

**ANACLETO D. BADOY, JR., PETITIONER, VS. JAIME N. FERRER,
CHAIRMAN, CESAR MIRAFLOR, AND LINO M. PATAJO, MEMBERS,
COMMISSION ON ELECTIONS, RESPONDENTS.**

G.R. No. L-32546. October 17, 1970

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3b0fbd7ab8db/>

MAKASIAR, J.:

In these two cases, petitioner Anacleto D. Badoy, Jr. avers that he is a candidate for delegate to the Constitutional Convention for the lone district of North Cotabato; and pursuant to Sec. 19 of R.A. NO. 6132, he prays in L-32546 that Sec. 12(F) of the law be declared unconstitutional as the same denies:

- (1) individuals, who are not candidates, their freedom of speech and of the press; and
- (2) candidates the right to speak and write, discuss and debate either in favor of their candidacies or against the candidacies of others.

Petitioner in G.R. No. L-32551 prays

- (1) that Sec. 12(F) of R.A. No. 6132 be so construed as to allow the printing and publication of comments and articles for or against a candidate, which are not paid, without mentioning the names of all the other candidates with equal prominence (underscoring supplied); and
- (2) that Comelec Resolution No. RR-724 be declared unconstitutional in so far as it prohibits the printing and publication of such comments and articles, which are not paid, unless the names of all the other candidates are mentioned with equal prominence. (underscoring supplied)

However, after the filing of the herein petitions, the Comelec had amended paragraph 6 of its Resolution No. RR-724 of September 8, 1970 by promulgating Resolution No. RR-739 on September 29, 1970, which limits the prohibition in said paragraph 6 of Resolution No. RR-724 to the publication of paid comments or paid articles without mentioning the names of all the other candidates with equal prominence; and the pertinent portion of paragraph 6 as thus amended merely restates the ban in Sec. 12(F) of R.A. No. 6132. Since the relevant portion of paragraph 6 of Resolution No. RR-724 as amended no longer prohibits the printing and publication of unpaid comments or unpaid articles without mentioning the names of all other candidates with equal prominence, which is the correct inter-pretation of Sec. 12(F) of R.A. No. 6132, the same renders moot and academic the petition in G.R. No. L-32551. Consequently, We cannot declare as unconstitutional that portion of paragraph 6 of Comelec Reso-lution No. RR-724 as amended by Comelec Resolution No. RR-739, which reads thus:

"(6) Outside of the Comelec Space, xx xx it shall be unlawful for any newspaper, magazine or periodical to print or publish or cause to be printed or published any advertisement, paid comment or paid article in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all the other candidates in the districts in which the candidate mentioned is running are also mentioned with equal prominence. xx xx xx x"

In G.R. No. L-32546, petitioner insists on his challenge that Sec. 12(F) of R.A. No. 6132 is unconstitutional, because it unduly abridges the freedom of expression of an individual, whether candidate or not.

Freedom of expression is not immune to regulation by the State in the exercise of its police power. The validity of the abridgment is gauged by the extent of its inroad into the domain of the liberty of speech and of the press, when subjected to the applicable clear-and-present danger rule or the balancing-of-interests test. If the restriction on the invaded freedom is so narrow that the basic liberty remains, then the limitation is constitutional.[1]

It should be first stressed that, as long as the publisher is a juridical person or an organized group of persons of whatever nature, whether in the business of publishing a newspaper, magazine or periodical only for this particular election or not, any advertisement or article published by a publisher for or against any candidate, paid or unpaid by said publisher, is prohibited as an organized group support under paragraph 1 of Sec. 8(a) of R.A. No. 6132.

Paragraph F of Sec. 12 reads thus:

"The Commission on Elections shall endeavor to obtain free space from newspapers, magazines and periodicals which shall be known as Comelec space, and shall allocate this space equally and impartially among all candidates within the areas in which the newspapers are circulated. Outside of said Comelec space, it shall be unlawful to print or publish, or cause to be printed or published, any advertisement, paid comment or paid article in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all other candidates in the district in which the candidate is running are also mentioned with equal prominence. "

Said paragraph F contemplates the following situations:

I. With or Without Comelec Space

1. Any advertisement, paid comment or paid article by the candidate or by a non-candidate who is a natural person, published in a newspaper, magazine, or periodical for or against a candidate, or mentioning the name of any candidate, and the fact of his candidacy, must mention the names of all other candidates in the same district with equal prominence, in order that such publication will not fall under the ban.
2. With respect to unpaid comments or unpaid articles, published in any newspaper, magazine, or periodical, the names of all the other candidates need not be mentioned.

II. If Comelec Space is Obtained in a Newspaper, Magazine, or Periodical -

1. That Comelec space must be allocated by the Comelec "equally and impartially among all candidates within the areas in which the newspapers are circulated," free for all such candidates.
2. Outside said Comelec space, any advertisement, paid comment or paid article by any candidate or non-candidate who is a natural person, and published in the same or another newspaper, magazine or periodical, for or against a candidate or mentioning the name of any candidate and the fact of his candidacy, must mention all the names of all the other candidates in the same district with equal prominence, to remove the same from the operation of the prohibition.
3. Any unpaid comment or unpaid article of the same nature or content published in any newspaper, magazine, or periodical need not mention the names of all the other candidates.

The expenses for such ad, comment or article incurred by the candidate or by any other person with the knowledge and consent of the candidate, shall be counted as part of the amount of thirty-two thousand pesos (P32,000.00), the maximum total fixed by the law which the candidate can lawfully spend for his candidacy. (see par. G of Sec. 12)

Under the challenged paragraph F of Sec. 12, the moneyed candidate or individual who can afford to pay for advertisements, comments or articles in favor of his candidacy or against the candidacy of another or which mention his name and the fact of his candidacy, is required to mention all the other candidates in the same district with equal prominence, to exempt him from the penal sanction of the law. The evident purpose of this limitation on the freedom of the candidate or his sympathizer to spend his own money for his candidacy alone and not for the furtherance of the candidacy of his opponents, is to give the poor candidates a fighting chance in the election. While it is true that the mere mention of the poor opponent in the same advertisement or paid article does not by itself alone engender perfect equality of chances; at least the chance of the poor candidate for victory is improved because thereby his name will be exposed to the reading public in the same article as that of the wealthy candidate.

The same is true with respect to the candidate who can afford to pay only for an advertisement or comment or article in his favor, and is without funds for the additional space needed to accommodate the names of the other candidates.

If the wealthy candidate or the one who can afford only to meet the campaign expenses for his own candidacy alone, is discouraged thereby to pay for any campaign advertisement, comment or article in his favor, then the parity of chances in winning the election among the poor, the not-so-poor, and the rich candidates is further enhanced.

But the restriction in the challenged paragraph F of Sec. 12, is only one of the measures devised by the law to preserve suffrage pure and un-defiled and to achieve the desired equality of chances among all the candidates.

Considering the foregoing limitation in paragraph F, Sec. 12 in the light of the other provisions of R.A. No. 6132 designed to maximize, if not approximate, equality of chances among the various candidates in the same district, the said restriction on the freedom of expression appears too insignificant to create any appreciable dent on the individual's liberty of expression.

More than compensating for the minor limitation on the freedom of expression of an individual delineated in Sec. 12(F), R.A. No. 6132 affords him several facilities and other forms of assistance by which he can fully exercise his freedom of expression, including freedom of assembly, namely:

1. Section 50-B of the Revised Election Code as amended by R.A. No. 4880 limiting the period of election campaign shall not apply to the election of delegates (Sec. 6 [B]);
2. Each candidate is entitled to utilize for his campaign all the members of his family within the fourth civil degree of consanguinity or affinity;
3. Each candidate can employ a personal campaign staff composed of one for every ten precincts in his district;
4. Each candidate cannot be refused a permit to hold a public meeting on the ground that the provisions of this paragraph a, Sec. 8, may be violated;
5. Any member of any political party, organization or organized group of whatever nature, acting individually, can campaign for or against any candidate;
6. All organizations or organized groups of whatever nature are allowed to disseminate information or advocate constitutional reforms or proposals, which may be the same constitutional reforms or proposals advocated by the candidate, without of course mentioning the candidate directly or indirectly (Sec. 8 [a], par. 1, R.A. 6132);

7. A Comelec billboard in every city, municipality, municipal district and barrio of sufficient population density to be allocated by lottery by the Comelec equally and impartially among them;
8. Comelec time from each radio broadcasting and television station at least one hour but not more than two hours at least once a week also to be allocated by lottery by the Comelec equally and impartially among the candidates within the area of coverage of said station;
9. A candidate may appear on any interview or program in any radio broadcasting or television station, movie house or theater, provided all the other candidates are also invited to appear; and
10. News coverage by the mass media of significant or newsworthy events, views, public meetings or rallies involving any candidate in any news program, newsreel, newspaper, magazine, or other periodicals is allowed. (see pars. A, B, C, E and H of Sec. 12)

To implement the foregoing facilities and to increase the chances of the poor candidate as against the wealthy opponent as well as to insure free, orderly and honest election, in addition to the penal sanctions provided for in the Revised Election Code, R.A. No. 6132 prohibits, with penalties:

1. Political party or organized group support, whether material or otherwise (par. 1 of Sec. 8[a]);
2. The head of any executive department, bureau or office, official or officer nominated or appointed by the President of the Philippines, head or appointed officer of any government-owned or controlled corporation, from giving support directly or indirectly, material or otherwise for or against any candidate (par. 2 of Sec. 8[a]);
3. Any public officer, head, official or appointing officer, or body of a government office, agency or instrumentality including corporations and enterprises owned or controlled by the government, or any employer or officer of a commercial, industrial, agricultural, economic or social enterprise; or any private person or private corporation or association; or any head, minister, officer, or authority of any religion, religious, fraternal, civic or social organization, directly or indirectly, from coercing any of their subordinates, employees, tenants, members, affiliates, parishioners, or followers, as the case may be, to aid, campaign, vote for or against any candidate, which coercion may include (underscoring supplied):
 - (1) punishing or threatening to punish with dismissal, expulsion, ejectment, excommunication, transfer, reduction in wage, salary or compensation;
 - (2) preventing or unduly interfering with the performance of duty or work, or exercise of the freedom of worship; and
 - (3) other forms of penalties or reprisal, as the case may be (Sec. 8[b]);
4. Except upon prior written authority of the Comelec after due notice and hearing, any head, official, or appointing officer of the government, office, agency or instrumentality whether national or local, including corporations and enterprises owned or controlled by the government, from appointing or hiring any new employees, whether provisional, temporary or casual, or from creating and filling up any new position within forty-five days before the election. The Comelec can grant the authority to appoint new employees to fill up new positions only when the position is essential to the proper functioning of the office or agency concerned and it shall not be filled in a manner that may influence the election (Sec. 8[c], underscoring supplied);
5. Release or disbursement of any funds by any government official including barrio officials within forty-five days before the election, whether for public works, for the DSW or for the Presidential Arm on Community Development or any other office performing similar functions except for salaries of personnel or for routine and normal expenses (Sec. 8[d]);

6. During the period of forty-five days before the election:

- (1) any person (a) from making reference to releases of public funds or barrio development funds, (b) from undertaking construction of public works with the materials or equipment procured before the forty-five-day period, or (c) from making deliveries of materials for public works purchased before the prohibited period, for the purpose of influencing voters; and
- (2) any government official from giving or promising to give any increase or salaries or remuneration or privileges to any government official or employee, including those in the government-owned or controlled corporations; and
- (3) any government-owned or controlled corporation from giving or causing to be given and/or from contributing or causing to be contributed any sums of money for any charitable, religious or social cause whatsoever (Sec. 8[e]);

7. During the period beginning thirty days before the election and ending thirty days thereafter, any member of the Armed Forces of the Philippines, the Philippine Constabulary, Special Forces, Home Defense Forces, Barrio Self-Defense Units and all other para-military units, from wearing his uniform or bearing arms outside the camp, garrison, or barracks or their homes in case of the para-military units without authority from the President of the Philippines or the Comelec (Sec. 8[f]); and

8. Any member of the security or police organizations of any government office or agency or government-owned or controlled corporations, or privately owned or operated security, investigative, protective or intelligence agencies, from wearing his uniform or making use of his insignia, decorations or regalia, or bearing arms except within the immediate vicinity of his office, corporation or agency during the prohibited period (Sec. 8[g]).

Furthermore,

9. Any person who publicly bears arms or publicly makes use of uniforms or insignia in violation of the law anywhere during the period of prohibition can be arrested by a peace officer or by a private person even in the absence of the circumstances provided by Rule 113, Sec. 6 of the Rules of Court (Sec. 9, par. 1);

10. Any person who publicly carries a firearm and actually threatens voters to vote for or against any candidate or not to vote at all, or prevents the Chairman or member of the Election Registration Board, the Board of Inspectors or the Board of Canvassers, or a duly appointed watcher from freely performing his duties shall be guilty of serious election offense and can be arrested as aforesaid (Sec. 9, par. 2);

11. The Director of Prisons, the Provincial Warden, the Keeper of the Jail and any person required by law to keep prisoners, who shall illegally order or allow any prisoner to leave the premises or jail sixty days before and thirty days after the election for the purpose of terrorizing or intimidating any voter or election official or watcher shall be penalized with prison mayor in its maximum period, and the prisoner committing such act of intimidation, terrorism or interference shall be sentenced to life imprisonment (Sec. 10, R. A. 6132);

12. No candidate can avail of the franking privilege, and no government official can use or extend such privilege in favor of or against any candidate (Sec. 12[D]);

13. No candidate can utilize paid forms of propaganda other than the Comelec billboards and Comelec time (Sec. 12[E]);

14. No radio broadcasting or television station, movie house or theatre can show, display or give any advertising or propaganda to any candidate (Sec. 12[E]); and

15. No radio broadcasting and television station can schedule any program or permit any sponsor to manifestly

favor or oppose any candidate by unduly referring to him or including him in its programs or newscasts (Sec. 12[H]).

Against the background of such facilities accorded by the law for all candidates, rich and poor alike, and the prohibitions as well as penal sanctions to insure the sanctity of the ballot against desecration and the equality of chances among the candidates, the restriction on the freedom of expression of the candidate or any other individual prescribed in par. F of Sec. 12 is so narrow as not to affect the substance and vitality of his freedom of expression itself.

The questioned ban on Sec. 12(F) is even less restrictive than the prohibitions in R. A. 4880. This Court -

(1) unanimously upheld as valid the provision in said Republic Act 4880 limiting the period for nomination of candidates of any elective public office voted for at large earlier than 150 days immediately preceding an election, and for any other elective public office earlier than 90 days immediately preceding an election;

(2) by six votes sustained the constitutionality of the provision of the same law limiting the period for the conduct of an election campaign or partisan political activity, even if the partisan activity consists of (a) forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate; (b) holding political conventions, cau-cuses, conferences, meetings, rallies, parades or other similar assemblies for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party; and (c) giving, soliciting, or receiving contributions for election campaign either directly or indirectly (Sec. 50-B, pars. [a], [b], and [c], R.A. 4880); and

(3) because four Members dissented, failed to declare as unconstitutional the limitation on the period for (a) making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office, (b) publishing or distributing campaign literature or materials, and (c) directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party specified in Sec. 50-B, pars. (c), (d), and (e) of R.A. 4880.[2]

As heretofore stated, Sec. 6(B) of R.A. 6132 expressly excludes the application of Sec. 50-B of R.A. 4880 limiting the period of election campaign to the election of delegates to the Constitutional Convention. Sec. 12(F) does not limit the period of campaign. And as a matter of fact, under par. 1 of Sec. 8(a) any individual, whether a member of a political party or organized group or not, can campaign for or against any candidate as long as he does so as an individual and not as a member of such party or organized group.

If the aforementioned limitations in R.A. 4880 were deemed valid restrictions on the due process clause, freedom of expression, freedom of association, right to equal protection of the laws and free-dom of peaceful assembly, a fortiori the less narrow or less restric-tive inhibition embodied in Sec. 12(F) of R.A. 6132 should survive the constitutional test.

Just recently, Five Members of this Tribunal upheld the validity of paragraph 1 of Section 8(a) of R.A. No. 6132, prohibiting any political party or any organization or any organized group of whatever nature, from giving aid or support, directly or indirectly, material or other-wise, for or against a candidate; while Six Members sustained the constitutionality of the prohibition against such support from poli-tical parties only.[3] The ban in said par. 1 of Sec. 8(a) is, We believe, more restrictive than the limitation contained in Section 12(F).

Hence, consistent with our opinion expressed in the cases of *Imbong vs. Comelec* and *Gonzales vs. Comelec*,[4] this slight limi-tation of the freedom of expression of the individual, whether candi-date or not, as expressed in par. F of Sec. 12, is only one of the many devices employed by the law to prevent a clear and present danger of the perversion or prostitution of the electoral apparatus and of the denial of the equal protection of the laws.

The fears and apprehensions of petitioner concerning his liberty of expression in these two cases, applying the less stringent balancing-of-interests criterion, are far outweighed by the all important substantive interests of the State to preserve the purity of the ballot and to render more meaningful and real the guarantee of the equal protection of the laws.

Special recognition should be made of the circumspection with which Congress couched the limitation in par. F of Sec. 12, revealing its deep respect for the freedom of expression guaranteed in the Bill of Rights. It should be noted that Congress did not impose on the publishers of newspapers, magazines and periodicals the duty to allocate for free a Comelec space in their newspapers, magazines or periodicals, but merely required the Comelec to endeavor to acquire such free Comelec space for the benefit of all the candidates. Congress thereby realized that to compel the publishers to provide free Comelec space would be an undue abridgment of the publisher's own freedom.

Under the guarantee of free expression, the candidate who pays for a comment or an article has the duty not only to inform the electorate about his qualifications and proposals for constitutional reforms, but also to inform truthfully the public who his opponents are, so that the public or particularly the electorate can determine the truth and merit of his claims vis-a-vis those of the other candidates. Other-wise, the candidate will be guilty of gross unpardonable deceit on the people. This duty on the part of the candidate was underscored by John Milton in his stirring rhetorical denunciation of the suppression of truth as he appealed for "the liberty to know, to utter and to argue freely according to conscience, above all liberties"[5] (underscoring supplied). The same duty was stressed by Mr. Justice Murphy speaking for the American Supreme Court in *Thornhill vs. Alabama*[6] when he delineated the contours as well as facets of the freedom of expression as "the freedom to publish publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment " (underscoring supplied).

The candidate, to enjoy the freedom, therefore has the concomitant duty to campaign for himself truthfully according to his conscience. If he is not truthful, he forfeits the freedom. His freedom of expression is not and should not be limited to his own personal right to know the truth of the claims of the other candidates. A candidate is prone to exaggerate his personal merits or qualifications. He invariably claims qualifications superior to those of his opponents. One test of the truth of his own pretensions as against those of his opponents is to require him to mention the names of the other candidates so that the electorate will know how to judge all the candidates. If the candidate omits the names of his opponents he is guilty of deception, which nullifies his right to enjoy the liberty he invokes for himself. At any rate, he usually mentions his opponents in an oral harangue. He must likewise do so in printed propaganda, so that the voter can decide who is the better man who can best represent in the constitutional convention their interests and articulate their longings and aspirations for an abundant life. The intrinsic merit of the candidate as a person and of his proposed amendments, not his wealth or lack of it, must be decisive.

Gauged by the more liberal "balancing-of-interests test", We must exercise judicial restraint in passing upon the statute challenged as unconstitutionally encroaching upon the realm of free expression and hearken to the caution pronounced by Mr. Justice Frankfurter in his concurring opinion in *Dennis vs. U.S.* that "free speech cases are not an exception to the principle that we are not legislators, that direct policy-making is not our province. How best to reconcile competing interests is the business of the legislature and the balance they strike is a judgment not to be displaced by ours, but to be respected, unless outside the pale of fair judgment."[7]

We cannot with justification pontificate that the limitation contained in Sec. 12(F) of R.A. 6132 is not a reasoned and reasonable judgment on the part of Congress, which is also the "ultimate guardian(s) of the liberties and welfare of the people in quite as great a degree as the Courts."[8]

The Constitution and the statutes are merely instruments of the sovereign people in their incessant quest for security and the good life. There is no permanent sovereign talisman that will work magic to usher in the longed for Utopia of Sir Thomas More or the Shangrila of James Hilton or the City of God of St. Augustine. Man, at best, can only approximate, for the human mind is finite and imperfect. Once adopted, the Constitution and the statutes are not to imprison forever in their cast the sovereign people, even though these organons no longer serve the people nor their welfare. On this planet Earth, in the epigrammatic language of Mr. Justice Holmes, than whom greater love hath no man for civil liberties, without in any way withholding reverence for dogmas cherished as eternal verities by any church or the moral code, the theory of our Constitution is that "it is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophesy based upon imperfect knowledge.[9]

Because "time has upset many fighting faiths" in the apt words of Mr. Justice Holmes,[10] the State must ever be resilient and continuously devise measures to meet the protean complexities of the present and future generations.

The agency of the State in fashioning instruments to generate the greatest good for the greatest number under our present political system is Congress, as a constituent assembly together with the electorate in the formulation of the organic law, or Congress with the President in the exercise of its ordinary law-making power for the enactment of statutes designed to solve the problems that urgently press for panaceas. In either case, as we march towards the millennium, the process that is followed is essentially empirical, pragmatic and utilitarian - whatever social, political, economic, legal or ideological philosophies may be employed as starting points. For as Mr. Justice Winslow of the Wisconsin State Supreme Court said: "The political or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress." [11]

WHEREFORE, the prayers of the petitions in these two cases are hereby denied and paragraph F of Section 12, R.A. No. 6132 is declared valid and constitutional.

Dizon and Castro, JJ., concur.

Reyes, J.B.L., Acting C.J., concurs with this opinion and that of Mr. Justice Makalintal.

Makalintal, J., concurs in a separate opinion.

Zaldivar and Villamor, JJ., concur in the dissenting opinion of Justice Fernando.

Fernando, Teehankee, and Barredo, JJ., dissent in a separate opinion.

[1] *Imbong vs. Comelec*, L-32432, and *Gonzales vs. Comelec*, L-32443, Sept. 11, 1970; *Gonzales vs. Comelec*, L-28783, Apr. 18, 1969, 27 SCRA, pp. 835, 858, 860-861.

[2] *Gonzales vs. Comelec*, L-28783, Apr. 18, 1969, 27 SCRA, 835, 865-870.

[3] *Imbong vs. Comelec*, supra; *Gonzales vs. Comelec*, supra.

[4] L-32432 & L-32443, Sept. 11, 1970.

[5] Milton's *Aeropogitica* cited by Justice Laurel in *Planas vs. Gil*, 67 Phil., 62, 81.

[6] 310 U.S. 88.

[7] 341 U.S., 494, 524-525.

[8] *Missouri, etc. vs. May*, 194 U.S. 267, 270.

[9] *Abrahms vs. U.S.* 250 U.S. 616, 631.

[10] *Ibid.*

[11] *Borgnis vs. Falk Co.*, 133 N.W. 209, 215.

Normal 150 Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*\{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

BARREDO, J.:

I find it difficult to agree with the Court's holding that the provision in question is a reasonable restraint of the freedom of the press guaranteed by the Constitution. Indeed, touching as it does on the right of a candidate in an election to campaign for his own victory, I regard this provision more repugnant to the Constitution than those I have heretofore voted to strike down as unconstitutional in the cases of *Gonzales v. Comelec*, G.R. No. L-27833, April 18, 1969, 27 SCRA 835, and *Imbong v. Comelec*, G.R. No. L-32432, September 11, 1970.

In the *Gonzales* case, I expressed my position in regard to legislations of the nature of the one now before Us this wise:

"x x x Lest I be misunderstood, however, as being an ultra-activist, it should be clear at the outset that in holding that the above prohibitions contained in the statute in question are violative of the Constitution, my stand is limited to my funda-mental conviction that the freedoms of speech, of the press and of peaceful assembly and redress of grievances are absolute when they are being exercised in relation to our right to choose the men and women by whom we shall be governed. I hold neither candle nor brier for licentious speech and press, but I recognize no power that can pre-censor, much less forbid, any speech or writing, and any peaceful assembly and petition for the redress of grievances, the purpose of which is no more than to express one's belief regarding the qualifications or lack of them, the merits and the demerits of persons who are candidates for public office or of political parties vying for power, as well as the principles and programs of government and public service they advocate, to the end that when voting time comes the right of suffrage may be intelligently and knowingly, even if not always wisely, exercised. x x x." (27 SCRA 835, 924)

Withal, since the election herein involved is that of delegates to the constitutional convention called to amend the existing Constitution, the more it is imperative that all the rights of all candidates and voters should be unrestricted and unimpaired. We should decry the apparent lack of interest exhibited by our people in past plebiscites held in connection with proposed constitutional amendments, as attested by the comparatively low percentage of voters who have taken part therein, for in a matter of such grave importance as the amendment of the fundamental law, it is naturally better that the stamp of approval or disapproval should be sufficiently reflective of the will of the greatest number possible. Surely, the provision here disputed, does not improve the situation. Rather, it gives more reason for people to shy away from the coming elections because it has increased the difficulties of the means of communi-cation between the candidates and the electorate.

I recognize the necessity of keeping electoral campaign practices within bounds that will insure the true expression of the popular will and generally, as I have manifested in past opinions, to Congress should be conceded the choice of the means that should be adopted towards that end. It is contended that it is the purpose of the enactment in question to equalize, as much as possible, the availability of the press, meaning newspapers, magazines and other publications to all candidates as a means of campaigning, so that the rich candidates may not have undue advantage over the poor candidates in the use of paid advertisements.

Without committing myself as to the validity of such attempt at compulsory equality for all candidates, I do not believe in imposing upon the rich candidates more restrictions on their liberties, just because they are rich which is not a sin, than the limitation of their expenses and those on their behalf to not more than P32,000.00. Even if this limitation is in itself a little questionable, considering its inadequacy due to the high costs of everything at present, I am ready to yield in respect thereto, since it seems that a one-year-salary limitation has been with us for such a long time already and may be considered as already sanctioned and accepted by all to be more or less reasonable from the point of view of its proportion to the emoluments of the office at stake. I cannot agree, however, that beyond this, the candidates who can afford should be placed under other restrictions with respect to the way they will spend the P32,000.00. Worse, under the provision in question, a candidate is not only restrained and regulated in the expenditure of his P32,000.00 by merely limiting the kind of advertisement or publication he may make on behalf of his candidacy. Under the said provision, he is also compelled to include in his propaganda, with equal prominence as his own, the names of all his opponents. In other words, there is an element of odious compulsion in this provision, for it makes it unlawful and punishable with imprisonment and other accessory penalties, the failure of a candidate to spend his own money to advertise with equal prominence the candidacy of his adversaries whenever he advertises his own candidacy. It is perhaps not far beyond reasonableness to restrict the advertisements of a candidate in the interest of remedying an evil Congress may recognize, but it is to me clearly unreasonable, nay unjust and oppressive, to compel a candidate not only to give quarters to his adversary, but to practically help the latter by giving his name equal prominence as his own. It must be borne in mind that the primary objective of a candidate in an election is to win over his opponents and to require him, under pain of suffering imprisonment and/or other penalties, to spend his own money in order precisely that his opponents may be publicized with equal prominence as himself is, to my mind, an intolerable infringement of one's freedom to pursue a legitimate objective by ordinarily lawful means.

Going to another consequence of the enactment in question, it is a matter of public knowledge that there are hardly any paid advertisement or publications of candidates in the newspapers. (We need not mention unpaid ones because one has to depend on the generosity of the publishers for these.) It is indeed understandable that candidates should hesitate or refuse to submit themselves to the imposition of the law. The result is that there is dearth of information regarding the candidates among the electors. This is bad. As I see it, the application of the disputed provision is producing a greater evil than the one purportedly being remedied. In this connection, I would like to reiterate what I said in the Gonzales case:

"x x x I like to reiterate over and over, for it seems this is the fundamental point others miss, that genuine democracy thrives only where the power and the right of the people to elect the men to whom they would entrust the privilege to run the affairs of the state exist. In the language of the declaration of principles of our Constitution, 'The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them.' (Section 1, Article II) Translating this declaration into actuality, the Philippines is a republic because and solely because the people in it can be governed only by officials whom they themselves have placed in office by their votes. And it is on this cornerstone that I hold it to be self-evident that when the freedoms of speech, press and peaceful assembly and redress of grievances are being exercised in relation to suffrage or as a means to enjoy the inalienable right of the qualified citizen to vote, they are absolute and timeless. If our democracy and republicanism are to be worthwhile, the conduct of public affairs

by our officials must be allowed to suffer incessant and unabating scrutiny, favorable or unfavorable, everyday and at all times. Every holder of power in our government must be ready to undergo exposure any moment of the day or night, from January to December every year, as it is only in this way that he can rightfully gain the confidence of the people. I have no patience for those who would regard public dissection of the establishment as an attribute to be indulged by the people only at certain periods of time. I consider the freedoms of speech, press and peaceful assembly and redress of grievances, when exercised in the name of suffrage, as the very means by which the right itself to vote can only be properly enjoyed. It stands to reason, therefore, that suffrage itself would be next to useless if these liberties cannot be untrammelled whether as to degree or time."

I cannot help but feel apprehensive that with the restrictions and imposition laid down by Republic Act 6132, the constitutional convention in which many pin their hopes for the betterment of this country may not be as representative of the true will of the majority of our people. It is my considered view that what We really need is not curtailment of the rights of the candidates and voters but, on the contrary, more freedom for all of them in order that there may be the maximum of information regarding the qualifications and issues of the candidates. Only then can We hope to have better results in our elections. Again, I would like to reiterate the views I expressed in this regard in the Gonzales case:

"My brethren view the problem before Us as one calling for the reconciliation of two values in our chosen way of life - individual freedom, on the one hand, and public welfare, on the other. I do not see it that way. To my mind, if the freedoms of speech, press, peaceful assembly and redress of grievances in regard to the right to vote can be impinged, if not stifled, by standards and limitations fixed by those who are temporarily in power, I would regard those freedoms as no freedoms at all, but mere concessions of the establishment which can be reduced or enlarged as its convenience may dictate. Of what use can such kind of freedom be?

"Taking all circumstances into account, it is entirely beyond my comprehension, how anyone could have conceived the idea of limiting the period of electoral campaigns in this country, when what we need precisely is more intelligent voting by the greater portion of our people. I do not believe our mass media have reached the degree of efficiency in the dissemination of information needed to enable the voters to make their choices conscientiously and with adequate knowledge of the bases of their decisions. I am not convinced that at this stage of our national life we are already prepared to enjoy the luxury of abbreviated electoral campaigns, unless we are inclined to forever have with us the areas of political bossism, apparent statistical improbabilities and politico-economic blocs and even politico-religious control which we have in varying degrees these days and which will naturally continue as long as our people are not better informed about the individual worth of the candidates for or against whom they vote. I dare say that there is enough reason to hold that if mistakes have been committed by our people in the selection of their elective officials, it is because the information needed to serve as basis for intelligent voting have not fully reached all segments of the population. Inadequacy of reliable information among the voters, regarding the qualification of the candidates and the relevant circumstances of the election they are taking part in can be the greatest bane of popular suffrage."

I do not find anything objectionable in the portion of the provision which would enable all candidates to take advantage of what is called Comelec space. I believe this is a step in the right direction. As to the rest, however, of Section 12 (F) of Republic Act 6132, the provision in dispute, for the reasons stated above, I vote to declare the same unconstitutional.

Normal 150 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

CASTRO, J.:

I concur unreservedly in the above concurring opinion of Mr. Justice Querube C. Makalintal. I need only add that my concurrence is entirely consistent with the essential views I articulated in *Gonzales vs. Commission on Elections* (L-27833, April 18, 1969, 27 SCRA 900-901).

Normal 150 Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*\{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

MAKALINTAL, J.:

I concur in the views expressed by Mr. Justice Felix V. Makasiar, but would add a few observations of my own which, although of merely tangential bearing on the strictly legal issues, I consider relevant in this case from a long-range viewpoint.

The copious citations of American authorities, particularly in one of the dissents, are undeniably of no little persuasive force, our constitutional orientation being what it is, by reason not only of the nature of the legal training dispensed in our law schools but also of the practical aspects of our political and juristic experience. But however steadfastly one might adhere to the fundamental principles enunciated of individual rights and liberties, as spelled out in almost identical terms in both the American and Philippine Constitutions, I am not so sure that their traditional and orthodox application in the United States should necessarily be binding upon us under all circumstances. Indeed even there the events of recent years have demonstrated that the concept of personal liberty can be so misread that its real significance all but disappears. In not a few instances it has been invoked to make a mockery of the administration of justice by the trial courts; to debase the meaning of students' academic freedom; to inspire violence and anarchy in the streets and college campuses; and, in general, to contribute in no small measure to a destructive divisiveness in a society that for hundreds of years has maintained a stable if delicate balance between individual rights and civic duties.

In the Philippines the same principles have governed our lives, and insofar as civil relationships are concerned have proven adequate and satisfactory. But in the political field, more particularly in connection with the conduct of elections and related activities, they have failed to curb, if they have not indirectly abetted, the proliferating evils that have long cried for relief, among them the hegemony of wealth, of entrenched political organizations and dynasties, of terrorist groups, of unabashed government patronage. The law that is here assailed as unconstitutional is a departure from the system that has been tried so many times before and found wanting. It is an experiment, to be sure; but it is one which Congress, by virtue of its powers and its grasp of the problem involved, has considered necessary to initiate; and I am not prepared to hinder its efforts except upon the clearest showing that they not only regulate but unjustifiably abridge individual rights and liberties.

It should be remembered that the law in question has to do with the process of amending the Constitution, or framing an entirely new one. The task is vital to the life of the nation, and has a character of permanence which is not susceptible of change through periodic submission to the people. The delegates to be elected for that task will

not represent regional districts in the political sense, nor particular social segments or interests. They stand for ideas, for theories of government and civil society; and the purpose of the law is to allow the people the freest possible choice, untrammelled by the many election practices heretofore permitted whereby some candidates are placed at a decided advantage because they have the logistics for effective political campaign that are denied the others.

As Mr. Justice Makasiar has stated in his opinion the challenged statute is pragmatic and empirical in its approach to an old familiar problem; and considering how our traditional electoral processes have failed to provide a solution, I am quite willing to accept the trial and error method, even if we do adopt a more stringent regulation of certain individual rights as long as such regulation is within permissible limits, which I am convinced it is in this case.

Normal 150 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:{behavior:url(#ieooui) } /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

TEEHANKEE, J.:

The holding of periodic elections constitutes the very foundation of a republican form of government such as ours. And it has aptly been remarked that "the measure of success of a democratic system is found in the degree to which its elections really reflect rising discontent before it becomes unmanageable, by which government responds to it with timely redress, and by which losing groups are self-disciplined to accept election results." [1]

An election is the most elemental and direct act and participation of the citizen in the conduct of government. Political power is thus entrusted by him, in concert with the entire body of the electorate, to the leaders who are to govern the nation for a specified period. It has thus been universally postulated that it is the government's bounden duty to see to it that the elections are free and honest and that the voter is free from fraud, force and corruption so that the choice of the people is freely expressed and recorded and "the ballot box, the just index of public opinion." [2] And since "many things are prerequisites to elections or may affect their outcome - voters, education, means of transportation, health, public discussion, x x, private animosities, even the face and figure of the candidate(s)" [3] the fullest and freest discussion of men and issues, through assembly, association and organizations, both by the candidate and the voter, has likewise been universally conceded as an indispensable condition for free and honest elections. This of course includes the fullest and freest discussion in all the media for public information: the press, since "the freedom of written (or printed) speech is (no) less protected .. than the freedom of spoken words" [4] and the modern media of radio, television and movies, since "these days free speech includes more than talk to a crowd from a platform." [5]

The Chief Justice, emphasizing the need for the electorate to be informed of the specific measures and issues based upon concrete proposals for constitutional reforms rather than generalizations, that a candidate for delegate to the forthcoming Constitutional Convention intends to espouse, as well as of the interests that he represents, has observed that "(I)t is vitally important for the electorate to know, before the election of delegates, what, in particular, are the specific measures each candidate proposes to champion in the convention. The people should not be contented with generalizations. They should not be satisfied with broad statements about

advancing the well-being of the collectivity, ridding the government of graft and corruption, promoting efficiency and economy, and the other abstractions of similar nature. Nor is it enough that a candidate be honest, patriotic and learned. The school of thought to which he belongs, the interests he represents, and the precise amendments he stands for, should count heavily in the choice of delegates. Each candidate should, therefore, raise issues based upon concrete reforms he intends to espouse. He should explain to the voters why they ought to back him up in supporting such reforms. In this manner, he would help the people make up their minds on particular questions."^[6]

Without freedom to circulate, through the public media of information and within the legally permissible limit for campaign expenditures, a candidate's qualifications and specific platform as well as to denounce the deficiencies and defects of an opponent and his program, the constitutional rights of both the candidate and the voters to free expression and free press are abridged and they are deprived thereof without due process.

I am constrained, therefore, to dissent, with due respect, from the main opinion that sustains the constitutionality of the challenged provisions of section 12(F) of the 1971 Constitutional Convention Act.

1. The challenged section decrees it to be "unlawful" and "a serious election offense carrying a penalty of imprisonment of not less than one year and one day but not more than five years" and disqualification from public office and deprivation of suffrage from one year to nine years^[7] -- outside of "Comelec space," "to print or publish, or cause to be printed or published, any advertisement, paid comment or paid article in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all other candidates in the district in which the candidate mentioned is running are also mentioned with equal prominence." As far as the writer knows, such a statute that would so stifle and curtail the people's right to free political discussion and to manifestly, publicly and actively support one candidate as against another is totally without precedent the annals of republican governments. This alone should give us pause.

2. The additional restrictions and strictures in the statute "to preserve suffrage pure and undefiled and to achieve the desired equality of chances among all the candidates", cited in the main opinion as "more than compensating for the minor limitation on the freedom of expression of an individual" by the challenged section, viz,

-- a ban on election propaganda and posters other than on a free "Comelec billboard" supposed to be allocated by lottery by the Comelec among the candidates, which billboard has proved to be so inutile that the Comelec itself declared its abandonment thereof;

-- a ban on radio and TV publicity other than on free "Comelec time" from each radio broadcasting and television station of from one to two hours a week "but not oftener than every other day"^[8] likewise allocated by lottery by the Comelec, which time amounts to sporadic four-minute spots where the candidates are at times constrained to race against the shortness of the allotted time and to alienate the listening and viewing audience with barren slogans and platitudes;

-- a ban on any candidate's appearance on any interview or program, unless all other candidates in the district are also invited to appear;^[9]

-- a total ban against all political party or organized group support or assistance, "whether material, moral, emotional or otherwise,"^[10] so much so that no two candidates in the same district are permitted to campaign together;

-- a total ban on all other forms of propaganda and literature (other than 8-1/2" x 14" pamphlets or leaflets and handwritten or printed letters containing data and qualifications relevant to one's candidacy)^[11] so much so that a candidate cannot place a poster announcing his candidacy "even on the outside walls of his house";^[12]

-- a total ban on radio and TV stations, movie houses or theaters showing, displaying or giving any advertising or propaganda to any candidate;[13] and

-- a total ban on radio and TV stations scheduling any program or permitting any sponsor "to manifestly favor or oppose any candidate by unduly referring to him or including him in its programs or newscasts;"[14]

far from being "so narrow as not to affect the substance and vital-ity of (the) freedom of expression itself", to my mind, oppress-ively and unreasonably strait-jacket the candidates as well as the electorate and gravely violate the constitutional guaranties of freedom of expression, freedom of the press and freedom of association, and deny due process and the equal protection of the laws.

3. As to the specifically challenged provision of Section 12 (F) of the Convention Act outlawing the recourse to and use of paid newspaper space and other print media outside "Comelec space", by any one, whether he be a candidate or not, to promote or oppose the candidacy of any person for delegate to the Convention, without mentioning with equal prominence the names of all other candidates in the district concerned, it should be stated that at the hearing of the cases at bar, respondents chairman and members of Comelec acknowledged that their tentative arrangements with newspapers, magazines and periodicals publishers to provide free "Comelec space" to be allocated equally among all the can-didates, with a maximum space of twenty (20) words for each can-didate stating his bio-data or constitutional amendment proposals had fizzled out, since there was just not that much free space for candidates totalling close to 3,000 and that the final arrangement was that the newspapers and periodicals would publish just the names of the candidates "as often as they can".

And so comes the petitioner in a plight typical of the over-whelming majority of the earnest candidates who wish to serve as delegates -- unknown and without previous public exposure, alone and without support of any political party or machine or political leader but perhaps worthy and deserving -- who wants to actively pursue his candidacy and asks only that he be given an opportunity to equalize his chances by being allowed, within his means and the means of those who have faith in him, to make use of the modern media of mass communications (the press, radio and TV) to make known to the hundred thousand or so voters of his province his candidacy and his proposals and to try to win their votes within the short span of two months that the Act has given him to campaign before the election scheduled for Novem-ber 10 this year. He complains of the denial of his and the people's constitutional rights of free expression and free press. But he is told that he may only campaign and solicit the people's votes in person (and through the members of his family within the fourth civil degree of consanguinity and affinity and his per-sonal campaign staff limited to one person for every ten pre-cincts of the over 1,000 precincts spread throughout his province) as during the horse-and-buggy era of old; that if he wants to buy newspaper space, he must also buy space for his opponents and mention them with equal prominence; that he is totally barred from buying any radio, TV, or movie theater time; and that all this is to enhance his "Parity of chances in winning the election."

4. The challenged provision according to the main opinion, would ban a publisher who is not a natural person but "a juridical person or an organized group of persons of whatever nature, whether in the business of publishing a newspaper, magazine or periodical only for the particular election or not," from publishing "any advertisement or article .. for or against any candidate, paid or unpaid by said publisher" since it "is prohibited as an organized group support under paragraph 1 of Sec. 8 (a) of R. A. No. 6132.[15] Under this constricted view of the main opinion, only publishers who are natural persons may on their own publish paid or unpaid articles for or against any candidate; the great majority of publishers, who are juridical persons - since in this modern age of corporations, publishers generally incorpor-ate to facilitate the doing of business as well as to avoid personal liability in libel suits -- may not do so, because of the Act's all-encompassing taboo on organized group support. Only individuals, i.e. natural persons, may cause the publication of unpaid com-ments or articles for or against

any candidate, assuming that notwithstanding the keen everyday competition for space, they succeed in exercising some special charm on the editors to accommodate their unsolicited contributions. Freedom of the press is indeed sorely tried under such strictures.

5. Yet, the main opinion acknowledges that Congress did not and could not impose on publishers of newspapers, magazines and periodicals the duty to allocate free Comelec space, since such compulsion "would be an undue abridgment of the publisher's own freedom." It would seem to be just as grave an abridgment of the preferred freedoms of free speech and free press to deny to the people, whether acting individually or in concert as a group, as well as to the individual candidates who should not be interdicted these freedoms by virtue of their candidacy, the right and liberty of free access to the press and the right to appeal to public opinion through its wide circulation among the people upon payment of the customary rates for the space.

6. Coming to the constitutional tests of the validity of these statutory restrictions, the main opinion, reiterating the holding in the recently decided cases of *Imbong and Gonzales*,^[16] justifies the Convention Act's abridgment of the freedoms of expression, press and association as valid limitations in the State's exercise of its police power, "to prevent a clear and present danger of the perversion or prostitution of the electoral apparatus and of the denial of the equal protection of the laws," and applying the balancing-of-interests criterion, declare that the "all important substantive interests of the State to preserve the purity of the ballot and to render more meaningful and real the guarantee of the equal protection of the laws" far outweigh the "restrictions on the invaded freedom (which) is so narrow that the basic liberty remains."^[17]

The premises upon which the main opinion is based, as gleaned from its pronouncements and those in *Imbong-Gonzales*, may thus be restated:

- Excessive partisan activities and participation of political parties present a clear and present danger of debasement and prostitution of the electoral process;^[18]
- The ban against all party or other organized support is to avert the clear and present danger of another substantive evil, denial of the equal protection of the laws - the candidates must be assured equal protection of the laws by according them equality of chances;^[19]
- Candidates must therefore "depend on their individual merits and not on the support of political parties or organizations";^[20]
- Civic associations other than political parties must likewise be banned, because if exempted, they would "utilize the facilities of the campaign machinery which they are denying to political parties", notwithstanding that when they "engage in a political activity to that extent it partakes of the nature of a political organization";^[21]
- Recent political history and experience show that "the victory of an independent candidate mainly rests on his ability to match the resources, financial and otherwise, of the political parties or organizations supporting his opponent";^[22]
- Political parties and other organized groups have built-in advantages because of their machinery and other facilities which the individual candidate who is without any organization support, does not have, and the law therefore bans their participation "to attain real equality of chances among individual candidates";^[23]
- The delegates must "be independent, beholden to no one but to God, country and conscience . . . delegates who, because they have been chosen with the aid and resources of organizations cannot be expected to be sufficiently representative of the people (and) could very well be the spokesmen of narrow political, religious or economic interest and not of the great majority of the people";^[24]

-- "The evident purpose of the limitation on the freedom of the candidate or sympathizers to spend his own money for his candidacy alone and not for the furtherance of the candidacy of his opponents (by requiring mention with equal prominence in newspapers, ads or paid articles of all other candidates) is to give the poor candidates a fighting chance in the election;"[25] and

-- Under the Convention Act, "If the candidate omits the name of his opponents he is guilty of deception, which nullifies his right to enjoy the liberty he invoked for himself."[26]

7. It is respectfully noted that the above-cited premises of the main opinion are vitiated by erroneous assumptions and conceptions, the validity of which may be questioned as follows:

-- Would the banning of political parties and all other organizations in the election purify electoral process - when the self-evident reality, as pungently expressed by Senator Tañada is that "Man is by nature gregarious, by instinct and necessity predisposed to form societies with other men to attain in concert with them the various goals or ends of his existence which individually they cannot achieve?"[27]

-- "Without organizations like the Masonic Lodge, the La Liga Filipina and the Katipunan, we will not today be a nation. And, without that grand old Nacionalista Party of Quezon and Osmeña, the predecessor of the present Nacionalista and Liberal Parties, we would not be independent" was the answer of Sen. Diokno,[28] who added tersely that "It is not political parties that make elections crooked. It is crooked politicians. And by eliminating political parties, you strengthen the crooked politicians because you take away the moral influence, if not actual influence of the party leaders to keep in check the abuses of crooked politicians;" conveying the implied suggestion that the proper remedy is the elimination at the polls of the power and evil influence of the crooked politician.

-- Are not political parties a necessity in any republican form of government, and as pointed out by Senator Diokno, "it is only where political rights are denied to the people that political parties are extinguished"[29] with the consequent elimination of all political opposition and the emergence of authoritarianism?

-- Would the ban against all party or other organized support accord the candidates equality of chances, when as is commonly known, in many provinces it is the so-called political kingpins who control politics, the party just being a convenient vehicle as witness the constant party switching after every national election, and as conceded by Senator Tolentino at the Imbong--Gonzales hearing, these political kingpins would continue to assert their influence, in their individual capacity, in the election?[30]

-- Would not the ban against all party or organization participation create a political vacuum that would render invincible the position of local political kingpins with their personal political machines and followers?

-- Would it not be illusory to decree by fiat that candidates depend on their individual merits without party or organized support, when it is precisely by gaining the support of effective and non-partisan organizations that non-moneyed independent candidates may secure the resources, facilities and organized action to overcome the superior financial resources of their opponents? For as pointed out by Senator Tañada, "a common man without organization has no chance against political leaders" and the organization ban would deprive the common man, the laborers and the farmers "of the very tools they need to elect their delegates."[31]

-- Is organized political activity of civic associations and non-political organizations to be considered tainted, such as to justify their being banned from the election as becoming pro-tanto "political organizations" when elections are nothing if not a political process and activity wherein the people, singly and collectively, make known their sovereign will?

-- Are not political parties and civic organizations the best instruments devised and evolved by the wit, knowledge and experience of men to equalize opportunities and situations and to off-set the "built-in advantages" of men of wealth and fortune, power and prestige, name and fame?

-- Even among the so-called non-partisan or independent candidates themselves, do not some enjoy "built-in advantages" as against the others, be they educational, material or moral, spiritual or physical?

-- If a candidate cannot secure the active support of a political party or responsible civic organizations or the leaders thereof individually, would it be reasonable to expect that he could win the election all by himself?

-- Is not the fact that as indicated by Senators Tañada and Diokno the loud and persistent clamor of organizations brought about the amendment to the Convention Act banning political parties from the election, the best proof of the necessity and effect-ivity of organizations?

-- Does it not cast an unfair reflection on the integrity and patriotic sense of duty of the delegate to require that he be elected "beholden to no one" because he cannot be expected to be sufficiently representative of the people and would be bound by narrow political, religious or economic interests if elected with the aid and resources of organizations?

-- Is it not preferable, as asked by Senator Tañada that rather than have a convention of ostensibly uncommitted delegates, that the candidates "present themselves to the people with definite views in mind which the electorate would assess and evaluate, accept or reject, by electing or not electing the candidate expressing these views" for "the essential strength of the representational approach to politics and government is exactly this -- that from a confrontation of opposing interests and opinions in a free forum what usually emerges is what is best for the largest number"?[32] Is this not after all what the constitutional system means, as stated by Senator Pelaez, sponsor of the Act, -- "to encompass all the interests that exist within our society and to blend them into one harmonious and balanced whole"?

-- May the right of the candidate and of his supporters to purchase legitimate press space promoting his candidacy be so constricted as to require them in effect to also espouse his opponents' candidacies under pain of severe penal sanctions?

8. If it be conceded that the premises of the main opinion are based on erroneous assumptions and conceptions as sought to be shown above, its conclusions justifying the Convention Act's infringement of the basic freedoms as being within the scope of the State's police power are necessarily vitiated by the same errors. This observation is reinforced by the established facts that the evils sought to be averted by the Act were perversion or prostitution of the electoral process by undue domination of the election by the political parties and by all other forms of organizations and denial of equal protection of the laws to the non-moneyed independent candidates who would not have a fighting chance against candidates of the "establishment" (i.e. the political parties and all other organizations). For the measures in question, far from suppressing these evils, would foment them by denying non-political" candidates the very freedoms of effectively appealing to the electorate through the public media and of being supported by organized groups that would give them at least a fighting chance to win against candidates of the political kingpins.

9. I do not believe that the main opinion's anchoring of its ruling on the "clear-and-present danger" criterion is tenable under the circumstances. The trouble is, as Professor Freund well put it, "that the clear-and-present-danger test is an oversimplified judgment unless it takes account also of a number of other factors: the relative seriousness of the danger in comparison with the value of the occasion for speech or political activity; the availability of more moderate control than those which the state has imposed; and perhaps the specific intent with which the speech or activity is launched. No matter how rapidly we utter the phrase 'clear and pre-sent danger', or how closely we hyphenate the words, they are not a substitute for the weighing of values. They tend to convey a delusion of certitude when what is most certain is the complexity of the strands in the web of freedoms that the judge must disentangle." [33] I subscribe to the views expressed last year by Mr. Justice Castro in *Gonzales vs. Comelec*, [34] that "(H)owever useful the 'clear and present danger' formulation was in the appraisal of a specific

type of situation, there is fairly extensive recognition that it is not a rule of universal applicability and validity, not an automatic mechanism that relieves a court of the need for careful scrutiny of the features of a given situation and evaluation of the competing interests involved" and that the "clear and present danger" test has "minimum relevance to our task" of appraising the provisions of election statutes, such as Republic Act 4880 in that case, which outlaws prolonged election cam-paigns and electioneering, and Republic Act 6132 in the cases at bar, since "(T)his kind of constitutional testing would involve both specula-tion and prophecy of a sort for which this Court x x x has neither the inclination nor any special competence."

10. I would state further, with Mr. Justice Castro's indulgence, that applying the various factors of the "balancing--of-interests" criterion as synthesized by him in *Gonzales*, supra, to wit,

'Although the urgency of the public interest sought to be secured by Congressional power res-tricting the individual's freedom, and the social importance and value of the freedom so restricted, 'are to be judged in the concrete, not on the basis of abs-tractions,' a wide range of factors are necessarily relevant in ascertaining the point or line of equilibrium. Among these are (a) the social value and importance of the specific aspect of the particular freedom restrict-ed by the legislation; (b) the specific thrust of the res-triction, i.e., whether the restriction is direct or indirect, whether or not the persons affected are few; (c) the value and importance of the public interest sought to be secured by legislation -- the reference here is to the nature and gravity of the evil which Congress seeks to prevent; (d) whether the specific restriction decreed by Congress is reasonably appro-priate and necessary for the protection of such public interest; and (e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.

the main opinion's conclusion that the State's objectives of preserv-ing the purity of the ballot and achieving the desired equality of chances among all the candidates warrant in balance the abridg-ment of the basic liberties falls short of satisfying the require-ments.

11. It is axiomatic that the highest of motives and the best of intentions are not enough to displace constitutional obs-tacles. The Act's bans here are so broad, and encompassing against political activity for or against a candidate by any "poli-tical party, political group, political committee, civic, religious, professional, or other organization or organized group of what-ever nature." [35] There are so many technical prohibitions against organized group activity, denying man's very nature, and so much emphasis on individual action that two or more candi-dates and their 4th degree relatives and personal campaign staffs are enjoined by Comelec from deliberately and regularly campaigning together or joining and mutually supporting each other, under the severe penal sanctions prescribed by the Act. The ban against party or organized group support, far from equal-izing the candidates' chances, leaves a vacuum which the local political leaders as individuals readily fill, and the candidates are left with no choice but to seek the support of the political leaders which makes a mockery of the desideratum that the candidates should be "beholden to no one." The bans against free access to the press instead of equalizing chances, leave the candidates helpless in promoting their candidacy and petitioner has come to Court for the removal of such bans so that precisely he may have a fighting chance. The tragedy of it is that the bans are so unrealistic, "arbitrary, irrational and fascistic" in the words of Senator Tañada [36] and fail futilely to accomplish the objectives of the Act, whereas the Act does contain a valid and effective limitation that "(T)he total expenditures made by a candidate or by any other person with the knowledge and consent of the candidate shall not exceed thirty-two thousand pesos", which, if properly implemented, would check the very evils that the Act seeks to avert.

12. The basic and crucial test that the Act fails to pass is the constitutional test of reasonableness required by the due process clause. [37] Due process limits the sweeping scope of the police power of the State and 'forbids governmental action that is unreasonable and arbitrary, or opposed to the community's sense of fair play or to principles of liberty and justice, or not in harmony with a scheme of ordered liberty.' [38] The mea-sure which is

sought to be justified as falling within the police power should bear a reasonable relation to the proper governmental object and should not go so far beyond the necessity of the case as to be unreasonable, oppressive and arbitrary. This is not to encroach upon the field of legislative policy but simply with the premises and circumstances known to all, to enforce the requirements of due process that the challenged provisions of the Act in question bear some rational or substantial relation to the public welfare sought to be achieved, in order to justify the abridgment of the basic freedoms of expression, press and association. The Convention Act, to my mind, plainly fails the test. The means employed and the strictures decreed strongly tend to defeat, rather than promote, the very objectives of the Act of preventing perversion of the electoral process and "maximizing, if not approximating, equality of chances among the various candidates." So enervating are the provisions and effects of the Act that earnest candidates are left without recourse to question the candidacies of nuisance candidates bearing the same surnames reportedly put up by their opponents.

13. Suppression of free, open and public discussion of men and issues, particularly in times of elections, goes against our traditions of liberty and freedom. The Tañada Election Period Law (Republic Act 4880) cited in the main opinion was upheld by the Court in Gonzales as a valid exercise of the police power in its banning of year-round prolonged election campaigns and electioneering, and limiting the campaign period to 120 days immediately preceding a national election. The measure was directly in furtherance of the governmental objective of preventing the harmful effects on the public interest of an excessive and prolonged preoccupation with partisan political activities, although a majority of the Court voted against the validity of the Act's specific provisions against the making of speeches for or against any candidate during the prohibited period, etc. as being too ambiguously and broadly drawn to safeguard adequately the basic liberties affected. The provisions of the Tañada Election Period Law were basically concerned with a limitation of the period of the election campaign and in no way trench upon the freedoms of the people and the candidates in the pursuit of their election campaign nor prohibited all party or organized group support, as does the Convention Act.

Let there be the fullest debate and discussion of the merits of the candidates and the issues. Let there be open support by political parties and organized groups of the candidates of their choice, so that the people may know who is supporting whom, instead of the present enforced silence and ignorance. If the people are disillusioned with the political parties and with politicians in general, as was aired in the debates on the Senate floor deliberations on the Act, it is their right to know who are the machine-backed candidates, so that they may vote them down as in the past. Let there be freedom, within the permitted limits of campaign expenditures which should be strictly enforced against the candidate publicized, for all to extol the merits of the candidates they support or to denounce the lack of merits of the candidates they oppose, so that the people may be enabled to freely and knowingly exercise their sovereign will. To paraphrase Brandeis,[39] among freemen, the deterrents ordinarily to be applied to prevent election excesses are education and punishment for violations of the law, not abridgment or sterilization of the rights of free speech, free press and free association.

14. The present election for delegates who will rewrite or amend our Constitution is of the greatest significance and it is vital that the people take the greatest interest and enjoy the fullest freedom to know the candidates, their concrete proposals for amendments and the interests that support them. Thus the delegates elected may be worthy of the people's trust and after their work is done, may say, as Recto did in 1935, that "it was as perfect as any human institution can hope to be perfect" with the injunction that "We are the Constitution in the sense that it can live only in us, through us, for us, and because of us." The fact that the office of delegate to the Constitutional Convention is non-contentious in the sense that opposing candidates for national or local offices are, does not warrant "experimenting" in the present election with the people's basic liberties for possible adoption for future elections, as manifested at the hearing hereof.

For those who have enjoyed the stillness of the present non campaign, I would recall the words of the late Woodrow Wilson who said: "I have always been among those who believed that the greatest freedom of speech was the greatest safety, because if a man is a fool, the best thing to do is to encourage him to advertise the fact by speaking. It cannot be so easily dis-covered if you allow him to remain silent and look wise, but if you let him speak, the secret is out and the world knows that he is a fool. So it is by the exposure of folly that it is defeated; not by the seclusion of folly, and in this free air of free speech men get into that sort of communication with one another which constitutes the basis of all common achievement." [40]

The restrictions in Republic Act 6132 discussed in para-graph 2 hereof, together with the provision of section 12 (F) thereof directly challenged in the cases at bar, are in my opinion inextricably linked in their violation of the Constitution. I there-fore vote for their exclusion from the statute.

[1] Jackson, *Struggle for Judicial Supremacy*, 316.

[2] Story, *Miscellaneous Writings*, 158.

[3] *McReynolds, Newberry vs. U. S.* 256 U. S. 232, 257.

[4] *Holmes, Leach vs. Carlile*, 258 U. S. 138, 140.

[5] *Douglas, We the Judges*, 319.

[6] "The Constitution, Its Amendments and the Rule of Law", address delivered by the Chief Justice on Constitution and Recto Day, February 9, 1970, prior to the enactment on August 24, 1970 of Rep-ublic Act 6132.

[7] Sec. 18, Rep. Act 6132.

[8] Sec. 12, (B), Rep. Act 6132.

[9] Sec. 12 (E), *idem*.

[10] Sec. 8 (A) par. 1, *idem*; *Imbong vs. Ferrer and Gonzales vs. Comelec*, L-32432 and L-32443, Sept. 11, 1970.

[11] Sec. 12 (C) *idem*.

[12] *Comelec Election Guide to the 1971 Constitutional Convention*.

[13] Sec. 12 (E), Rep. Act 6132.

[14] Sec. 12 (H), *idem*.

[15] At page 3, citing *Imbong and Gonzales*, see fn. 10.

[16] *Supra*, fn. 10.

[17] At page 3 and 12, main opinion.

[18] *Imbong-Gonzales decision*, at p. 11.

[19] *Idem*, at p. 12.

[20] *Idem*.

[21] *Idem*, at p. 15.

[22] *Idem*, at p. 12.

[23] *Idem*, at p. 14.

[24] *Idem*.

[25] Main opinion, at p. 5.

[26] Main opinion, at p. 13.

[27] See Senate speech of Senator Tañada against amend-ment of S. B. No. 77 on July 15, 1970.

[28] See Senate speech of Senator Diokno against amendment of S. B. No. 77 on July 16, 1970.

[29] See fn. 28.

[30] Dissenting opinion of Justice Fernando in *Imbong--Gonzales*.

[31] See fn. 27.

[32] See fn. 27.

[33] *On Understanding the Supreme Court*, 27-28.

[34] L-27833, April 18, 1969; 27 SCRA 835, 898-901.

[35] Sec. 8 (A) first par. R. A. 6132.

[36] See fn. 27.

[37] "Sec. 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." Art. III, Phil. Constitution.

[38] 2 Tañada and Carreon, *Political Law of the Phil.* 7-8.

[39] Concurring op., *Whitney vs. California*, 274 U. S. 356, 377.

[40] 2 *Wilson's Selected Literary and Political Papers and Addresses*, 333.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.