

**MANUEL B. IMBONG, PETITIONER, VS. JAIME FERRER, AS
CHAIRMAN OF THE COMELEC, LINO M. PATAJO AND CESAR
MIRAFLOR, AS MEMBERS THEREOF, RESPONDENTS.**

G.R. No. L-32432. September 11, 1970

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

These two separate but related petitions for declaratory relief were filed pursuant to Sec. 19 of R.A. No. 6132 by petitioners Manuel B. Imbong and Raul M. Gonzales, both members of the Bar, taxpayers and interested in running as candidates for delegates to the Constitutional Convention. Both impugn the constitutionality of R.A. No. 6132, claiming during the oral argument that it prejudices their rights as such candidates. After the Solicitor General had filed answers in behalf of the respondents, hearings were held at which the petitioners and amici curiae, namely Senator Lorenzo Tanada, Senator Arturo Tolentino, Senator Jovito Salonga, and Senator Emmanuel Pelaez argued orally.

It will be recalled that on March 16, 1967, Congress, acting as a Constituent Assembly pursuant to Art. XV of the Constitution, passed Resolution No. 2 which among others called for a Constitutional Convention to propose constitutional amendments to be composed of two delegates from each representative district who shall have the same qualifications as those of Congressmen, to be elected on the second Tuesday of November, 1970 in accordance with the Revised Election Code.

After the adoption of said Res. No. 2 in 1967 but before the November elections of that year, Congress, acting as a legislative body, enacted Republic Act No. 4914 implementing the aforesaid Resolution No. 2 and practically re-stating in toto the provisions of said Resolution No. 2.

On June 17, 1969, Congress, also acting as a Constituent Assembly, passed Resolution No. 4 amending the aforesaid Resolution No. 2 of March 16, 1967 by providing that the convention "shall be composed of 320 delegates apportioned among the existing representative districts according to the number of their respective inhabitants: Provided, that a representative district shall be entitled to at least two delegates, who shall have the same qualifications as those required of members of the House of Representatives"[1] "and that any other details relating to the specific apportionment of delegates, election of delegates to, and the holding of, the Constitutional Convention shall be embodied in an implementing legislation: Provided, that it shall not be inconsistent with the provisions of this Resolution."[2]

On August 24, 1970, Congress, acting as a legislative body, enacted Republic Act No. 6132, implementing Resolutions Nos. 2 and 4, and expressly repealing R.A. No. 4914.[3]

Petitioner Raul M. Gonzales assails the validity of the entire law as well as the particular provisions embodied in Sections 2, 4 5, and par. 1 of 8(a). Petitioner Manuel B. Imbong impugns the constitutionality of only par. 1 of Sec. 8(a) of said R.A. No. 6132 practically on the same grounds advanced by petitioner Gonzales.

I

The validity of Sec. 4 of R.A. No. 6132, which considers all public officers and employees, whether elective or appointive, including members of the Armed Forces of the Philippines, as well as officers and employees of corporations or enterprises of the government, as resigned from the date of the filing of their certificates of candidacy, was recently sustained by this Court, on the grounds, inter alia, that the same is merely an application of and in consonance with the prohibition in Sec. 2 of Art. XII of the Constitution and that it does not constitute a denial of due process or of the equal protection of the law. Likewise, the constitutionality of paragraph 2 of Sec. 8(a) of R.A. No. 6132 was upheld.[4]

II

Without first considering the validity of its specific provisions, we sustain the constitutionality of the enactment of R.A. No. 6132 by Congress acting as a legislative body in the exercise of its broad lawmaking authority, and not as a Constituent Assembly, because -

- Congress, when acting as a Constituent Assembly pursuant to Art. XV of the Constitution, has full and plenary authority to propose Constitutional amendments or to call a convention for the purpose, by a three-fourths vote of each House in joint session assembled but voting separately. Resolutions Nos. 2 and 4 calling for a constitutional convention were passed by the required three-fourths vote.

- The grant to Congress as a Constituent Assembly of such plenary authority to call a constitutional convention includes, by virtue of the doctrine of necessary implication, all other powers essential to the effective exercise of the principal power granted, such as the power to fix the qualifications, number, apportionment, and compensation of the delegates as well as appropriation of funds to meet the expenses for the election of delegates and for the operation of the Constitutional Convention itself, as well as all other implementing details indispensable to a fruitful convention. Resolutions Nos. 2 and 4 already embody the above-mentioned details, except the appropriation of funds."

- While the authority to call a constitutional convention is vested by the present Constitution solely and exclusively in Congress acting as a Constituent Assembly, the power to enact the implementing details, which are now contained in Resolution Nos. 2 and 4 as well as in R. A. No. 6132, does not exclusively pertain to Congress acting as a Constituent Assembly. Such implementing details are matters within the competence of Congress in the exercise of its comprehensive legislative power, which power encompasses all matters not expressly or by necessary implication withdrawn or removed by the Constitution from the ambit of legislative action. And as long as such statutory details do not clash with any specific provision of the Constitution, they are valid.

- Consequently, when Congress, acting as a Constituent Assembly, omits to provide for such implementing details after calling a constitutional convention, Congress, acting as a legislative body, can enact the necessary implementing legislation to fill in the gaps, which authority is expressly recognized in Sec. 8 of Res. No. 2 as amended by Res. No. 4.

- The fact that a bill providing for such implementing details may be vetoed by the President is no argument against conceding such power in Congress as a legislative body nor present any difficulty; for it is not irremediable as Congress can override the Presidential veto or Congress can reconvene as a Constituent Assembly and adopt a resolution prescribing the required implementing details.

III

Petitioner Raul M. Gonzales asserts that Sec. 2 on the apportionment of delegates is not in accordance with proportional representation and therefore violates the Constitution and the intent of the law itself, without pinpointing any specific provision of the Constitution with which it collides.

Unlike in the apportionment of representative districts, the Constitution does not expressly or impliedly require such apportionment of delegates to the convention on the basis of population in each congressional district. Congress, sitting as a Constituent Assembly, may constitutionally allocate one delegate for each congressional district or for each province, for reasons of economy and to avoid having an unwieldy convention. If the framers of the present Constitution wanted the apportionment of delegates to the convention to be based on the number of inhabitants in each representative district, they would have done so in so many words as they did in relation to the apportionment of the representative districts.[5]

The apportionment provided for in Sec. 2 of R.A. No. 6132 cannot possibly conflict with its own intent expressed therein; for it merely obeyed and implemented the intent of Congress acting as a Constituent Assembly expressed in Sec. 1 of Res. No. 4, which provides that the 320 delegates should be apportioned among the existing representative districts according to the number of their respective inhabitants, but fixing a minimum of at least two delegates for a representative district. The presumption is that the factual predicate, the latest available official population census, for such apportionment was presented to Congress, which, accordingly employed a formula for the necessary computation to effect the desired proportional representation.

The records of the proceedings on Senate Bill No. 77 sponsored by Senator Pelaez which is now R.A. No. 6132, submitted to this Tribunal by the amici curiae, show that it based its apportionment of the delegates on the 1970 official preliminary population census taken by the Bureau of Census and Statistics from May 6 to June 30, 1970; and that Congress adopted the formula to effect a reasonable apportionment of delegates. The Director of the Bureau of Census and Statistics himself, in a letter to Senator Pelaez dated July 30, 1970, stated that "on the basis of the preliminary count of the population, we have computed the distribution of delegates to the Constitutional Convention based on Senate Bill 77 (p. 2 lines 5 to 32 and p. 3 line 12), which is a fair and an equitable method of distributing the delegates pursuant to the provisions of the joint Resolution of both Houses No. 2, as amended. Upon your request at the session of the Senate-House Conference Committee meeting last night, we are submitting herewith the results of the computation on the basis of the above-stated method."

Even if such latest census were a preliminary census, the same could still be a valid basis for such apportionment.[6] The fact that the lone and small congressional district of Batanes, may be over-represented, because it is allotted two delegates by R.A. No. 6132 despite the fact that it has a population very much less than several other congressional districts, each of which is also allotted only two delegates, and therefore under-represented vis-a-vis Batanes alone, does not vitiate the apportionment as not effecting proportional representation. Absolute proportional apportionment is not required and is not possible when based on the number of inhabitants, for the population census cannot be accurate nor complete, dependent as it is on the diligence of the census takers, aggravated by the constant movement of population, as well as daily death and birth. It is enough that the basis employed is reasonable and the resulting apportionment is substantially proportional. Resolution No. 4 fixed a minimum of two delegates for a congressional district.

While there may be other formulas for a reasonable apportionment, considering the evidence submitted to Congress by the Bureau of Census and Statistics, we are not prepared to rule that the computation formula adopted by Congress for proportional representation as directed in Res. No. 4 is unreasonable and that the apportionment provided in R.A. No. 6132 does not constitute a substantially proportional representation.

In the Macias case, relied on by petitioner Gonzales, the apportionment law, which was nullified as unconstitutional, granted more representatives to a province with less population than the provinces with more inhabitants. Such is not the case here, where under Sec. 2 of R.A. No. 6132 Batanes is allotted only two delegates, which number is equal to the number of delegates accorded other provinces with more population. The present petitions therefore do not present facts which fit the mould of the doctrine in the case of Macias, et al. vs. Comelec, supra.

The impossibility of absolute proportional representation is recognized by the Constitution itself when it directs that the apportionment of congressional districts among the various provinces shall be "as nearly as may be according to their respective inhabitants, but each province shall have at least one member" (Sec. 5, Art. VI, Phil. Const., italics supplied). The employment of the phrase "as nearly as may be according to their respective inhabitants" emphasizes the fact that the human mind can only approximate a reasonable apportionment but cannot effect an absolutely proportional representation with mathematical precision or exactitude.

IV

Sec. 5 of R. A. 6132 is attacked on the ground that it is an undue deprivation of liberty without due process of law and denies the equal protection of the laws. Said Sec. 5 disqualifies any elected delegate from running "for any public office in any election" or from assuming "any appointive office or position in any branch of the government until after the final adjournment of the Constitutional Convention."

That the citizen does not have any inherent nor natural right to a public office, is axiomatic under our constitutional system. The State, through its Constitution or legislative body, can create an office and define the qualifications and disqualifications

therefor as well as impose inhibitions on a public officer. Consequently, only those with qualifications and who do not fall under any constitutional or statutory inhibition can be validly elected or appointed to a public office. The obvious reason for the questioned inhibition, is to immunize the delegates from the perverting influence of self-interest, party interest or vested interest and to insure that he dedicates all his time to performing solely in the interest of the nation his high and well-nigh sacred function of formulating the supreme law of the land, which may endure for generations and which cannot easily be changed like an ordinary statute. With the disqualification embodied in Sec. 5, the delegate will not utilize his position as a bargaining leverage for concessions in the form of an elective or appointive office as long as the convention has not finally adjourned. The appointing authority may, by his appointing power, entice votes for his own proposals. Not love for self, but love for country must always motivate his actions as delegate; otherwise the several provisions of the new Constitution may only satisfy individual or special interests, subversive of the welfare of the general citizenry. It should be stressed that the disqualification is not permanent but only temporary - only to continue until the final adjournment of the convention which may not extend beyond one year. The convention that framed the present Constitution finished its task in approximately seven months - from July 30, 1934 to February 8, 1935.

As admitted by petitioner Gonzales, this inhibition finds analogy in the constitutional provision prohibiting a member of Congress, during the time for which he was elected, from being appointed to any civil office which may have been created or the emolument whereof shall have been increased while he was a member of the Congress. (Sec. 16, Art. VI, Phil. Constitution).

As observed by the Solicitor General in his Answer, the overriding objective of the challenged disqualification, temporary in nature, is to compel the elected delegates to serve in full their term as such and to devote all their time to the convention, pursuant to their representation and commitment to the people; otherwise, his seat in the convention will be vacant and his constituents will be deprived of a voice in the convention. The inhibition is

likewise "designed to prevent popular political figures from controlling elections or positions. Also it is a brake on the appointing power, to curtail the latter's desire to raid the convention of 'talents' or attempt to control the convention." (p. 10, Answer in L-32443).

Thus the challenged disqualification prescribed in Sec. 5 of R.A. No. 6132 is a valid limitation on the right to public office pursuant to state police power as it is reasonable and not arbitrary.

The discrimination under Sec. 5 against delegates to the Constitutional Convention is likewise constitutional; for it is based on a substantial distinction which makes for real differences, is germane to the purposes of the law, and applies to all members of the same class.[7] The function of a delegate is more far-reaching and its effect more enduring than that of any ordinary legislator or any other public officer. A delegate shapes the fundamental law of the land which delineates the essential nature of the government, its basic organization and powers, defines the liberties of the people, and controls all other laws. Unlike ordinary statutes, constitutional amendments cannot be changed in one or two years. No other public officer possesses such a power, not even the members of Congress unless they themselves propose constitutional amendments when acting as a Constituent Assembly pursuant to Art. XV of the Constitution. The classification, therefore, is neither whimsical nor repugnant to the sense of justice of the community.

As heretofore intimated, the inhibition is relevant to the object of the law, which is to insure that the proposed amendments are meaningful to the masses of our people and not designed for the enhancement of selfishness, greed, corruption, or injustice.

Lastly, the disqualification applies to all the delegates to the convention who will be elected on the second Tuesday of November, 1970.

V

Paragraph 1, Sec. 8(a) of R.A. No. 6132 is impugned by both petitioners as violative of the constitutional guarantees of due process, equal protection of the laws, freedom of expression, freedom of assembly and freedom of association.

This Court ruled last year that the guarantees of due process, equal protection of the laws, peaceful assembly, free expression, and the right of association are neither absolute nor illimitable rights; they are always subject to the pervasive and dominant police power of the State and may be lawfully abridged to serve appropriate and important public interests.[8]

In said *Gonzales vs. Comelec* case, the Court applied the clear and present danger test to determine whether a statute which trenches upon the aforesaid constitutional guarantees, is a legitimate exercise of police power.[9]

Paragraph 1 of Sec. 8(a), R.A. No. 6132 prohibits:

- any candidate for delegate to the convention

(a) from representing, or

(b) allowing himself to be represented as being a candidate of any political party or any other organization; and

- any political party, political group, political committee, civic, religious, professional or other organizations or organized group of whatever nature from

(a) intervening in the nomination of any such candidate or in the filing of his certificate, or

(b) from giving aid or support directly or indirectly, material or otherwise, favorable to or against his campaign

for election.

The ban against all political parties or organized groups of whatever nature contained in par. 1 of Sec. 8(a), is confined to party or organization support or assistance, whether material, moral, emotional or otherwise. The very Sec. 8(a) in its provisos permits the candidate to utilize in his campaign the help of the members of his family within the fourth civil degree of consanguinity or affinity, and a campaign staff composed of not more than one for every ten precincts in his district. It allows the full exercise of his freedom of expression and his right to peaceful assembly, because he cannot be denied any permit to hold a public meeting on the pretext that the provision of said section may or will be violated. The right of a member of any political party or association to support him or oppose his opponent is preserved as long as such member acts individually. The very party or organization to which he may belong or which may be in sympathy with his cause or program of reforms, is guaranteed the right to disseminate information about, or to arouse public interest in, or to advocate for constitutional reforms, programs, policies or constitutional proposals for amendments.

It is therefore patent that the restriction contained in Sec. 8(a) is so narrow that the basic constitutional rights themselves remain substantially intact and inviolate. And it is therefore a valid infringement of the aforesaid constitutional guarantees invoked by petitioners.

In the aforesaid case of *Gonzales vs. Comelec*, supra, this Court unanimously sustained the validity of the limitation on the period for nomination of candidates in Sec. 50-A of R.A. No. 4880, thus:

"The prohibition of too early nomination of candidates presents a Question that is not too formidable in character. According to the act: 'It shall be unlawful for any political party, political committee, or political group to nominate candidates for any elective public office voted for at large earlier than one hundred and fifty days immediately preceding an election, and for any other elective public office earlier than ninety days immediately preceding an election.

"The right of association is affected. Political parties have less freedom as to the time during which they may nominate candidates; the curtailment is not such, however, as to render meaningless such a basic right. Their scope of legitimate activities, save this one, is not unduly narrowed. Neither is there infringement of their freedom to assemble. They can do so, but not for such a purpose. we sustain its validity. We do so unanimously." [10]

In said *Gonzales vs. Comelec*, case, this Court likewise held that the period for the conduct of an election campaign or partisan political activity may be limited without offending the aforementioned constitutional guarantees as the same is designed also to prevent a "clear and present danger of a substantive evil, the debasement of the electoral process." [11]

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, caucuses, conferences, meetings, rallies, parades or other similar assemblies for the meetings, rallies, parades or other similar assemblies for the purpose of soliciting, or receiving contributions for election campaign either directly or indirectly, (Sec. 50-B, pars. (a), (b), and (c), R.A. 4880), the abridgment was still affirmed as constitutional by six members of this Court, which could not "ignore x x x the legislative declaration that its enactment was in response to a serious substantive evil affecting the electoral process, not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied. To assert otherwise would be to close one's eyes to the reality of the situation." [12]

Likewise, because four members dissented, this Court in said case of *Gonzales vs. Comelec*, supra, failed to muster the required eight votes 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, par. (c), (d), & (e) of R.A. 4880.[13]

The debasement of the electoral process as a substantive evil exists today and is one of the major compelling interests that moved Congress into prescribing the total ban contained in par. 1 of Sec. 8(a) of R.A. No. 6132, to justify such ban. In the said *Gonzales vs. Comelec* case, this Court gave "due recognition to the legislative concern to cleanse, and if possible, render spotless, the electoral process,"[14] impressed as it was by the explanation made by the author of R.A. No. 4880, Sen. Lorenzo Tafiada, who appeared as *amicus curiae*, "that such provisions were deemed by the legislative body to be part and parcel of the necessary and appropriate response not merely to a clear and present danger but to the actual existence of a grave and substantive evil of excessive partisanship, dishonesty and corruption as well as violence that of late has marred election campaigns and partisan political activities in this country. He did invite our attention likewise to the well-settled doctrine that in the choice of remedies for an admitted malady requiring governmental action, on the legislature primarily rests the responsibility. Nor should the cure prescribed by it, unless clearly repugnant to fundamental rights, be ignored or disregarded."[15]

But aside from the clear and imminent danger of the debasement of the electoral process, as conceded by Senator Pelaez, the basic motivation, according to Senate Majority Floor Leader Senator Arturo Tolentino, the sponsor of the Puyat-Tolentino amendment embodied in par. 1 of Sec. 8(a) of R.A. No. 6132, is to assure the candidates equal protection of the laws by according them equality of chances.[16] The primary purpose of the prohibition then is also to avert the clear and present danger of another substantive evil, the denial of the equal protection of the laws. The candidates must depend on their individual merits and not on the support of political parties or organizations. Senator Tolentino and Senator Salonga emphasized that under this provision, the poor candidate has an even chance as against the rich candidate. We are not prepared to disagree with them, because such a conclusion, predicated as it is on empirical logic, finds support in our recent political history and experience. Both Senators stressed that the independent candidate who wins in the election against a candidate of the major political parties, is a rare phenomenon in this country and 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. This position is further strengthened by the principle that the guarantee of social justice under Sec. V, Art. n of the Constitution, includes the guarantee of equal opportunity, equality of political rights, and equality before the law enunciated by Mr. Justice Tuazon in the case *Guido vs. Rural Progress Administration*. [17]

While it may be true that a party's support of a candidate is not wrong per se, it is equally true that Congress in the exercise of its broad law-making authority can declare certain acts as *mala prohibita* when justified by the exigencies of the times. One such act is the party or organization support proscribed in Sec. 8(a), which ban is a valid limitation on the freedom of association as well as expression, for the reasons aforesated.

Senator Tolentino emphasized that "equality of chances may be better attained by banning all organization support." [18]

The questioned par. 1 of Sec. 8(a) likewise can easily pass the balancing-of-interest test.[19]

In the apt words of the Solicitor General:

"It is to be noted that right now the nation is on the threshold of rewriting its Constitution in a hopeful endeavor to find a solution to the grave economic, social and political problems besetting the country. Instead of directly proposing the amendments, Congress has chosen to call a Constitutional Convention which shall

have the task of fashioning a document that shall embody the aspirations and ideals of the people. Because what is to be amended is the fundamental law of the land, it is indispensable that the Constitutional Convention be composed of delegates truly representative of the people's will. Public welfare demands that the delegates should speak for the entire nation, and their voices be not those of a particular segment of the citizenry, or of a particular class or group of people, be they religious, political, civic or professional in character. Senator Pelaez, Chairman of the Senate Committee on Codes and Constitutional Amendments, eloquently stated that 'the function of the constitution is not to represent any one interest or set of interests, not to favor one group at the expense or disadvantage of the candidates -but to encompass all the interests that exist within our society and to blend them into one harmonious and balanced whole. For the constitutional system means, not the predominance of interests, but the harmonious balancing thereof.'

"So that the purpose for calling the Constitutional Convention will not be defeated or frustrated, it is necessary that the delegates thereto be independent, beholden to no one but to God, country and conscience."

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"The evil, therefore, which the law seeks to prevent lies in the election of delegates who, because they have been chosen with the aid and resources of organizations, cannot be expected to be sufficiently representative of the people. Such delegates could very well be the spokesmen of narrow political, religious or economic interest and not of the great majority of the people." [20]

We likewise concur with the Solicitor General that the equal protection of the laws is not unduly subverted in par. 1 of Sec. 8(a); because it does not create any hostile discrimination against any party or group nor does it confer undue favor or privilege on an individual as heretofore stated. The discrimination applies to all organizations, whether political parties or social, civic, religious or professional associations. The ban is germane to the objectives of the law, which are to avert the debasement of the electoral process and to attain real equality of chances among individual candidates and thereby make real the guarantee of equal protection of the laws.

The political parties and the 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. The fact that the other civic or religious organizations cannot have a campaign machinery as efficient as that of a political party, does not vary the situation; because it still has that much built-in advantage as against the individual candidate without similar support. Moreover, these civic, religious and professional organizations may band together to support common candidates, who advocate the reforms that these organizations champion and believe are imperative. This is admitted by petitioner Gonzales thru the letter of Senator Ganzon dated August 17, 1970 attached to his petition as Annex "D", wherein the Senator stated that his own "Timawa" group had agreed with the Liberal Party in Iloilo to support petitioner Gonzales and two others as their candidates for the convention, which organized support is nullified by the questioned ban. Senator Ganzon stressed that "without the group moving and working in joint collective effort" they cannot "exercise effective control and supervision over our leaders - the Women's League, the area commanders, etc."; but with their joining with the LP's they "could have presented a solid front with very bright chances of capturing all seats."

The civic associations other than political parties cannot with reason insist that they should be exempted from the ban; because then by such exemption they would be free to utilize the facilities of the campaign machineries which they are denying to the political parties. Whenever an organization engages in a political activity, as in this

campaign for election of delegates to the Constitutional Convention, to that extent it partakes of the nature of a political organization. This, despite the fact that the Constitution and by-laws of such civic, religious or professional

associations usually prohibit the association from engaging in partisan political activity or supporting any candidate for an elective office. Hence, they must likewise respect the ban.

The freedom of association also implies the liberty not to associate or join with others or join any existing organization. A person may run independently on his own merits without need of catering to a political party or any other association for support. And he, as much as the candidate whose candidacy does not evoke sympathy from any political party or organized group, must be afforded equal chances. As emphasized by Senators Tolentino and Salonga, this ban is to assure equal chances to a candidate with talent and imbued with patriotism as well as nobility of purpose, so that the country can utilize their services if elected.

Impressed as We are by the eloquent and masterly exposition of Senator Tañada for the invalidation of par. 1 of Sec. 8(a) of R.A. No. 6132, demonstrating once again his deep concern for the preservation of our civil liberties enshrined in the Bill of Rights, We are not persuaded to entertain the belief that the challenged ban transcends the limits of constitutional invasion of such cherished immunities.

WHEREFORE, the prayers in both petitions are hereby denied and R.A. No. 6132 including Sees. 2, 4, 5, and 8(a), paragraph 1, thereof, cannot be declared unconstitutional. Without costs.

Dizon, Ruiz Castro and Reyes, J.B.L., JJ., concur.

Makalintal, J., in the result.

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

Concepcion, C.J., and Villamor, J., concur with the separate opinion of Justice Fernando.

Zaldivar, J., concurs with the separate opinion of Justice Fernando in so far as it relates to Sec. 8(a), par. 1 of Rep. Act. 6132 and reserves his vote in so far as other questions raised in the two cases are concerned.

Teehankee, J., is on official leave.

[1] Sec. 1 of Res. No. 4.

[2] Sec. 3, Res. No. 4.

[3] Sec. 22, R.A. No. 6132.

[4] Abelardo Subido vs. Comelec, in re validity of Sec. 4 and Sec. 8(a) par. 2, R.A. 6132, G.R. No. L-32436, and In the matter of the petition for declaratory relief re validity and constitutionality of Sec. 4, R.A. 6132, Hon. Guardson Lood, Judge, CFI, Pasig, Rizal, et al., petitioners, G.R. No. L-32439, Sept. 9, 1970.

[5] Sec. 5, Art. VI, Constitution.

[6] Marias, et al. vs. Comelec, G.R. No. L-18684, Sept. 14, 1961.

[7] People vs. Vera, 65 Phil. 56; People vs. Solon, G.R. No. L-14864, Nov. 23, 1960.

[8] See Gonzales vs. Comelec, L-27833, Apr. 18, 1969; Vol. 27, SCRA, P-835,858, etseq; Justice Douglas in

Elfbrandtv. Russel, 384, U.S. 11, 18-19, 1966.

[9] 27 SCRA, pp. 860-861.

[10] 27 SCRA, p. 865.

[11] 27 SCRA, p. 869.

[12] 27 SCRA, pp. 864-865, 868.

[13] 27SCRA; pp. 869-870.

[14] 27 SCRA, p. 873.

[15] 27SCRA, p. 872.

[16] See his sponsorship speech of July 20, 1970.

[17] 84 Phil. 847, 852.

[18] See his sponsorship speech on July 20, 1970.

[19] See Justice Castro's separate opinion in Gonzales vs. Comelec, supra, 27 SCRA, pp. 898-899 citing American Communications Association vs. Douds, 339 U.S. 383, 94 L. Ed., 925, 9437.

[20] Pp. 4-5, 12, Answer in L-32432.

CONCURRING AND DISSENTING

FERNANDO, J.,

The opinion of Justice Makasiar speaking for the Court,comprehensive in scope, persuasive in character and lucid in expression, has much to recommend it. On the whole, I concur. I find difficulty, however, in accepting the conclusion that there is no basis for the challenge hurled against the validity of this provision: "No candidate for delegate to the Convention shall represent or allow himself to be represented as being a candidate of any political party or any other organization, and no political party, political group, political committee, civic, religious, professional, or other organization or organized group of whatever nature shall intervene in the nomination of any such candidate or in the filing of his certificate of candidacy or give aid or support directly or indirectly, material or otherwise, favorable to or against his campaign for election: ***." [1] In It is with regret then that I dissent from that portion of the decision.

- I find it difficult to reconcile the decision reached insofar as the aforesaid ban on political parties and civic, professional and other organizations is concerned with the explicit provision that the freedom to form associations or societies for purposes not contrary to law shall not be abridged.[2] The right of an individual to join others of a like persuasion to pursue common objectives and to engage in activities is embraced within if not actually encouraged by the regime of liberty ordained by the Constitution. This particular freedom has an indigenous cast, its origin being traceable to the Malolos Constitution.

In the United States, in the absence of an explicit provision of such character, it is the view of Justice Douglas, in a 1963 article, that it is primarily the First Amendment of her Constitution, which safeguards freedom of speech and of the press, of assembly and of petition "that provides [associations] with the protection they need if they are

to remain viable and continue to contribute to our Free Society." [3] Such is indeed the case, for five years earlier the American Supreme Court had already declared: "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty' [embraced in] freedom of speech." [4]

Not long after, in 1965, Justice Douglas as spokesman for the American Supreme Court could elaborate further on the scope of the right of association as including "the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful." [5] Thus is further vitalized freedom of expression which, for Justice Laurel, is at once the instrument "and the guarantee and the bright consummate flower of all liberty" [6] and, for Justice Cardozo, "the matrix, the indispensable condition of nearly every other form of freedom." [7]

- It is in the light of the above fundamental postulates that I find merit in the plea of petitioners to annul the challenged provision. There is much to be said for the point emphatically stressed by Senator Lorenzo M. Tañada, as amicus curiae, to the effect that there is nothing unlawful in a candidate for delegate to the Convention representing or allowing himself to be represented as such of any political party or any other organization as well as of such political party, political group, political committee, civic, religious, professional or other organization or organized group intervening in his nomination, in the filing of his certificate of candidacy, or giving aid or support, directly or indirectly, material or otherwise, favorable to or against his campaign for election as such delegate. I find the conclusion inescapable, therefore, that what the constitutional provisions in question allow, more specifically the right to form associations, is prohibited. The infirmity of this ban is thus apparent on its face.

There is, to my mind, another avenue of approach that leads to the same conclusion. The final proviso in the same section of the Act forbids any construction that would in any wise "impair or abridge the freedom of civic, political, religious, professional, trade organization or organized groups of whatever nature to disseminate information about, or arouse public interest in, the forthcoming Constitutional Convention, or to advocate constitutional reforms, programs, policies or proposals for amendment of the present Constitution, and no prohibition contained herein shall limit or curtail the right of their members, as long as they act individually, to support or oppose any candidate for delegate to the Constitutional Convention." [8] It is regrettable that such an explicit recognition of what cannot be forbidden consistently with the constitutional guarantees of freedom of expression and freedom of association falls short of according full respect to what is thus commanded by the fundamental law, as they are precluded by the very same Act from giving aid or support precisely to the very individuals who can carry out whatever constitutional reforms, programs, policies or proposals for amendment they might advocate. As thus viewed, the conviction I entertain as to its lack of validity is further strengthened and fortified.

- It would be a different matter, of course, if there is a clear and present danger of a substantive evil that would justify a limitation on such cherished freedoms. Reference has been made to *Gonzales v. Commission on Elections*. [9] As expressed in the opinion of the writer in that case: "Why repression is permissible only when the danger of substantive evil is present is explained by Justice Brandeis thus: '* * * the will apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.' For him the apprehended evil must be 'relatively serious.' For '[prohibition] of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society.' Justice Black would go further. He would require that the substantive evil be 'extremely serious.' Only thus may there be a realization of the ideal envisioned by Cardozo: "There shall be no compromise of the freedom to think one's thoughts and speak them, except at those extreme borders where

thought merges into action.' It received its original formulation from Holmes. Thus: 'The question in every case is whether the words used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.'"[10] The majority of the Court would find the existence of a clear and present danger of debasing the electoral process. With due respect, I find myself unable to share such a view.

The assumption would appear to be that there is a clear and present danger of a grave substantive evil of partisanship running riot unless political parties are thus restrained. There would be a sacrifice then of the national interest involved. The Convention might not be able to live up to the high hopes entertained for an improvement of the fundamental law. It would appear though that what prompted such a ban is to assure that the present majority party would not continue to play its dominant role in the political life of the nation. The thought is entertained that otherwise, we will not have a Convention truly responsive to the needs of the hour and of the future insofar as they may be anticipated.

To my mind, this is to lose sight of the fact that in the national elections of 1946, 1953, 1961 and 1965, the presidency was won by the opposition candidate. Moreover, in national elections for senators alone, that of 1951, to mention only one instance, saw a complete sweep of the field by the then minority party. It would be unjustifiable, so I am led to believe, to assume that inevitably the prevailing dominant political party would continue its ascendancy in the coming Convention.

Then, too, the result of the plebiscite in the two proposed amendments in 1967 indicate unmistakably that the people can, if so minded, make their wishes prevail. There is thus no assurance that the mere identification with party labels would automatically insure the success of a candidacy. Even if it be assumed that to guard against the evils of party spirit carried to excess, such a ban is called for, still no such danger is presented by allowing civic, professional or any other organization or organized group of whatever nature to field its own candidates or give aid or support, directly or indirectly, material or otherwise, to anyone running for the Convention. From such a source, no such misgivings or apprehension need arise. Nor is the fear that organizations could hastily be assembled or put up to camouflage their true colors as satellites of the political parties be valid. The electorate can see through such schemes and can emphatically register its reaction. There is, moreover, the further safeguard that whatever work the Convention may propose is ultimately subject to popular ratification.

For me then the danger of a substantive evil is neither clear nor present. What causes me grave concern is that to guard against such undesirable eventuality, which may not even come to pass, a flagrant disregard of what the Constitution ordains is minimized. A desirable end cannot be coerced by unconstitutional means.

- It is not easy to yield assent to the proposition that on a matter so essentially political as the amendment or revision of an existing Constitution, political parties or political groups are to be denied the opportunity of launching the candidacy of their choice. Well has it been said by Chief Justice Hughes: "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."[11] It is to carry this essential process one step farther to recognize and to implement the right of every political party or group to select the candidates who, by their election, could translate into actuality their hopes for the fundamental law that the times demand. Moreover, is it not in keeping with the rights to intellectual freedom so sedulously safeguarded by the Constitution to remove all obstacles to organized civic groups making their influence felt in the task of constitution framing, the result of which has momentous implications for the nation? What is decisive of this

aspect of the matter is not the character of the association or organized group as such but the essentially political activity thus carried out.

This is not to deny the wide latitude as to the choice of means vested in Congress to attain a desirable goal. Nor can it be successfully argued that the judiciary should display reluctance in extending sympathy and understanding to such legislative determination. This is merely to stress that however worthwhile the objective, the Constitution must still be paid deference. Moreover, it may not be altogether unrealistic to consider the practical effects of the ban as thus worded as not lacking in effectivity insofar as civic, religious, professional or other organization or organized group is concerned, but not necessarily so in the case of political party, political group or political committee. There is the commendable admission by Senator Tolentino, appearing as *amicus curiae*, that the political leaders of stature, in their individual capacity, could continue to assert their influence. It could very well happen, then, in not a few cases, assuming the strength of political parties, that a candidate thus favored is sure of emerging the victor. What is thus sought to be accomplished to guard against the evil of party spirit prevailing could very well be doomed to futility. The high hopes entertained by the articulate and vocal groups of young people, intellectuals and workers, may not be realized. The result would be that this unorthodox and novel provision could assume the character of a tease, an illusion like a munificent bequest in a pauper's will.

If such an appraisal is not unjustifiably tinged with pessimism, then, to my mind, a radical approach to a problem possibly tainted with constitutional infirmity cannot hurdle the judicial test as to its validity. It is one thing to encourage a fresh and untried solution to a problem of gravity when the probability of its success may be assumed. It is an entirely different matter to cut down the exercise of what otherwise are undeniable constitutional rights when, as in this case, the outcome might belie expectations. Considering the well-settled principle that even though the governmental process be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties, if the end can be narrowly achieved, I am far from being persuaded that to preclude political parties or other groups or associations from lending aid and support to the candidates of men in whom they can repose their trust is consistent with the constitutional rights of freedom of association and freedom of expression. Here, the danger of overbreadth, so clear and manifest as to be offensive to constitutional standards, magnified by the probability that the result would be the failure and not success of the statutory scheme, cautions against the affixing of the imprimatur of judicial approval to the challenged provision.

- Necessarily then, from this mode of viewing the matter, it would follow that the holding of this Court in *Gonzales v. Comelec*[12] does not compel the conclusion reached by the majority sustaining the validity of this challenged provision. What survived the test of constitutional validity in that case, with the Court unanimous in its opinion, is the prohibition for any political party, political committee or political group to nominate candidates for any elective public office voted for at large earlier than 150 days immediately preceding election and for any other public office earlier than 90 days immediately preceding such election.[13] A corollary to the above limitation, the provision making it unlawful for any person, whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the above periods successfully hurdled the constitutional test, although the restrictions as to the making of speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office or the publishing or distributing of campaign literature or materials or the solicitation or undertaking any campaign or propaganda for or against any candidate or party, directly or indirectly, survived by the narrow margin of one vote, four members of this Court unable to discern any constitutional infirmity as against the free speech guarantee, thus resulting in failing to muster the necessary two-thirds majority for a declaration of invalidity. Insofar as election campaign or partisan political activity would limit or restrict the formation of organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes or undertaking any campaign or propaganda for or against a party or candidate or the

giving, soliciting, or receiving a contribution for election campaign purposes, either directly or indirectly as well as the holding of political conventions, caucuses, conferences, meetings, rallies, parades or other similar assemblies, with a similar end in view, only five members of this Court, a minority thereof, voted for their unconstitutionality. What emerges clearly, then, is that definite acts short of preventing the political parties from the choice of their candidates and thereafter working for them in effect were considered by this Court as not violative of the constitutional freedoms of speech, of press, of assembly and of association.

The challenged provision in these two petitions, however, goes much farther. Political parties or any other organization or organized group are precluded from selecting and supporting candidates for delegates to the Constitutional Convention. To my mind, this is to enter a forbidden domain, Congress trespassing on a field hitherto rightfully assumed to be within the sphere of liberty. Thus, I am unable to conclude that our previous decision in *Gonzales v. Commission on Elections* which already was indicative of the cautious and hesitant judicial approach to lending its approval to what otherwise are invasions of vital constitutional safeguards to freedoms of belief, of expression, and of association lends support to the decision reached by the majority insofar as this challenged provision is concerned.

Hence my inability to subscribe in its entirety to the opinion of the Court. I am authorized to state that the Chief Justice is in agreement with the views herein expressed.

[1] Sec. 8(a), Republic Act No. 6132 (1970).

[2] The Constitution provides: "The right to form associations or societies for purposes not contrary to law shall not be abridged." Art. III, Sec. 1, par. 6.

[3] Douglas, *The Right of Association*, 63 Col. Law Rev. 1363(1963).

[4] *NAACP v. Alabama ex rel. Patterson*, 357 US 449, 460 (1958) per Harlan, J. Cf. *Bates v. Little Rock*, 361 US 516 (1960); *Shelton v. Tucker*, 364 US 479 (1960); *Louisiana ex rel. Gremillon v. NAACP*, 366 US 293 (1961); *Communist Party v. Subversive Activities Control Board*, 367 US 1(1961); *Scales v. United States*, 367US203 (1961); *NAACP v. Button*, 371 US 415 (1963); *Gibson v. Florida Legislative Investigation Comm.*, 372 US 539(1963); *Brotherhood v. Virginia ex rel. State Bar*, 377 US 1 (1964); *NAACP v. Alabama*, 377 US 288 (1964).

[5] *Griswold v. Connecticut*, 381 US 479,483 (1965). In *Elfbrandt v. Russel*, 384 US 11,18 (1966) he spoke of this right as a "cherished freedom." Cf. *Keyishan v. Board of Regents*, 385 US 589 (1967).

[6] *Planas v. Gil*, 67 Phil. 62 (1939), Justice Laurel quoting Wendell Philipps.

[7] *Palko v. Connecticut*, 302 US 319, 323 (1937).

[8] Section 8(a), Republic Act No. 6132 (1970).

[9] L-27833, April 18, 1969, 27 SCRA 835.

[10] *Ibid.*, pp. 859-860.

[11] *De Jonge v. Oregon*, 299 US 353, 365 (1937).

[12] L-27833, April 18, 1969, 27 SCRA 835.

[13] Sec. 50(a) of Republic Act 4880 (1967).

CONCURRING AND DISSENTING

BARREDO, J.,

Without prejudice to a more extended opinion, I vote, in concurrence with the majority, to sustain the validity of the provisions of Republic Act 6132 impugned by petitioners in these cases, except Section 4 and the portion of Section 8(a) referring to political parties. As regards Section 4, I reiterate my separate opinion in the cases of Subido and others. (G.R. Nos. L-32436 and L-32439) With respect to Section 8(a), I hold that the considerations which make the restraint on the freedoms of association, assembly and speech involved in the ban on political parties to nominate and support their own candidates, reasonable and within the limits of the Constitution do not obtain when it comes to civic or non-political organizations. As I see it, the said ban, insofar as civic or non-political organizations are concerned.

is a deceptive device to preserve the built-in advantages of political parties while at the same time crippling completely the other kinds of associations. The only way to accomplish the purported objective of the law of equalizing the forces that will campaign on behalf of the candidates to the constitutional convention is to maintain said ban only as against political parties, for after all, only the activities and manners of operation of these parties and/or some of their members have made necessary the imposition thereof. Under the resulting set up embodied in the provision in question, the individual candidates who have never had any political party connections or very little of it would be at an obvious disadvantage unless they are allowed to seek and use the aid of civic organizations. Neither the elaborate provisions of Republic Act 6132 regarding methods of campaign nor its other provisions intended to minimize the participation of political parties in the electoral processes of voting, counting of the votes and canvassing of the results can overcome the advantages of candidates more or less connected with political parties, particularly the major and established ones, as long as the right to form other associations and the right of these associations to campaign for their candidates are denied, considering particularly the shortness of the time that is left between now and election day.

The issues involved in the coming elections are grave and fundamental ones that are bound to affect the lives, rights and liberties of all the people of this country most effectively, pervasively and permanently. The only insurance of the people against political parties which may be inclined towards the Establishment and the status quo is to organize themselves to gain much needed strength and effectivity. To deny them this right is to stifle the people's only opportunity for change.

It is axiomatic that issues, no matter how valid, if not related to particular candidates in an organized way, similarly as in the use of platforms by political parties, cannot have any chance of support and final adoption. Both men and issues are important, but unrelated to each other, each of them alone is insignificant, and the only way to relate them is by organization. Precisely because the issues in this election of candidates are of paramount importance second to none, it is imperative that all of the freedoms enshrined in the constitution should have the amplest recognition for those who are minded to actively battle for them and any attempt to curtail them would endanger the very purposes for which a new constitutional convention has been conceived.

Consistently with my separate opinion in the case of Gonzales and Cabigao vs. Comelec, G.R. No. L-27833, April 18, 1969 and for the reasons therein stated, I maintain that the right of suffrage which is the cornerstone of any democracy like ours is meaningless when the right to campaign in any election therein is unreasonably and unnecessarily curtailed, restrained or hampered, as is being done under the statute in dispute.

It is, of course, understood that this opinion is based on my considered view, contrary to that of the majority, that

as Section 8(a) stands and taking into account its genesis, the ban against political parties is separable from that against other associations within the contemplation of Section 21 of the Act which expressly refers to the separability of the application thereof to any "persons, groups or circumstances."

I reserve my right to expand this explanation of my vote in the next few days.

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