoral Commission should be composed of nine members, three from the Supreme Court and six chosen by the National Assembly to be nominated by the party in power, there being no other party entitled to such nomination."

Pursuant to the foregoing opinion of February 1, 1939, the Electoral Commission was formally organized, with six members of the National Assembly all belonging to the same party and three Justices of the Supreme Court. Constitutional amendments were introduced and duly adopted in 1940, and the Electoral Commission was replaced by an Electoral Tribunal for each house of Congress. It is now provided that "Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman." (Article VI, Section 11, of the Constitution.)

If there was any doubt on the matter, the same was removed by the amendment of 1940 the framers of which may be assumed to have been fully aware of the one-party composition of the former National Assembly which gave rise to the abovequoted opinion of the Secretary of Justice. When instead of wording the amendment in such a form as to nullify said opinion, Section 11 of Article VI of the Constitution not only did not substantially depart from the original constitutional provision but also positively and, expressly ordains that "Each Electoral Tribunal shall be composed of nine Members," the intent has become clear and mandatory that at all times the Electoral Tribunal shall have nine Members regardless of whether or not two parties make up each house of Congress.

It is very significant that while the party having the second largest number of votes is allowed to nominate three Members of the Senate or of the House of Representatives, it is not required that the nominees should belong to the same party. Considering further that the six Members are chosen by each house, and not by the party or parties, the conclusion is inescapable that party affiliation is neither controlling nor necessary.

Under the theory of the petitioners, even if there were sufficient Members belonging to the party having the second largest of votes, the latter may nominate less than three or none at all; and the Chief Justice may similarly designate less than three Justices. If not absurd, this would frustrate the purpose of having an ideal number in the composition of the Electoral Tribunal and guarding against the possibility of deadlocks. It would not be accurate to argue that the Members of the Electoral Tribunal other than the Justices of the Supreme Court would naturally vote along purely partisan lines, checked or fiscalized only by the votes of the Justices; otherwise membership in the Tribunal may well be limited to the Justices of the Supreme Court and six others who are not Members of the Senate or of the House of Representatives. Upon the other hand, the framers of the Constitution—not insensitive to some such argument—still had reposed their faith and confidence in the independence, integrity and uprightness of the Members of each House who are to sit in the Electoral Tribunals and thereby expected them, as does everybody, to decide jointly with the Justices of the Supreme Court election contests exclusively upon their merits.

In view of the failure or unwillingness of Senator Lorenzo M. Tañada of the Citizens Party, the party having the second largest number of votes in the Senate, to nominate two other Members of the Electoral Tribunal, the Senate was justified, in obedience to the constitutional mandate, to choose—as it did—said two Members.

I vote to dismiss the petition.

Endencia, J., concurs.

DISSENTING

LABRADOR, *J.,*

I dissent and herewith proceed to explain my reasons therefor.

The constitutional provision, in pursuance of which Senators Cuenco and Delgado were elected by the Senate members of the Senate Electoral Tribunal is as follows:

> "The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications, of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or of the House of Representatives, as the case may be, who shall be chosen by each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest number of votes therein. The Senior Justice in each Electoral Tribunal shall be its Chairman." (Section II, Article VI of the Constitution.)

I hold that the above provision, just as any other constitutional provision, is mandatory in character and that this character is true not only of the provision that nine members shall compose the tribunal but also that which defines the manner in which the members shall be chosen. Such a holding is in accord with well-settled rules of statutory construction.

> "As a general proposition, there is greater likelihood that constitutional provisions will be given mandatory effect than is true of any other class of organic law. Indeed, such a construction accords with the generally acknowledged import of constitutional fiat; that its character is such as to require absolute compliance in all cases without exception. And the very principles of our institutions, involving as they do concepts of constitutional supremacy, are such as to form reasonable grounds for a presumption that the framers of a constitution intended that just such efficacy be given to it * * *." (Sec. 5807, Sutherland Statutory Construction, Vol. 3, p. 84.)

The majority holds that as Senator Tañada, the only member of the Senate who does not belong to the Nacionalista Party, has refused to exercise the constitutional privilege afforded him to nominate the two other members, the Senate may not elect said two other members. And the reason given for this ruling is the presumed intention of the constitutional provision to safeguard the interests of the minority. This holding is subject to

the following fundamental objections. In the first place, it renders nugatory ythe provision which fixes the membership of the Senate Electoral Tribunal at nine, a provision which is admittedly a mandatory provision. In the second place, it denies to the Senate the power that the constitutional provision expressly grants it, i. e., that of electing the members of the Electoral Tribunal; so in effect this right or prerogative is lodged, as a consequence of the refusal of the minority member to nominate, in the hands of said member of the minority, contrary to the constitutional provision. In the third place, it would make the supposedly procedural provision, the process of nomination lodged in the minority party in the Senate, superior to and paramount over the power of election, which is lodged in the whole Senate itself. So by the ruling of the majority, a procedural provision overrides a substantive one and renders nugatory the other more important mandatory provision that the Electoral Tribunal shall be composed of nine members. In the fourth place, the majority decision has by interpretation inserted a provision in the Constitution, which the Constitutional Convention alone had the power to introduce, namely, a proviso to the effect that if the minority fails or refuses to exercise its privilege to nominate all the three members, the membership of the Electoral Tribunal shall thereby be correspondingly reduced. This arrogation of power by us is not justified by any rule of law or reason.

I consider the opinion of the Senate that the refusal of Senator Tañada to nominate the two other members must be construed as a waiver of a mere privilege, more in consonance not only with the constitutional provision as a whole, but with the dictates of reason. The above principle (of waiver) furnishes the remedy" by which two parts of the constitutional provision, that which fixes membership at nine and that which outlines the procedure in which said membership of nine may be elected, can be reconciled. Well known is the legal principle that provisions which in their application may nullify each other should be reconciled to make them both effective, if the reconciliation can be effected by the application of other legal principles. The reconciliation is brought about in this case by the principle of waiver.

While I agree with the majority that it is the duty of this Court to step in, when a constitutional mandate is ignored, to enforce said mandate even as against the other coordinate departments, this is not the occasion for it to do so, for to say the least it does not clearly appear that the form and manner in which the Senate exercised its expressly recognized power to elect its members to the Senate Electoral Tribunal has been clearly violative of the constitutional mandate.

Senators Cuenco and Delgado not having been duly elected as members of the Senate

Electoral Tribunal, are not entitled to act as such. Petition dismissed <=”” em=””>

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[1] Casanovas *vs.* Hord, 8 Phil., 125; Orno *vs.* Insular Gov’t., 11 Phil., 67; Weigall *vs.* Shuster, 11 Phil., 340; Barrameda *vs.* Moir, 25 Phil., 44; Hamilton *vs.* McGirr, 30 Phil., 563; Compañía Gral. de Tabacos vs. Board of Public Utility Commissioners, 34 Phil., 136; Central Capiz *vs.* Ramirez, 40 Phil., 883; Concepción *vs.* Paredes, 42 Phil., 599; McDaniel *vs.* Apacible, 42 Phil., 749; U. S. *vs.* Ang Tan Ho, 43 Phil., 1; People *vs.* Pomar, 46 Phil., 440; Agcaoili *vs.* Saguitan, 48 Phil., 676; Gov’t. *vs.* Springer, 50 Phil., 259; Gov’t. *vs.* Agoncillo, 50 Phil., 348; Gov’t. *vs.* El Hogar Filipino, 50 Phil., 399; Manila Electric *vs.* Pasay Transp., 57 Phil., 600; Angara *vs.* Electoral Commission, supra; People *vs.* Vera, 65 Phil., 56; Vargas *vs.* Rilloraza, 45 Off. Gaz., 3847; Endencia *vs.* David, 49 Off. Gaz., 4822; Rutter *vs.* Esteban, 49 Off. Gaz., 1807; Comm. Investment *vs.* Garcia, 49 Off. Gaz., 1801; Marbury *vs.* Madison, 1 Cranch 137; Ex. Parte Garland, 4 Wall. 333; Hepburn *vs.* Griswold, 8 Wall. 603; Knox *vs.* Lee, 12 Wall. 457; Civil Rights Cases [U.S. *vs.* M. Stanley; U.S. *vs.* M. Ryan, U. S. *vs.* S. Nichols; U. S. *vs.* Singleton; Robinson *vs.* Menphis and Charleston Railroad Co.], 109 U. S. 3 Pollock *vs.* Farmers’ Loan and Trust Co. 157 U.S. 429, 158 U.S. 601; Fairbanks *vs.* U.S., 181 U. S. 286.

[2] Which, insofar as pertinent to the issues in the case at bar, is substantially identical to each of the Electoral Tribunals under the Constitution as amended.

[3] Araneta *vs.* Dinglasan, Barredo *vs.* Commission on Elections, andRodriguez *vs.* Teasurer of the Philippines, 84 Phil., 368, 45 Off. Gaz., 4411, 4457; Nacionalista Party *vs.* Bautista, 85 Phil., 101, 47 Off. Gaz., 2356; Lacson *vs.* Romero, 84 Phil., 740, 47 Off. Gaz., 1778; De los Santos *vs.* Mallare, 87 Phil., 289, 48 Off. Gaz., 1787; Lacson *vs.* Roque, 92 Phil., 456, 49 Off. Gaz., 93;,Jover Ledesma *vs.* Borra, 93 Phil., 506, 49 Off. Gaz., 2765; Ramos *vs.* Avelino, 97 Phil., 844, 51 Off. Gaz., 5607.

[4] “From the very nature of the American system of government with Constitutions prescribing the jurisdiction and powers of each of the three branches of government, *it has devolved on the judiciary to determine whether the acts of the other two departments are in harmony with the fundamental law*. All the departments of the government are unquestionably entitled and compelled to judge of the Constitution for themselves; but, in doing so, they act under the obligations imposed in, the instrument, and in the order of time

pointed out by it. When the judiciary has once spoken, if the acts of the other two departments are held to be unauthorized or despotic, in violation of the Constitution or the vested rights of the citizen, they cease to be operative or binding.

"Since the Constitution is intended for the observance of the judiciary as well as the other departments of government and the judges are sworn to support its provisions, *the courts are not at liberty to overlook or disregard its commands: It is their duty in* authorized proceedings to give effect to the existing Constitution and to obey all constitutional provisions irrespective of their opinion as to the wisdom of such provisions.

"In accordance with principles which are basic, the rule is fixed that *the duty in a proper case to declare a law unconstitutional cannot be declined and must be performed* in accordance with the deliberate judgment of the tribunal before which the validity of the enactment is directly drawn into question. When it is clear that a statute transgresses the authority vested in the legislature by the Constitution, *it is the duty of the courts to declare the act unconstitutional because they cannot shrink from it without violating their oaths of office.* This duty of the courts to maintain the Constitution as the fundamental law of the state is *imperative and unceasing;* and, as Chief Justice Marshal said, whenever a statute is in violation of the fundamental law, the courts must so adjudge and thereby give effect to the Constitution. *Any other course would lead to the destruction of the Constitution*. Since the question as to the constitutionality of a statute is a judicial matter, the courts will not decline the exercise of jurisdiction upon the suggestion that action might be taken by political agencies in disregard of the judgment of the judicial tribunals." (11 Am. Jur,, pp. 712-713, 713-715; italics supplied.)

[5] Rich *vs.* Board of Canvassers, 59 N. W. 183; State *vs.* McBride, 29 Am. Dec. 636; Collier *vs.* Frierson, 24 Ala. 100; State *vs.* Swift, 69 Ind. 505; State *vs.* Timme, 11 N. W. 785; Prohibition and Amendment Cases, 24 Kan. 700; Kadderly *vs.* Portland, 74 Pac. 710; Koehler *vs.* Hill, 14 N. W. 738; State *vs.* Brockhart, 84 N. W. 1064; University *vs.* Mclver, 72 N. C. 76; Westinghausen *vs.* People, 6 N.W. 641; State *vs.* Powell, 27 South, 927; Bott *vs.* Wurtz, 43 Atl. 744; Rice *vs.* Palmer, 96 S. W. 396; State *vs.* Tooker, 37 Pac. 840.

[6a] "The procedure or manner of nomination cannot possibly affect the constitutional mandate that the Assembly is entitled to six members in the Electoral Commission. When for lack of a minority representation in the Assembly the power to nominate three minority members cannot be exercised, it logically follows that the only party in the Assembly may nominate three others, otherwise the explicit mandate of the Constitution that there shall be

six members from the National Assembly would be nullified.

"In other words, fluctuations in the total membership of the Commission were not and could have been intended. We cannot say that the Commission should have nine members during one legislative term and six members during the next. Constitutional provisions must always have a consistent application. The membership of the Commission is intended to be fixed and not variable and is not dependent upon the existence or non-existence of one or more parties in the Assembly.

> 'A cardinal rule in dealing with Constitutions is that they should receive a consistent and uniform interpretation, so they shall not be taken to mean one thing at one time and another thing at another time, even though the circumstances may have so changed as to make a different rule seem desirable (11 Am. Jur. 659).'
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> "It is undisputed of course that the primary purpose of the Convention in giving representation to the minority party in the Electoral Commission was to safeguard the rights of the minority party and to protect their interests, especially when the election of any member of the minority party is protected. The basic philosophy behind the constitutional provision was to enable the minority party to act as a check on the majority of the Electoral Commission, with the members of the Supreme Court as the balancing factor. Inasmuch, however, as there is no minority party represented in the Assembly, the necessity for such a check by the minority party disappears. It is a function that is expected to be exercised by the three Justices of the Supreme Court.
>
> "To summarize, considering the plain terms of the constitutional provision in question, the changes that it has undergone since it was first introduced until finally adopted by the Convention, as well as the considerations that must have inspired the Constitutional Convention in adopting it as it is, I have come to the conclusion that the Electoral Commission should be composed of nine members, three from the Supreme Court and six chosen by the National Assembly to be nominated by the party in power, there being no other party entitled to such nomination." Annex A to the Answers pp. 2-3.
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> "Since 1939, when said opinion was rendered, the question therein raised has not been taken up or discussed, until the events leading to the case at bar (in

February 1956).

[6b] "Thus, in Suanes *vs.* Chief Accountant (*supra*)—in which the respondents maintained that the Electoral Commission formed part of the National Assembly, citing in support thereof the principle of contemporaneous and practical construction—this Court deemed it unnecessary to refute the same in order to adopt the opposite view.

[7] Senator Laurel reiterated this view on the floor of the Senate, on February 22, 1956, in the following language:

"And hence this provision that we find in the Constitution, three to represent, in the manner prescribed in the Constitution, the party that received the highest number of votes, meaning the majority party which is the Nacionalista Party now, and three to represent the party receiving the next highest number of votes therein, meaning the minority party, the party receiving the next highest number of votes. But there was a great deal of opinion that it would be better if this political organization, so far as the legislative department is concerned, could be tempered by a sort of a judicial reflection which could be done by drafting three, as to each Electoral Tribunal, from the Supreme Court. And that, I think, was the reason because a great majority of the delegates to the constitutional convention accepted that principle. That is why we have nine members in each electoral tribunal, in the House and in the Senate. And one reason that I remember then and I am speaking from memory, Mr. President, was that *it is likely that the three members representing a party would naturally favor the protestants or protestees*, and so on. So it would be better that even on that hypothesis or on that supposition it would be better, in case they annul each other because three votes in favor or three votes against, depending on the party of the protestants or the protestees, that the Supreme Court decide the case because then it would be a judicial decision in reality. Another reason is founded on the theory that the Justices of the Supreme Court are supposed to be beyond pressure, beyond influence, although that may not be true. But having reached the highest judicial position of the land, these persons would likely act impartially." (Congressional Record for the Senate, Vol. Ill, p. 376.)

[8] When the legislative power was vested in a unicameral body, known as the National Assembly.

[9] Upon the substitution of the National Assembly by a bicameral Congress, consisting of the Senate and the House of Representatives.

[10] Senator Lim said:

"But *in the spirit, Your Honor can see very well that those three should belong to the party having the second largest number of votes, precisely, as Your Honor said, to maintain equilibrium because partisan considerations naturally enter into the mind and heart of a senator belonging to a particular party.* Although grammatically, I agree with Your Honor, Your Honor can see that the spirit of the provision of the Constitution is clear that the three must come from the party having the highest number of votes and *the other three nominated must belong to the party having the second highest number of votes.* Your Honor can see the point. If we allow Your Honor to back up your argument that equilibrium should be maintained, because partisan considerations enter when one is with the majority party, and that no party should prevail, Your Honor should also have to consider that *the spirit of the Constitution is precisely to obviate that to the extent than only three can be nominated from the party having the largest number of votes and three from the party having the second largest number of votes."* (Congressional Record of the Senate, Vol. Ill, p. 337; italics supplied.)

The statement of Senator Sabido was:

> *"* * * the purpose of the creation of the Electoral Tribunal and of its composition is to maintain a balance, between the two parties and make the members of the Supreme Court the controlling power so to speak of the Electoral Tribunal or hold the balance of power. That is the ideal situation."*
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> * * * * * * *
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> "* * * I said that the ideal composition in the contemplation of the framers of the Constitution is that those participating in the electoral tribunal shall belong to the members of the party who are before the electoral tribunal either as protestants or protestees, in order to insure impartiality in the proceeding and justice in the decision that may be finally rendered." (Congres<-sional Record for the Senate, Vol. Ill, pp. 349, 352; italics supplied.)

Senator Cea declared:

> *"* * * the original purpose of the Constitution is to nominate only members of the*

> *two major parties in the Senate in the Electoral Tribunal.*" (Congressional Record for the Senate, Vol. Ill, p. 350; italics supplied.)

The words of Senator Paredes were:

> "* * * *what was intended in the creation of the electoral tribunal was to create a sort of collegiate court composed of nine members three of them belonging to the party having largest number of votes, and three from the party having the second largest number of votes so that these members may represent the party, and the members of said party* who will sit before the electoral tribunal as protestees. For *when it comes to a party, Mr. President, there is ground to believe that decisions will be. made along party lines.*" "(Congressional Record for the Senate, Vol. Ill, p. 351; italics supplied.)

[11] The need of adopting this view is demanded, not only by the factors already adverted to, but, also, by the fact that constitutional provisions, unlike statutory enactments, are presumed to be mandatory, "unless the contrary is unmistakably manifest." The pertinent rule of statutory construction is set forth in the American Jurisprudence as follows:

"In the interpretation of Constitutions, questions frequently arise as to whether particular sections are mandatory or directory. The courts usually hesitate to declare that a constitutional provision is directory merely in view of the tendency of the legislature to disregard provisions which are not said to be mandatory. Accordingly, *it is the general rule to regard constitutional provisions as mandatory*, and not to leave any discretion to the will of a legislature to obey or to disregard them. This presumption as to mandatory quality is usually followed *unless it is unmistakably manifest that the provisions are intended to be merely directory*. The analogous rules distinguishing mandatory and directory statutes are of *little value* in this connection and are *rarely applied* in passing upon the provisions of a Constitution.

"So strong is the inclination in favor of giving obligatory force to the terms of the organic law that it has even been said that *neither by the courts nor by any other department of the government may any provision of the Constitution be regarded as merely directory, but that each and every one of its provisions should be treated as imperative and mandatory, withóut reference to the rules and distinguishing between the directory,land the mandatory*

statutes." (II Am. Jur. 686-687; italics supplied.)

[12] Which admittedly," has the second largest number of votes in the Senate.

[13] In Angara vs. Electoral Commission (supra, 169) Senator, then Justice, Laurel, speaking for this Court, recalled that:

"In the same session of December 4, 1934, Delegate Cruz (C.) sought to amend the draft by reducing the representation of the minority party and the Supreme Court in the Electoral Commission to two members each, so as to accord more representation to the majority party. *The Convention rejected this amendment* by a vote of seventy-six (76) against forty-six (46), thus maintaining the non-partisan character of the commission."(Italics supplied.)

Needless to say, what the Constitutional Convention thus precluded from being done by direct action or grant of authority in the Charter of our Republic should not receive judicial sanction, when done by resolution of one House of Congress, a mere creature of said charter.

[14] Namely, the other two (2) Justices of the Supreme Court and Senators Laurel, Lopez and Primicias, or a total of six (6) members of the Tribunal.

Date created: March 26, 2015