

PEDRO G. PERALTA, PETITIONER, VS. HON. COMMISSION ON ELECTIONS, HON. NATIONAL TREASURER, AND KILUSANG BAGONG LIPUNAN, RESPONDENTS.

G.R. No. L-47771. March 11, 1978

Ponente: ANTONIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/88dd675caf05/>

ANTONIO, J.:

These six (6) consolidated petitions pose for the determination of this Court the constitutionality of specific provisions of the 1978 Election Code (Presidential Decree No. 1296).

I

The first issue posed for resolution is: Whether or not the voting system provided for in Sections 140 and 155, sub-paragraphs 26 to 28, of the 1978 Election Code, granting to the voter the option to vote either for individual candidates by filling in the proper spaces in the ballot the names of candidates he desires to elect, or to vote for all the candidates of a political party, group or aggrupation by simply writing in the space provided for in the ballot the name of the political party, group or aggrupation, violates Section 1 of Article IV and Section 9(1) of Article XII-C of the Constitution.

The specific provisions of the 1978 Election Code which are assailed as being in violation of the equal protection clause are the following:

"SEC. 140. Manner of preparing the ballot.-The voter upon receiving his folded ballot shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the candidate for whom he desires to vote: Provided, That in the election of regional representatives to the interim Batasang Pambansa, the voter may choose to vote for individual candidates by filling in the proper spaces of the ballot the names of candidates he desires to elect, but if for any reason he chooses to vote for all the candidates of a political party, group or aggrupation, by writing in the space provided for in the ballot the name of the political party, group or aggrupation: Provided, further, That the ballots for the election of regional representatives to the interim Batasang Pambansa shall be prepared by the Commission in such manner that the voter may vote for the straight ticket of a political party, group or aggrupation or for individual candidates, and for this purpose, the ticket of a regularly organized political party, group or aggrupation as certified under oath by their respective directorates or duly authorized representatives as well as candidates not belonging to any particular political party, group or aggrupation, shall be printed in the upper portion of said ballots in a manner which does not give undue advantage to any political party, group or aggrupation or candidate, and there shall also be a column containing blank spaces for the names of such candidates which spaces are to be filled by the voter who does not desire to vote for a straight ticket: Provided, finally, That a candidate may be in the ticket of only one political party, group or aggrupation; if he is included in the ticket of more than one political party, group or aggrupation presenting different sets of candidates, he shall immediately inform the Commission as to which ticket he chooses to be included, and if he

fails to do so, he shall cease to be considered to belong to any ticket. The following notice shall be printed on the ballot: 'If you want to vote for all the official candidates of a political party, group or aggrupation to the exclusion of all other candidates, write the name of such political party, group or aggrupation in the space indicated. It shall then be unnecessary for you to write the names of candidates you vote for. On the other hand, if you want to vote for candidates belonging to different parties, groups or aggrupations and/or for individual candidates, write in the respective blank spaces the names of the candidates you vote for and the names written by you in the respective blank spaces in the ballot shall then be considered as validly voted for.'

*** **

"SEC. 155. Rules for the appreciation of ballots. - In the reading and appreciation of ballots, the committee shall observe the following rules:

*** **

"26. If a voter has written in the proper space of the ballot the name of a political party, group or aggrupation which has nominated official candidates, a vote shall be counted for each of the official candidates of such party, group or aggrupation.

"27. If a voter has written in the proper space of the ballot the name of a political party, group or aggrupation which has nominated official candidates and the names of individual candidates belonging to the ticket of the same political party, group or aggrupation in the spaces provided therefor, a vote shall be counted for each of the official candidates of such party, group or aggrupation and the votes for the individual candidates written on the ballot shall be considered as stray votes.

"28. If a voter has written in the proper space of his ballot the name of a political party, group or aggrupation which has nominated official candidates and the names of individual candidates not belonging to the ticket of the same political party, group or aggrupation in the spaces provided therefor, all of the votes indicated in the ballot shall be considered as stray votes and shall not be counted: Provided, however, That if the number of candidates nominated by the political party, group or aggrupation written by the voter in the ballot is less than the number of seats to be filled in the election and the voter also writes the names of individual candidates in the spaces provided therefor not belonging to the ticket of the political party, group or aggrupation he has written in the ballot, the ballot shall be counted as votes in favor of the candidates of the political party, group or aggrupation concerned and the individual candidates whose names were firstly written by the voter in the spaces provided therefor, until the authorized number of seats is filled."

The system which allows straight party voting is not unique in the Philippine experience. As early as 1941, the Second National Assembly of the Philippines enacted Commonwealth Act No. 666, entitled "An Act to Provide for the First Election for President and Vice-President of the Philippines, Senators, and Members of the House of Representatives, Under the Constitution and the Amendments Thereof." Said Commonwealth Act enabled the voter to vote for individual candidates or for a straight party ticket by writing either the names of the candidates of his choice or of the political party he favored on designated blank spaces on the ballot.[1]

While the original Election Code, Commonwealth Act No. 357, dated August 22, 1938, did not carry provisions for optional straight party voting,[2] the system was, however, substantially reinstituted in Republic Act No. 180, or the Revised Election Code, enacted on June 21, 1947.[3] The only important difference introduced was that in appreciating ballots on which the voter had written both the name of a political party and the names of candidates not members of said party, Republic Act No. 180 provided that the individual candidates whose names were written shall be considered voted for,[4] whereas Commonwealth Act No. 666 provided that the vote shall be counted in favor of the political party.[5]

Likewise, it should be noted that in other jurisdictions, ballots providing for optional straight party voting have been accepted as a standard form, in addition to the "office-block" ballots, in which all candidates for each office are grouped together. Among the different states of the United States, for example, the following has been observed:

"The party-column ballot, used in about 30 states, is sometimes called the Indiana-type ballot because the Indiana law of 1889 has served as a model for other states. In most states using the party-column ballot, it is possible to vote for the candidates of a single party for all offices by making a single cross in the circle at the head of the column containing the party's candidates. In some states, the party emblem is carried at the top of its column, a feature which, in less literate days, was of some utility in guiding the voter to the right column on the ballot. To vote a split ticket on a party-column ballot usually requires the recording of a choice for each office, a path the voter will presumably hesitate to follow when he has the alternative of making a single cross mark. Professional party workers generally favor the use of the party-column ballot because it encourages straight ticket voting.* * *.

"In contrast with the party-column ballot is the office-block ballot, or, as it is sometimes called by virtue of its origin, the Massachusetts ballot. Names of all candidates, by whatever party nominated, for each office are grouped together on the office-block ballot, usually with an indication alongside each name of the party affiliation. The supposition is that the voter will be compelled to consider separately the candidates for each ballot, in contrast with the encouragement given to straight-ticket voting by the party column ballot. Pennsylvania uses a variation of the office-block ballot: the candidates are grouped according to office but provision is made for straight-ticket voting by a single mark."[6]

Election laws providing for the Indiana-type ballot, as afore-mentioned, have been held constitutional as against the contention that they interfere with the freedom and equality of elections. Thus, in *Oughton, et al. v. Black, et al.*,[7] assailed as unconstitutional was a statutory proviso which required that ballots should be printed with the following instructions: "To vote a straight party ticket, mark a cross (x) in the square opposite the name of the party of your choice, in the first column. A crossmark in the square opposite the name of any candidate indicates a vote for that candidate."

It was contended that such provision interferes with the freedom and equality of elections, and authorizes a method of voting for political parties and not for men. It was alleged that the special privilege given to straight ticket voters and denied to others injured appellants, who, as candidates, were opposed by other candidates who can much more easily be voted for. In resolving such question and declaring the law valid, the Supreme Court of Pennsylvania held that the "free and equal exercise of the elective franchise by every elector is not impaired by the statute, but simply regulated. The regulation is for the convenience of the electors. The constitutionality of the law is not to be tested by the fact that one voter can cast his ballot by making one mark while another may be required to make two or more to express his will. When each has been afforded the opportunity and been provided

with reasonable facilities to vote, the Constitution has been complied with. All else is regulation, and lies in the sound discretion of the Legislature." [8]

The Pennsylvania Court further emphasized that elections are equal when the vote of every candidate is equal in its influence on the result, to the vote of every candidate; when each ballot is as effective as every other ballot. [9]

To the same effect is the holding in *Ritchie v. Richards*, which sustained the validity of a statute containing a similar provision. [10]

At any rate, voting by party has been accepted in various states as a form of democratic electoral process. In Israel, for example, where the election system is one of proportional representation in which each political party presents a list of candidates to the citizenry, the voter selects a party, not a candidate, and each party is then represented in the Knesset in proportion to its strength on the polls. The head of the largest party is asked to form a government. [11] In France, on the other hand, under the electoral law of October 5, 1946, providing for the selection of National Assembly members, a list system of proportional representation was set up, whereby each electoral area elected several candidates in proportion to its voting strength. The voter was required to vote only for one party list; he could not split his vote among several candidates on different party lists, but could depart from the order of preference set up by the party. Commissioners then count the ballots for each party list and distribute the total number of seats among the different successful parties. [12] In Italy and West Germany, party voting is likewise in practice, and proportional representation seats are distributed on the basis of the number of votes received by the successful parties.

Petitioners in the cases at bar invoke the constitutional mandate that no person shall be denied the equal protection of the laws (Article IV, Section 1) and the provision that "bona fide candidates for any public office shall be free from any form of harassment or discrimination" (Article XII-C, Section 9[1]). The word "discrimination" in the latter provision should be construed in relation to the equal protection clause and in the manner and degree in which it is taken therein, since said provision "is in line with the provision of the Bill of Rights that no 'person shall be denied the equal protection of the laws'". [13]

The main objection of petitioners against the optional straight party voting provided for in the Code is that an independent candidate would be discriminated against because by merely writing on his ballot the name of a political party, a voter would have voted for all the candidates of that party, an advantage which the independent candidate does not enjoy. In effect, it is contended that the candidate who is not a party-member is deprived of the equal protection of the laws, as provided in Section 1 of Article IV, in relation to Section 9 of Article XII, of the Constitution.

The equal protection clause does not forbid all legal classifications. What it proscribes is a classification which is arbitrary and unreasonable. It is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies equally to all those belonging to the same class. [14] The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within the class and those who do not. [15] There is, of course, no concise or easy answer as to what an arbitrary classification is. No definite rule has been or can be laid down on the basis of which such question may be resolved. The determination must be made in accordance with the facts presented by the particular case. The general rule, which is well-settled by the authorities, is that a classification, to be valid, must rest upon material differences between the persons, activities or things included and those excluded. There must, in other words, be a basis for distinction. Furthermore, such classification must be germane and pertinent to the purpose of the law. And, finally, the basis of classification must, in general, be so drawn that

those who stand in substantially the same position with respect to the law are treated alike. It is, however, conceded that it is almost impossible in some matters to foresee and provide for every imaginable and exceptional case. Exactness in division is impossible and never looked for in applying the legal test. All that is required is that there must be, in general, some reasonable basis on general lines for the division.[16] Classification which has some reasonable basis does not offend the equal protection clause merely because it is not made with mathematical nicety.[17]

In the cases at bar, the assailed classification springs from the alleged differential treatment afforded to candidates who are party members as against those who run as independents. It must be emphasized that one who assails the classification contained in the election law must carry the burden of showing that it does not rest upon a reasonable basis, but is essentially arbitrary.[18] The factual foundation to demonstrate invalidity must be established by the litigant challenging its constitutionality.[19] These principles are predicated upon the presumption in favor of constitutionality.

This has to be so because of "the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature, approved by the executive, is presumed to be within constitutional limitations. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. The question of the validity of every statute is first determined by the legislative department of the government itself.[20]

Thus, to justify the nullification of a law, there must be "a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication." [21] There is practical unanimity among the courts in the pronouncement "that laws shall not be declared invalid unless the conflict with the Constitution is clear beyond a reasonable doubt." [22]

We shall now test the validity of petitioners' arguments on the basis of these principles.

In the challenged provision of the electoral law, unlike the previous block-voting statutes, all the names of the candidates, whether of parties, groups or independent candidates, are printed on the ballot. Before he prepares his ballot, the voter will be able to read all the names of the candidates. No candidate will receive more than one vote, whether he is voted individually or as a candidate of a party, group or aggrupation. The voter is free to vote for the individual candidates or to vote by party, group or aggrupation. The choice is his. No one can compel him to do otherwise. In the case of candidates, the decision on whether to run as an independent candidate or to join a political party, group or aggrupation is left entirely to their discretion. Certainly, before filing his certificate of candidacy, a candidate is aware of the advantages under the law accruing to candidates of a political party or group. If he wishes to avail himself of such alleged advantages as an official candidate of a party, he is free to do so by joining a political party, group or aggrupation. In other words, the choice is his. In making his decision, it must be assumed that the candidate had carefully weighed and considered the relative advantages and disadvantages of either alternative. So long as the application of the rule depends on his voluntary action or decision, he cannot, after exercising his discretion, claim that he was the victim of discrimination.

In the ordinary course of things, those who join or become members of associations, such as political parties or any other lawful groups or organizations, necessarily enjoy certain benefits and privileges which are incident to, or are consequences of, such membership. Freedom of association has been enshrined in the Constitution to enable individuals to join others of like persuasion to pursue common objectives and to engage in lawful activities. Membership in associations is considered as an extension of individual freedom. Effective advocacy of both public and private views or opinions is undeniably enhanced by group association. Freedom to engage in associations for the advancement of beliefs and ideas is, therefore, an inseparable aspect of the liberty guaranteed

by the fundamental law. Therefore, if, as an incident of joining a political party, group or aggrupation, the candidate is given certain privileges, this is constitutionally permissible. Thus, under the provisions of the previous election laws, only the parties who polled the largest and the next largest number of votes in the last preceding presidential elections were entitled to representation in the Board of Election Inspectors.[23] Independent candidates had no representation in the Board; and yet it was never contended that the independent candidates were denied the equal protection of the laws.

The official candidates of an organized political party may be distinguished from an independent candidate. The former are bound by the party's rules. They owe loyalty to the party, its tenets, its policies, its platforms and programmes of government. To the electorate, they represent the party, its principles, ideals and objectives. This is not true of an independent candidate. If the electoral law has bias in favor of political parties, it is because political parties constitute a basic element of the democratic institutional apparatus. Government derives its strength from the support, active or passive, of a coalition of elements of society. In modern times the political party has become the instrument for the organization of societies. This is predicated on the doctrine that government exists with the consent of the governed. Political parties perform an "essential function in the management of succession to power, as well as in the process of obtaining popular consent to the course of public policy. They amass sufficient support to buttress the authority of governments; or, on the contrary, they attract or organize discontent and dissatisfaction sufficient to oust the government. In either case they perform the function of the articulation of the interests and aspirations of a substantial segment of the citizenry, usually in ways contended to be promotive of the national weal." [24]

The Constitution establishes a parliamentary system of government. Such a system implies the existence of responsible political parties with distinct programmes of government. The parliamentary system works best when party distinctions are well defined by differences in principle. As observed by a noted authority on political law, under a parliamentary system, "the maintenance and development of the party system becomes not only necessary but indispensable for the enforcement of the idea and the rule of government responsibility and accountability to the people in the political management of the country." [25] Indeed, the extent to which political parties can become effective instruments of self-government depends, in the final analysis, on the degree of the citizens' competence in politics and their willingness to contribute political resources to the parties.

It is also contended that the system of optional straight party voting is anathema to free, orderly and honest elections or that it encourages laziness or political irresponsibility. These are objections that go to the wisdom of the statute. It is well to remember that this Court does not pass upon questions of wisdom or expediency of legislation. We have reiterated in a previous case that: "It is * * * settled * * * that only congressional power or competence, not the wisdom of the action taken, may be the basis for declaring a statute invalid." [26] This notwithstanding, We deem it necessary, for the information of everyone concerned, to explain why such fears, in a growing climate of political maturity and social responsibility, appear conjectural.

There are no data to show that the system herein assailed was the proximate cause of all the frauds in the 1941, 1947 and 1949 elections. Besides, all procedures or manners of voting are susceptible to fraud. The important thing to consider is that the 1978 Election Code is replete with new provisions designed to guarantee the sanctity and secrecy of the people's vote.

As demonstrated in the experience of other democratic states, such a system has its advantages. It may enable deserving young candidates --- but without adequate financial resources of their own to win, with party support, in countrywide or regional elections. Since candidates of a party or group may pool their resources, it will tend to make elections less expensive. As this system of voting favors the strongly organized parties or groups, it tends to prevent the proliferation of political parties or groups. It thus results in the formation of stable and responsible

political parties. On the part of the electorate, such a system of voting facilitates the exercise of their right of suffrage. It enables the laborer, the farmer and the voter of ordinary education to vote with greater facility for all the official candidates of the party of his choice. It thus broadens the ways and means by which the sovereign will can be expressed.

Nor could it be true, as petitioners contend, that a system which allows straight ticket voting encourages laziness and political irresponsibility. While there may be those who may be moved to vote straight party by reason of lack of interest, nevertheless, there are still those sufficiently interested to cast an intelligent vote. It has been observed that in a straight ticket the motivated voter is more likely to organize his ballot in a highly structured pattern. His motivation may derive from an interest in parties, candidates, or issues or any combination of those. As observed by a survey research group: "Motivated straight ticket voting appears to reflect an intention on the part of the voter to accomplish his political purpose as fully as possible. Such a voter does not scatter his choices casually, he has a political direction in mind and he implements it through the choice of one party or the other on the ballot. The more highly motivated he is toward this political objective, the less willing he is to dilute his vote by crossing party lines." [27]

II

The second issue before Us is: Whether or not the provisions of Sections 11, 12 and 14 of the 1978 Election Code, which authorize the election the members of the interim Batasang Pambansa by regions, violate Section 2 of Article VIII of the Constitution, which provides that the members of the National Assembly shall be apportioned among the provinces, representative districts and cities.

Assailed as unconstitutional are the following provisions of the 1978 Election Code:

"SEC. 11. Composition. - The interim Batasang Pambansa shall be composed of the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the members of the Cabinet."

"SEC. 12. Apportionment of regional representatives. - There shall be 160 regional representatives to the interim Batasang Pambansa apportioned among the thirteen regions of the nation in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio * * *:

*** **

"The foregoing apportionment shall not be considered a precedent in connection with the reapportionment of representative districts for the regular National Assembly under Section 2, Article VIII and Section 6, Article XVII of the Constitution.

"Notwithstanding the foregoing provisions, the number of regional representatives for any region shall not be less than the number of representative districts therein existing at the time of the ratification of the Constitution. There are also allotted two additional seats for regional representatives to Region IV in view of

inhabitants, such as students, in the region not taken into account in the 1975 census."

"SEC. 14. Voting by region.-- Each region shall be entitled to such number of regional representatives as are allotted to it in Section 12 of Article II hereof. All candidates for regional representatives shall be voted upon at large by the registered voters of their respective regions. The candidates receiving the highest number of votes from the entire region shall be declared elected."

The constitutional provision relied upon is Section 2 of Article VIII, which provides:

"SEC. 2. The National Assembly shall be composed of as many Members as may be provided by law to be apportioned among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Representative districts or provinces already created or existing at the time of the ratification of this Constitution shall have at least one Member each."

In resolving the issue, the provisions of Amendment No. 1 to the Constitution, which took effect on October 27, 1976, should be considered and not, as pointed out by petitioner Juan T. David, those of Section 2 of Article VIII of the Constitution, which deal with the composition of the regular National Assembly.

It should be recalled that under the terms of the Transitory Provisions of the Constitution,[28] the membership of the interim National Assembly would consist of the Incumbent President and Vice-President, the Senators and the Representatives of the old Congress and the Delegates to the Constitutional Convention who have opted to serve therein. The Filipino people rejected the convening of the interim National Assembly, and for a perfectly justifiable reason.

By September of 1976, the consensus had emerged for a referendum partaking of the character of a plebiscite which would be held to establish the solid foundation for the next step towards normalizing the political process. By the will of the people, as expressed overwhelmingly in the plebiscite of October 15 and 16, 1976, Amendments Nos. 1 to 9 were approved, abolishing the interim National Assembly and creating in its stead an interim Batasang Pambansa. This was intended as a preparatory and experimental step toward the establishment of full parliamentary government as provided for in the Constitution.

Amendment No. 1 provides:

"1. There shall be, in lieu of the interim National Assembly, an interim Batasang Pambansa. Members of the interim Batasang Pambansa, which shall not be more than 120, unless otherwise provided by law, shall include the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the Members of the Cabinet. Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio, while the sector shall be determined by law. The number of representatives from each region or sector and the manner of their election shall be prescribed and regulated by law. (*Italics supplied.*)

The provisions of the above Amendment are clear. Instead of providing that representation in the interim Batasang Pambansa shall be by representative districts, it specifically provides that: (1) the representatives shall be elected from the different regions of the nation; and (2) the "Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and

progressive ratio while the sector shall be determined by law." No mention whatsoever is made of "provinces, representative districts and cities". Where the intent is to relate to the regular National Assembly, the Constitution made it clear and manifest, as indicated in Amendment No. 2 of the Constitution.[29] It is significant to note that nowhere in the said amendment is it provided that the members of the interim Batasang Pambansa shall be apportioned among the representative districts, in the same manner as the regular National Assembly. The clear import and intent of the Constitutional Amendment is, therefore, the election of the representatives from the different regions of the nation, and such regional representatives shall be allotted or distributed among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio. Neither does the Amendment provide that the members of the interim Batasang Pambansa "shall be elected by the qualified electors in their respective district for a term of six years * * *" as provided in Section 3[1] of Article VIII of the Constitution. To hold that Section 3[1] of Article VIII is applicable to the interim Batasang Pambansa would lead to the conclusion that the members of the Batasan shall have a term of six years, which is of course inconsistent with its transitory character. That the interim Batasang Pambansa is a distinct and special body, which, by reason of its transitory nature should be governed by specifically formulated rules, is apparent from the constitutional amendment which created it. Thus, its membership "shall not be more than 120, unless otherwise provided by law." Furthermore, it "shall include the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the Members of the Cabinet." The regular National Assembly, on the other hand, is limited in its membership to representatives to be apportioned among the provinces, representative districts and cities. By reason of its provisional character, the interim Batasang Pambansa has to be more flexible, both in its representation and the manner of election of its members. There is no denying the fact that as wide a range of representation as possible is required in order to hasten the nation's return to normalcy. It is for this reason that sectors are given adequate representation[30] and are considered as "national aggrupations." Elections of sectoral representatives are specially provided for in the 1978 Election Code.[31] It should be emphasized that the regular National Assembly is distinct and different in composition, powers and manner of elections of its members from the interim Batasang Pambansa. The two legislative bodies were intended to operate in different situations -- the interim Batasang Pambansa is to function during the period of transition while the regular National Assembly is to operate upon the restoration of normalcy.

The composition of the interim Batasang Pambansa is indeed experimental. It is an experiment in size, form and distribution of constituencies in the hope of securing a legislature most truly representative of the views of the electorate. It would, therefore, be ludicrous to confine the members of such body within the strictures of the representative districts of the regular National Assembly. The fear of petitioner Juan T. David that several representative districts will be deprived of representation misconstrues the concept of regional elections. The representatives are to be elected by the voters of the entire region. They will represent the whole region and not merely its integral provinces, districts or cities. Moreover, Section 12 of the Code ensures that there shall be sufficient representatives for each region by providing that "the number of regional representatives for any region shall not be less than the number of representative districts therein existing at the time of the ratification of the Constitution."

III

The following two issues raised by petitioners are interrelated and must be jointly discussed herein. They are:

(a) Whether or not the Kilusang Bagong Lipunan (KBL) and the Lakas ng Bayan (LABAN) may be registered and accredited as political parties under Section 8 of Article XII-C the Constitution, so that their respective candidates for membership in the interim Batasang Pambansa may be voted for a group under the 1978 Election

Code; and

(b) Whether or not members a political party in the 1971 elections may run under the ticket sponsored by any other party, group or aggrupation, considering the provisions of Section 10 of Article X11--C of the Constitution, which prohibit candidates for any elective public office from changing party affiliation within six months immediately preceding or following an election.

The resolution of the foregoing issues calls for the determination of the constitutionality of Section 199 of the 1978 Election Code, questioned by petitioners. Said section provides:

"SEC. 199. Registration of political parties.-- Pending the promulgation of rules and regulations to govern the registration and accreditation of political parties by the Commission in accordance with Article XII[C] of the Constitution, the registration with the Commission previous to 1972 of the Nacionalista Party, Liberal Party, Citizens' Party, and other national parties shall be deemed to continue and they may, upon notice to the Commission through their respective presidents or duly authorized representatives, amend or change their names, constitutions, by-laws, or other organizational papers, platforms, officers and members, and shall be entitled to nominate and support their respective candidates for representatives in the interim Batasang Pambansa. Similarly, any other group of persons pursuing the same political ideals in government may register with the Commission and be entitled to the same rights and privileges."

Invoked by petitioners are Sections 8 and 10 of Article XII-C of the Constitution, which provide:

"SEC. 8. A political party shall be entitled to accreditation by the Commission if, in the immediately preceding election, such party has obtained at least the third highest number of votes cast in the constituency to which it seeks accreditation. No religious sect shall be registered as a political party, and no political party which seeks to achieve its goals through violence or subversion shall be entitled to accreditation."

"SEC. 10. No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six months immediately preceding or following an election."

It should be recalled that the object of the afore-quoted provisions of the Constitution was to develop a third party and break the heretofore dominant hold on the political system by the two major political parties which have been in existence since the birth of the republic. These two major parties were considered as "in fact a one party system with two factions openly disagreeing on fringe issues but tacitly united by one common aim: alternate monopoly of power through a pattern of patronage politics." [32] The framers of the Constitution examined the weaknesses of the party system and saw the need "for discarding the old two party system as a political farce that has been largely responsible for many of the country's ills * * *". [33] They envisioned, therefore, a new era in Philippine politics, where elections were to be decided on issues rather than on personalities, and where the electoral process was to be free, less expensive, and more democratic. Effective and responsive government depends on an organized and vigorous citizenry. Such can only exist if citizens can increase their effectiveness in politics by modernizing and using political parties to set the general directions of public policy and to influence the specific decisions of public institutions that affect their daily lives.

It was intended, however, that some of these provisions would not operate during the interim period. Thus, from the wording of Section 8, it is obvious that said section is incapable of application during the first election because

it states that no political party shall be entitled to accreditation unless in the immediately preceding election, it obtained at least the third highest number of votes cast in the constituency to which it seeks accreditation. That there cannot be any accreditation during the first election under the 1973 Constitution is evident from the sponsorship speech of the proponent of this constitutional provision.[34]

Although their members are united by common policies and principles of government and apparently impelled by the same political ideals, neither the Kilusang Bagong Lipunan (KBL) nor the Lakas ng Bayan (LABAN) professes to be a political party in the sense of a stable organization with a degree of permanence, imposing strict discipline among the members, and with a party platform drafted and ratified in a party convention. It does not follow, however, that the KBL and LABAN are not political parties, in a generic sense, since a political party has been generally defined as "an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles in governmental affairs through officers of like belief." [35] Political parties "result from the voluntary association of electors, and do not exist by operation of law. The element of time is not essential to the formation of a legal party; it may spring into existence from the exigencies of a particular election, and with no intention of continuing after the exigency has passed." [36] As a matter of fact, it is only the Kilusang Bagong Lipunan (KBL) and the Lakas ng Bayan (LABAN) that have polarized the major differences on vital public issues affecting the nation. And, during this first election in this period of transition when, obviously, no political party can be accredited, does the Constitution, in Article XII-C, Sections 2[5] and 8 limit registration to political parties as strictly understood by withholding it from aggrupations of persons pursuing the same political ideals of government as provided in Section 199 of the 1978 Election Code? It clearly does not. The listing of political parties appears to have a dual aspect registration and accreditation. Registration is a means by which the government is enabled to supervise and regulate the activities of various elements participating in an election.

It would appear from Section 8 of Article XII-C that the only groups which cannot be registered are: (a) religious groups or sects; and (b) those political parties or groups who seek "to achieve its goals through violence and subversion". Accreditation is the means by which the registration requirement is made effective by conferring benefits to registered political parties. The condition for accreditation, aside from those mentioned, is that the political party must have obtained, in the immediately preceding election, at least "the third highest number of votes cast in the constituency to which it seeks accreditation." The Constitution, however, does not state what are the effects of accreditation. There is, therefore, necessity for legislation. Moreover, to construe the term "political party" restrictively would delimit the supervisory authority of the Commission on Elections. More specifically, it would exempt aggrupations or other political groups from certain requirements. Under Section 199, the 1978 Election Code allows the registration of aggrupations or groups of persons "pursuing the same political ideals in government"; consequently, they are subjected to the regulation of propaganda materials (Sec. 41) and the limitation of expenses for candidates (Sec. 52).

From another point of view, a narrow construction may discourage the robust exercise of the right of association guaranteed by the Bill of Rights, which at this stage of our political history, appears necessary.

The fact that the coming polls will be the first that we shall hold since the proclamation of martial law on September 21, 1972 makes it an event of no ordinary significance. "The Filipino society has outgrown its age of innocence. Today the acts of Filipino politicians must be judged by more mature standards and the test of national allegiance has become more strict and more demanding, even more binding." [37] By this election, we shall inaugurate a new stage in our political life, and commence our fateful transition from crisis government to a parliamentary system.

But as President Ferdinand E. Marcos has significantly observed:

"* * * this step, I repeat, is no mere restoration of electoral processes and representative government. The coming elections would be a perilous exercise indeed if they would merely return us to elections and representative institutions as we had known them in the past, and compromise what had taken us so much time and effort to construct over the last five years.

"What we envision in this initiative is the permanence and continuity of the reforms that we have launched under the aegis of crisis government. We envision in it the full emergence of a new political order that will give life and sustenance to our national vision of a new society. And it will have permanence and continuity because by the grace of suffrage and representative government, we shall thereby attain a formal mechanism for the exercise of participation and involvement by our people in nation-building and national development." [38]

It is, therefore, necessary at this stage to encourage the emergence or growth of political parties that will truly reflect the opinions and aspirations of our people. The right of individuals to form associations as guaranteed by the fundamental law, includes the freedom to associate or refrain from association. [39] In accord with this constitutional precept, it is recognized that no man is compelled by law to become a member of a political party, or, after having become such, to remain a member. [40]

The existence of responsible political parties with distinct programs of government is essential to the effectiveness of a parliamentary system of government. It is in recognition of this fact that Section 199 of the 1978 Election Code allows or sanctions the registration of groups of persons "pursuing the same political ideals in government" with the Commission on Elections. Moreover, to what extent the rights of organized political parties should be regulated by law is a matter of public policy to be determined by the lawmaker -- a matter which does not concern the courts. [41]

This brings us to the next point raised by petitioners, namely, that under Section 10 of Article XII-C of the Constitution, no candidate for elective office may change his party affiliation within six months immediately preceding or following an election. In the cases at bar, We understand that no candidate voluntarily changed his party affiliation. On the contrary, the claim that the KBL and the LABAN are not "political parties" is based partly on the fact that the candidates running under their banners have retained their party affiliation. Section 10 is a statement of a basic principle against political opportunism. To begin with, no legislation has been enacted to implement this constitutional prohibition. Indeed, it is difficult to conceive how the courts may apply the prohibition, in all the varied facts and circumstances under which it may be invoked, without the aid of supplementary legislation. For instance, the provision in question states that no elective public officer may change his political party affiliation during his term of office. Suppose an elected representative in the legislature, belonging to one party, shall always vote and side with another political party. Will he be considered a "turncoat" even if he does not formally change his party affiliation? Suppose it be decided that he is a "turncoat". What sanctions should be adopted? Should he be suspended or ousted from the legislature?

When one turns to political candidates, the same questions as to what should be considered "political opportunism" or "turncoatism" will be encountered. But the problem of procedure for hearing and deciding infringements of the prohibition or the determination of the appropriate sanction becomes more acute. Is the sanction to be found in the refusal by the Commission on Elections to register the party or group, or in the denial of his certificate of candidacy, or are there other ways? Should political parties be prevented from "adopting" candidates? Or from forming coalitions?

All of these are questions of policy, in resolving which many immensurable factors have to be considered. The afore-cited constitutional provisions are commands to the legislature to enact laws to carry out the constitutional

purpose. They are, therefore, addressed initially to the lawmaking department of the government. It is not part of the judicial department to deal with such questions without their authoritative solutions by the legislative department. It may be relevant to emphasize here that the jurisdiction of this Court is "limited to cases and controversies, presented in such form, with adverse litigants, that the judicial power is capable of acting upon them, and pronouncing and carrying into effect a judgment between the parties, and does not extend to the determination of abstract questions or issues framed for the purpose of invoking the advice of the court without real parties or a real case." [42]

In any event, We cannot perceive how such constitutional prohibition could be applied in this first election. Precisely, the overriding constitutional purpose is to remove the dominant hold of the two major political parties and encourage the formation of new political parties. The intention is not to rebuild old party coalitions but to define new political means and instruments, within the parties or beyond them, that will allow the Filipino people to express their deeper concerns and aspirations through popular government.

IV

The fourth issue is: whether or not the forty-five-day period of campaign prescribed in the 1978 Election Code violates the Constitution because: (a) it was decreed by the President and not by the Commission on Elections as provided by Section 6 Article XII-C; and (b) the period should cover at least ninety (90) days.

Petitioners question the constitutionality of Section 4 of the 1978 Election Code, which provides:

"SEC. 4. Election and campaign periods.—The election period shall be fixed by the Commission on Elections in accordance with Section 6, Article XII[C] of the Constitution. The period of campaign shall not be more than forty-five days immediately preceding the election, excluding the day before and the day of the election: Provided, That for the election of representatives to the interim Batasang Pambansa, the period of campaign shall commence on February 17, 1978 except that no election campaign or partisan political activity may be conducted on March 23 and 24, 1978."

In support of the allegation of unconstitutionality, petitioners rely on Section 6 of Article XII-C of the Constitution, thus:

"SEC. 6. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter."

At the outset, it should be considered that Amendment No. 1 provides that the "number of representatives from each region and the manner of their election shall be prescribed and regulated by law" (*italics supplied*). Under Amendment No. 5, "the incumbent President shall continue to exercise legislative powers until martial law shall have been lifted." The power conferred by these Amendments upon the lawmaker necessarily included the authority to prescribe the date and procedure for the holding of such elections. It should be borne in mind that the forthcoming election for members in the interim Batasang Pambansa will be a special election during a regime of martial law. It is, therefore, an election in a state of emergency. The exigencies of the situation require that it be governed by special rules. At this point, the objective is to hasten the normalization of government and, at the same time, to ensure that the nation is not exposed to the same critical problems that necessitated the declaration of martial law. In conferring upon the incumbent President the authority to determine the date of the election, those who drafted the Amendments must have realized that it is only the incumbent President who has the authority and the means of obtaining, through the various facilities in the civil and military agencies of the

government, information on the peace and order condition of the country, and to determine the period within which an electoral campaign may be adequately conducted in all the regions of the nation. Thus, the 1978 Election Code was formulated to meet a special need, and this is emphasized by the fact that the Code itself limits its application.[43]

Even assuming that it should be the Commission on Elections that should fix the period for campaign, the constitutional mandate is complied with by the fact that the Commission on Elections has adopted and is enforcing the period fixed in Section 4, Article I of the 1978 Election Code.

At any rate, insofar as objections to the fixing of the campaign period for elections in general are concerned, it is apparent that there is a distinction between the terms "election period" and "campaign period". Thus, Section 4, Article I of the 1978 Election Code provides that the "election period shall be fixed by the Commission on Elections in accordance with Section 6, Article XII(C) of the Constitution." The "campaign period", however, has been fixed so that "it shall not be more than forty-five days immediately preceding the election: Provided, That for the election of representatives to the interim Batasang Pambansa, the period of campaign shall commence on February 17, 1978 except that no election campaign or partisan political activity may be conducted on March 23 and 24, 1978." The distinction is further made apparent by the fact that the "election period" under Section 5 of Article XII-C of the Constitution extends even beyond the day of the election itself, while the "campaign period", by reason of its nature and purpose, must necessarily be before the elections are held. There is, therefore, no conflict with the constitutional provision.

At this juncture, it may be relevant to note the efforts of the Commission on Elections to give more substance and meaning to the intent and spirit of the Constitution and the 1978 Election Code by giving the same practicable opportunities to candidates, groups or parties involved in the April 7, 1978 interim Batasang Pambansa elections. Thus, in Resolution No. 1289, the COMELEC removed the so called undue advantage which the Nacionalista Party and the Kilusang Bagong Lipunan (KBL) had over the Lakas ng Bayan (LABAN) in terms of authorized election expenses, appointment of election watchers and use of print and broadcast media. This circumstance, contrary to the claims of petitioners, shows that the Commission on Elections, as a constitutional body charged with the enforcement and administration of all laws relative to the conduct of elections, and with broad powers, functions and duties under the 1973 Constitution, can give candidates, irrespective of parties, equal opportunities under equal circumstances.

WHEREFORE, in view of the foregoing, the instant petitions DISMISSED, without costs.

Castro, C.J., Makasiar, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Fernando, J., concurs except for the exclusion on the rule of appreciation of ballots in par. 28 of election 155 of the 1987 Election Code and submits a separate opinion.

Teehankee and Muñoz Palma, JJ., dissents in a separate opinion.

Barredo, J., concurs in a separate opinion.

[1] Sec. 3 of Commonwealth Act No. 666 provides:

"SEC. 3. * * * The ballot shall be prepared in such manner that the voter may vote for a straight party ticket or for individual candidates and for this purpose, the tickets of the regularly organized political parties that participated in the last preceding election for national officials, as certified under oath by the national directorates of the respective parties, shall be printed on the ballot, and there shall also be one column containing blank spaces for

the names of candidates for all elective positions to be filled in said election, which spaces are to be filled by the voter who does not desire to vote a straight ticket. The following notice shall be printed on said ballot: 'If you want to vote for all the official candidates of a political party to the exclusion of all other candidates, write the name of such political party in the space indicated. It shall then be unnecessary for you to write the names of the candidates you vote for. On the other hand, if you want to vote for candidates belonging to different parties and/or for independent or individual candidates, write the names of the candidates you vote for.' * * *."

[2] Sec. 119 of Commonwealth Act No. 357 provides:

"SEC. 119. Official ballots. - Uniform official ballots shall be provided at public expense for each election. Said ballots shall be of white paper in the shape of a strip one hundred and twenty millimeters wide and two hundred and forty millimeters long, exclusive of the stub and coupon containing the detachable number of the ballot and shall bear at the top the coat of arms of the Commonwealth, the words, 'Official Ballot', the name of the municipality and province in which the election is held, the date of the election, and the following notice in eight point gothic type: 'Fill out this ballot secretly inside the booth. Do not write anything nor put any distinctive mark thereon but the names of the candidates you vote for. Any violation of this instruction will invalidate your vote.' On the body of the ballot shall be printed on the left margin the title of each one of the offices to be voted for in twelve point gothic type, followed by a blank line for the name of the candidate for whom the voter desires to vote, and if more than one is to be elected, the corresponding number of blank lines consecutively numbered, immediately below the title of the office. There shall not be anything on its reverse side. There shall be in the coupon a space for the thumbmark of the voter."

[3] Sec. 124, Republic Act No. 180 provides:

"SEC. 124. Official Ballots. - * * * * *

"The ballots for national offices shall be prepared in such manner that the voter may vote for a straight ticket of a political party or for individual candidates, and, for this purpose, the ticket of the regularly organized political parties that participated in the last preceding election for national officials, as certified under oath by the national directorates of the respective parties, shall be printed on said ballots, and there shall also be one column containing blank spaces for the name of candidate for elective national positions to be filled in said election, which spaces are to be filled by the voter who does not desire to vote a straight ticket. The following notice shall be printed on the ballots for national offices: 'If you want to vote for all the official candidates of a political party to the exclusion of all other candidates, write the name of such political party in the space indicated. It shall then be unnecessary for you to write the names of the candidates you vote for. On the other hand, if you want to vote for candidates belonging to different parties and/or for independent or individual candidates, write in the respective blank spaces the names of the candidates you vote for and the names written by you in the respective blank spaces of the ballot shall then be considered as validly voted for.' * * *."

[4] Sec. 149[20] of Republic Act No. 180 provides:

"SEC. 149. Rules for the appreciation of ballots. -- In the reading and appreciation of ballots, the following rules shall be observed:

*** **

"20. If a voter should vote for individual candidates for national offices, only the names of the candidates written by him in the respective blank spaces of his ballot shall be considered as validly voted for even though he has written on the corresponding space the name of a political party which has nominated official candidates."

[5] Sec. 4[g] of Commonwealth Act No. 666 provides:

"SEC. 4. In the reading and appreciation of ballots in making the canvassing, in addition to the rules of appreciation provided for by the Election Code, the boards of inspectors shall observe the following rules:

*** **

"(g) If a voter had voted for the straight ticket of a political party and at the same time had written on one or more blank spaces of the ballot the names of candidates of other party or parties or of independent candidates, said names shall be deemed as not written and the vote shall be counted as cast for each and every one of the official candidates of the party voted for in the ballot."

[6] Key, Politics, Parties and Pressure Groups, 5th Ed., pp. 641-642. Cf. Sec. 2, of S. 303, Acts (1965) Indiana, Chapter 252; State ex rel Nebraska Republican State Central Committee v. Wait, 92 Neb. 313, 138 N.W. 159. Schmandt & Steinbicker, Fundamentals of Government, pp. 273-274.

[7] Decided by the Sup. Court of Penn. in 1905. 61 Atlantic 346.

[8] The Pennsylvania Court said:

"What is the real complaint of the appellants? Whether we confine ourselves to their bill, beyond which we ought not to go in looking for it, or search for it in the elaborate briefs of their learned counsel, it is not that the acts of 1893 and 1903 deprive them, as candidates, of the right to be voted for by qualified electors, or that the latter are deprived of the right to vote. It is simply that certain electors, in going into the election booths, possessing no higher, but just the same, right to freely cast their votes and have them counted than every other elector in the commonwealth possesses, may mark their tickets more readily and quickly than the elector who, in wishing to assert his absolute right of independence of any political party, makes up his own ticket, and in doing so necessarily is required to consume more time. In other words, because those voters who insist upon making up their own tickets, as is their unquestioned right, must necessarily make a number of marks, the contention of the appellants is that elections are not equal if other electors may indicate the candidates of their choice by making fewer marks. Because some in giving expression to a freeman's will must make a number of marks, the position of the appellants, as logically understood, is that elections are not equal unless the rest of the electors, satisfied with party nominations and willing to vote for political candidates named, are required to spend as much time in marking their ballots. This is not the test of inequality. Each individual voter as he enters the booth is given an opportunity to freely express his will, with no one by him to influence or intimidate him, and from the face of the ballot he is instructed how to mark it. If unable to understand the instructions, a qualified elector of the district, selected by himself, may enter the voting apartment and assist him. This is the right given to every elector, and therefore is an equal one. The free and equal exercise of the elective franchise by every elector is not impaired by the statute, but simply regulated. A regulation for the convenience of certain electors providing that they may -- not must -- if they desire to vote a straight party ticket, vote for it by marking a cross in the square opposite the name of the party of their choice, is not inequality, as against these complainants. They have the right to vote in precisely the same way for all the candidates on the Municipal League ticket. If they wish to vote for offices for which candidates are not named on their ticket, they not only have the right to do so, but can do so by making the proper marks on the ballot, or writing out the names of their choice. The straight party man -- the voter who, as a rule, votes his straight party ticket -- may, if unwilling to vote for the ticket named by his party, omit the cross opposite the party name, and by separate marks on the party ticket indicate those candidates on it for whom he will vote, marking on other tickets those for whom he wishes to vote, instead of the candidates named for the same offices on his party ticket. * * *.

"* * * They complain of inequality because an elector, in marking his ticket from the names found on the official ballot, cannot make it up as readily and quickly as the voter who is given the privilege of voting a straight ticket by making a single mark. But how much more inconvenient is it, and how much more time must necessarily be consumed, when an elector makes up his whole ticket by writing the names of those for whom he would vote! If marking is inequality, writing is more so. The whole matter is but a regulation, working no inequality, but preserving the equal right to vote." (pp. 347-348).

Quoted in the same case was the decision of the Supreme Court of Michigan in *Todd v. Election Commissioners* (104 Mich. 474; 62 N.W. 564; 64 N.W. 496; 29 L.R.A. 330), wherein it was said:

"The Constitution does not guaranty that each voter shall have the same facilities with every other voter in expressing his will at the ballot box, * * *. The constitutionality of the law is not to be tested by the fact that one voter can cast his ballot by making one mark, while another may be required to make two or more to express his will. When each has been afforded the opportunity and been provided with reasonable facilities to vote, the Constitution has been complied with. All else is regulation, and lies in the sound discretion of the Legislature, to whom alone such regulation is committed. Courts cannot hold such provisions unconstitutional because, in their judgment, they are harsh or unwise, or have their origin in partisan purposes. Constitutional laws often have their origin in such purposes, and unconstitutional laws are often based upon pure motives and honest intentions. Courts have nothing to do with the motives of legislators, nor the reasons they may have for passing the law. The polar star of interpretation to guide them is the language of the Constitution itself, and the sole question always is, does the law destroy or abridge the right." (61 Atlantic 349).

[9] The Pennsylvania Court further went on to state:

"* * * In *State ex rel. Runge v. Anderson*, 100 Wis. 523, 76 N.W. 482, 42 L.R.A. 239, *Ritchie v. Richards*, 14 Utah, 345, 47 Pac. 670, and *People ex rel. v. Hoffman, et al.*, 116 Ill. 587, 5 N.E. 596, 8 N.E. 788, 56 Am. Rep. 793, similar views seem to have been entertained. In the latter case, it was said, 'Elections are equal when the vote of every elector is equal, in its influence on the result, to the vote of every other elector; when each ballot is as effective as every other ballot.' * * *.

"What the Legislature has done has been to provide how free and equal elections are to be conducted. It has confined itself to regulating them, and has not gone beyond forbidden limits by interfering with their freedom and equality. It has neither denied, qualified nor restricted the right of every elector to vote freely and for the persons of his choice. It has simply told him how he may vote freely and equally with all others, and in doing so has made no distinction that affects his freedom or gives him a right that is not equal to that of every other elector to take his ballot to the box, as he has made it up, to be counted as his vote. This system of regulating free and equal elections would be more than a human device if it did not encounter criticism. Perfect though it were as the wisdom of man could make it, there would still be those among men to point to its defects, and, as in every case of legislation not in accord with the view or sense of right and propriety of those affected by it, the Constitution would be turned to as the shibboleth to strike it down. It may or may not be wise legislation. The convenience of the elector may not have been properly considered when it was passed. Another system might be more convenient. Defects in it may be fairly pointed out, and improvements suggested. But these are not matters for us. Our duty is to apply the touchstone of the Constitution, and if the response is, 'Freedom and equality', the act must be upheld. Such is the response here," (p. 349).

[10] The Supreme Court of Utah said:

"The plaintiff also insists that ballots prepared and printed according to the act of March 28th, above mentioned, and exclusively used at the November election, do not afford equal facilities to vote to all voters; that a ballot may

be cast for party candidates with less difficulty than for those candidates who have no emblem on the ballot to represent them; that a partisan can vote easier than an independent; and that the law does not operate equally and uniformly on all voters. It is true that party organizations may, by the observance of certain requirements, have the names of their candidates and their emblem printed on the ticket, while other candidates are required to obtain the signatures of a specified number of voters to a certificate before their name can be printed on the ballot. And by simply placing a cross opposite a party emblem, a vote may be cast for all the candidates of a party, while a vote for any number of candidates of a party less than all can only be given by a cross opposite the name of each candidate; and if a voter wishes to cast a vote for a candidate whose name is not on it, he is obliged to write the name on the ballot, and place a cross opposite to it. Of course the voter should be allowed to perform this duty with the least difficulty and inconvenience consistent with an honest and fair election. No unnecessary impediments or inconveniences should be thrown in his way. The system tends to encourage the voting of straight tickets and to discourage independent voting, which some think is an objection. The system has its merits as well as its demerits, and the legislative department of the state government has seen fit, in its wisdom, to enact the law; and we do not feel authorized to overturn the people's will, as expressed through that body, in the law. The court holds that none of the various objections urged by the plaintiff is well founded. We therefore deny the application for the writ." (14 Utah, 345, 47 Pac. 670, 675).

[11] Arian, *The Choosing People: Voting Behavior In Israel*, Press of Case Western Reserve University, Cleveland and London, 1973, p. 8.

[12] Zurcher, *Constitutions and Constitutional Trends Since World War II*. New York University Press, 1951, p. 53.

[13] "A Matter of Elementary Justice", Sponsorship speech of Delegate Jose A. Leido, Sr.

[14] *Felwa v. Salas*, 19 SCRA 606; *Rafael v. Embroidery and Apparel Control and Inspection Board*, 21 SCRA 336; *Ichong, etc., et al. v. Hernandez*, 101 Phil. 1157.

[15] *2 Cooley, Constitutional Limitations*, pp. 824-825; *Tan Ty v. Land Tenure Administration*, 35 SCRA 250; *Ichong, etc. et al. v. Hernandez*, *supra*.

[16] *Mekios v. Milwaukee*, 156 Wis. 591, 146 N.W. 882.

[17] *Morey v. Doud*, 354 U.S. 457, 1 L. ed. 2d 1485.

[18] *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 79, 55 L. ed. 369, 372.

[19] *O'Gorman and Young v. Hartford Fire Insurance*, 282 U.S. 251.

[20] *People v. Vera*, 65 Phil. 56, 95.

[21] *Cooper v. Telfair*, 4 Dall 14.

[22] *Dodd, Cases on Constitutional Law*, 3rd Ed., (1942) 56.

[23] Sec. 144, Rep. Act 6388; Sec. 76, Rep. Act No. 180 as amended by Rep. Acts 599, 867, 2242, 3036, 3522, 3588, 4168, 4364 and 4421.

[24] *Key, Politics, Parties and Pressure Groups*, 5th Ed., p. 9.

[25] "Government Responsibility and Accountability", Rebuttal Speech of Delegate Vicente G. Sinco.

[26] *Morfe v. Mutuc*, 22 SCRA 424, 450.

[27] Campbell and Miller, "The Motivational Basis of Straight and Split Ticket Voting", A Survey Conducted by the Survey Research Center of the University of Michigan in October and November, 1965, The American Political Science Review, Vol. LI, No. 2, pp. 293, 303.

[28] Sections 1 and 2 of Article XVII.

[29] Amendment No. 2 provides:

"2. The interim Batasang Pambansa shall have the same powers and its Members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the interim National Assembly and the regular National Assembly and the Members thereof. However, it shall not exercise the powers provided in Article VIII, Section 14[1] of the Constitution."

[30] Thus, Section 13 of the 1978 Election Code provides:

"SEC. 13. Sectoral representatives. -- There shall be three sectors to be represented in the interim Batasang Pambansa, namely: (1) youth; (2) agricultural labor; and (3) industrial labor to be elected in the manner herein provided. Each sector shall be entitled to four sectoral representatives, two of whom shall come from Luzon, one from Visayas, and one from Mindanao: Provided, That the youth sector shall be entitled to two additional sectoral representatives who shall be elected from any region."

[31] The pertinent provisions of the 1978 Election Code are the following:

"SEC. 15. Sectors are national aggrupations.--The sectors named in Section 13 of Article II hereof shall be considered as national aggrupations and as such shall elect their respective national representatives to the interim Batasang Pambansa through their own Electoral Councils which shall be constituted in the manner hereinafter provided.

"SEC. 16. Delegates from provinces to the electoral councils. -- At any time after the date of the election fixed herein, but not later than twenty days, the Kagawads representing agricultural labor, industrial labor and youth in the Sangguniang Bayan or Panlungsod of the municipalities and cities in every province shall meet at the provincial capital and, subject to the supervision of the Commission or its authorized representatives, shall choose from among themselves one delegate of their sector to their respective Electoral Councils.

"The meetings of the sectoral Kagawads shall be held separately at a time and place to be designated by the Commission or its authorized representatives. A majority of all the Kagawads of each sector shall constitute a quorum. The Kagawad obtaining the highest number of votes shall be the provincial delegate of the sector to the corresponding Electoral Council.

"In the case of Metro Manila (Region IV), the members of the agricultural and industrial labor sectors in every barangay, if any, upon call of the barangay captain and under the supervision of the Commission, shall choose one Kagawad each for their respective sectors. The sectoral Kagawads elected shall meet on a date and at a place designated by the Commission to choose from among themselves ten delegates each to their respective Electoral Councils.

"In the case of the youth sector in Metro Manila, the Presidents of the Kabataang Barangay in the four cities and thirteen municipalities shall likewise elect from among themselves ten delegates for the youth sector to their Electoral Council.

"Upon call of the Commission which shall be made not later than twenty days after the date of the election fixed herein and at such time as it may determine, existing national aggrupations of industrial labor and agricultural labor as accredited by the Department of Labor, and the Department of Agriculture and Department of Agrarian

Reform, respectively, shall elect to their Electoral Councils ten delegates for their respective sectors. The election shall be under the supervision of the Commission.

"SEC. 17. Election and proclamation of sectoral members. -- The delegates of each sector shall, upon call of the Commission, convene in Manila to elect from among those sectoral members who have filed their certificates of candidacy two representatives from each sector from Luzon, one from Visayas, and one from Mindanao. The delegates of the youth sector shall also elect the two additional representatives of their sector provided in Section 13, Article II of this Code. The Commission shall supervise the conduct of the election and proclaim the results thereof."

[32] Report of the Committee on Political Parties, 3rd Publication, p. 16.

[33] Reynaldo T. Fajardo, *A New Party System for the Philippines; The New Constitution*, by Cirilo Montejo, p. 199.

[34] Explaining the operation of the provision on accreditation, Delegate Pacifico A. Ortiz said:

"The second requirement is accreditation. Let me explain the concept of and the need for accreditation. Section 3, par. (b) of this proposed article states: 'A registered political party shall be entitled to accreditation only if in the immediately preceding elections under this Constitution it shall have obtained at least 5% of the votes cast in the constituency to which it seeks accreditation.' Let us visualize the mechanics involved in this provision. Let us first suppose that hopefully we shall have the new Constitution ratified in June 1973. Secondly, let us suppose that the first national elections under this Constitution shall take place in November 1973. At these 1973 elections the political parties are registered but none shall be considered as yet accredited. All parties start under equal conditions at this political baseline -- the first elections under this Constitution. Thirdly, let us suppose that in this 1973 elections only four registered parties obtain 5% or better of the votes cast for national offices. In that supposition, only these four registered parties shall be considered accredited as national parties; other parties which failed to gain at least 5% of the votes shall not be considered accredited. Fourthly, let us suppose that the next national or local elections will take place in 1975. In these 1975 elections only the four accredited national or local level which the Comelec may deem wise to extend, privileges which by their very nature can not be extended to all registered political parties in existence without promoting the proliferation of splinter and nuisance parties or creating for the Comelec unsolvable problems of accommodation." ("The Meaning and Implications of Section 3", Sponsorship Speech of Delegate Pacifico A. Ortiz, Report of the Committee on Political Parties, 3rd Publication, pp. 24-25.)

[35] *Bell v. Hill*, 74 S.W. (2d) 113, 114.

[36] *Ibid.*, p. 115.

[37] Jesus E. Bigornia, *Newsman's Notes*, *Bulletin Today*, March 8, 1978.

[38] Ferdinand E. Marcos, *Five Years of the New Society*.

[39] Emerson, *Freedom of Association*, 74 *Yale Law Journal*, 1, 4 (1964).

[40] 25 Am. Jur. 2nd 800; *Bell v. Hill*, supra, wherein the Supreme Court of Texas said:

"In order that we may understand the questions involved in this case, it is essential that we clearly comprehend the nature of a political party, such as the Democratic Party. First of all, it is a voluntary association; an association formed of the free will and unrestrained choice of those who compose it. No man is compelled by law to become a member of a political party; or, after having become such, to remain a member. He may join such a party for whatever reason seems good to him, and may quit the party for any cause, good, bad, or indifferent, or without

cause. A political party is the creation of free men, acting according to their own wisdom, and in no sense whatever the creation of any department of the government.

[41] Bell v. Hill, *supra*.

[42] Liberty Warehouse Co. v. Grannis (1927) 273 U.S. 70, 74, 71 L. ed. 541, 47 S. Ct. 282, Antieau, Modern Constitutional Law, p. 643; Justice Enrique M. Fernando on the Philippine Constitution, pp. 41-42 (1974), citing Angara v. Electoral Com., 63 Phil. 139; Tan v. Macapagal, 43 SCRA 677, 681.

[43] Section 2 of the 1978 Election Code provides:

"SEC. 2. Applicability. -- This Code shall govern the election of the members of the interim Batasang Pambansa and, to the extent appropriate, elections for local officials, referenda and plebiscites."

CONCURRING ON THE WHOLE BUT DISSENTING IN PART

FERNANDO, J.:

It is a reassuring feature of the martial law regime in the Philippines that this Court had repeatedly entertained suits challenging the validity of presidential decrees raised in appropriate legal proceedings.[1] It is a role it had never shunned. There is thus adherence to the path of constitutionalism, both in normal times and under crisis conditions. Even during this period of emergency, parties had come to this Tribunal whenever, in their opinion, the executive act assailed was tainted by the vice of nullity. They did complain, and they were heard. In that way, this Court manifested fealty to the basic tenet of constitutionalism. For there is no issue so basic that it cannot be settled within the constitutional framework. Courts, in the language of Chief Justice Concepcion, "have, not only jurisdiction to pass upon [such questions] but also the duty to do so, which cannot be evaded without violating the fundamental law and paving the way to its eventual destruction." [2] Judicial review is thus the dominant constitutional concept to assure that the Constitution remains supreme. It is an awesome power, to be sure, but reasons of delicacy as well as the courtesy due a coordinate branch do not suffice to ward off judicial intervention in proper cases. More specifically, this Tribunal cannot avoid the responsibility thrust upon it to vindicate the rights safeguarded by the Constitution.

It is undeniable that the function of judicial review exists not because courts can initiate the governmental action to be taken, but because thereafter the duty to pass upon its validity, whenever raised in an appropriate case, is theirs to perform. The trust reposed in them is not to formulate policy but to determine its legality as tested by the Constitution. The function entrusted to them is to decide, assuming that a suit satisfies the requisites for an inquiry into a constitutional issue, whether there is a failure to abide by the fundamental law. If so, the outcome should not be in doubt. Care is to be taken though that the transgression alleged did in fact occur. The challenge may be insubstantial and the argument adduced inconclusive. It may come from parties resolved to transfer the site of conflict from the political arena to the judicial forum. That is not to be encouraged. Certainly, there must always be an awareness of the scope of the power to adjudicate. It goes no further than to assure obedience to and respect for the mandates of the Constitution. The limits imposed on the exercise of executive and legislative power must be observed. The function of judicial review is intended to serve that purpose. It does not extend to an unwarranted intrusion into that broad and legitimate sphere of discretion enjoyed by the political branches to determine the policies to be pursued. This Court should ever be on the alert lest, without design or intent, it oversteps the boundary of judicial competence. Judicial activism may become judicial exuberance. As was so well put by Justice Malcolm: "Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence

to the powers expressly or by implication conferred on it by the Organic Act." [3]

Justice Laurel, in the landmark case of *Angara v. Electoral Commission*, [4] decided eight months to the day from the effectivity of the 1935 Constitution, put the matter in language notable for its impact, sweep, and enduring vitality. Thus: "The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed 'judicial supremacy' which properly is the power of judicial review under the Constitution. Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government." [5] Such a principle was earlier given expression, in words both lucid and emphatic, by Justice Malcolm: "If there is probable basis for sustaining the conclusion reached, [legislative] findings are not subject to judicial review. Debatable questions are for the legislature to decide. The courts do not sit to resolve the merits of conflicting theories." [6]

In that perspective and with such pronouncements of undoubted clarity, force, and authority coming from eminent constitutionalists, the conclusion reached by the Court commends itself for approval. Nor is this merely to pay heed to precepts fundamental in character. The principles set forth above were not only characterized by their responsiveness to the questions involved in such litigations but were also impressed with a validity which transcended the issues raised on those occasions. As it was then, so should it be now. While the judicial process does not take place in a social void, there are doctrines that are of the essence of the function of judicial review. The doubts that come to mind from an objective appraisal of the challenged provisions of the 1978 Election Code do not suffice then to call for a declaration of nullity.

It is true that as to the optional block voting scheme, it may be said that the strictures of recent history had been glossed over. To the extent, however, that it will undoubtedly be of great help to the unlettered and untutored who, as citizens, are entitled to participate in the democratic process, without impairing the freedom of choice in view of its not being compulsory, it cannot be said to be infected with the virus of invalidity. This is, of course, on the assumption that electoral frauds will be avoided. Moreover, insofar as the optional block voting scheme is a valid response to a compelling state interest, favoring as it does the growth and stability of political parties, petitioners who are independent candidates were unable to sustain the burden of proving that there is a denial of due process or of equal protection. [7] What added difficulty to their task was the rather tenuous character of their plea, premised as it is on their mere assertion that the challenged provision on the block voting scheme is void on its face. Thus they had to overcome the presumption of validity accorded a legislative or executive act. This they failed to do.

Nor should nagging doubts prevail against the overriding consideration that thereby, the electorate is afforded the

opportunity of choosing their representatives in a legislative body, even of an interim character. That is to pay homage to the fundamental principle of the Philippines being a republican state, with sovereignty residing in the people.[8] As was so well emphasized by Justice Laurel in *Moya v. Del Fierro*: [9] "As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority." [10]

There is this added reinforcement to the conclusion reached by the Court. The forthcoming election is a major step toward the eagerly-awaited restoration of full civilian rule. There is thus a closer approximation to the Willoughby concept [11] that martial law merely confers on the Executive the competence to call on the armed forces to assist him in the faithful execution of the laws, primarily the maintenance of peace and order, leaving unimpaired the full exercise of legislative and judicial powers by the other departments and thus maintaining civilian supremacy. Moreover, the existence of an interim Batasang Pambansa would be in consonance with the pronouncement of Justice Black in *Duncan v. Kahanamoku* [12] that even during such emergency period, legislatures and courts remain indispensable to the existence of a republican state. [13] I am thus persuaded to yield conformity to the able, exhaustive, and learned opinion of Justice Antonio, except for the inclusion of the rule on the appreciation of ballots found in paragraph 28 of Section 155 of the 1978 Election Code, which, to my mind, raises a serious constitutional question. For as it stands, there appears to be an undue intrusion in the freedom of choice implicit in the right of suffrage if an elector's preference for individual candidates would not be accorded recognition solely due to the fact that at the same time his ballot likewise indicates his voting for the slate of another party or aggrupation. In such a case, it is my view that what should be disregarded is the vote for such other party or aggrupation and the vote for the individual candidates counted. To that extent, I am unable to yield entire concurrence.

1. Solicitor General Estelito P. Mendoza [14], in raising the question of standing of petitioners, relied on a well-settled doctrine concerning the procedural standards that must be met for the function of judicial review to come into play. "The unchallenged rule," according to Justice Laurel, in the equally leading case of *People v. Vera*, [15] "is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." [16] There was a reiteration of this doctrine in *Pascual v. Secretary of Public Works*, [17] with this modification in the opinion of Chief Justice Concepcion: "Yet, there are many decisions nullifying, at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that 'the expenditure of public funds by an office of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds,' which may be enjoined at the request of a taxpayer." [18] Thus was the concept of a taxpayer's suit given the imprimatur of approval by this Court. It does not mean, however, that in each and every instance where such an exception is invoked, this Tribunal is left with no alternative except to hear the parties. *Tan v. Macapagal* [19] clarified matters thus: "Moreover, as far as a taxpayer's suit is concerned, this Court is not devoid of discretion as to whether or not it should be entertained." [20] Solicitor General Mendoza was on solid ground therefore when he raised as one of his defenses that taxpayers' suits as such do not necessarily call for the exercise of the function of judicial review. Fortunately for petitioners, all of them could show an interest personal and substantial. Two petitions were filed by registered voters; [21] two others, by registered candidates for the interim Batasang Pambansa; [22] and the last two, one by "a political and civic aggrupation" and the other by a former delegate to the 1971 Constitutional Convention who was also the Chairman of the Committee on Political Parties. [23] It only remains to be added

that there apparently is a tendency in recent American decisions to retreat from the liberal rule as to standing announced in the 1968 decision of *Flast v. Cohen*.^[24] There is no automatic reversion, however, to the rather rigid rule of *Mellon v. Frothingham*,^[25] a 1923 decision. After a recent careful and analytical study of the trend discernible in cases heard the last two or three years by the American Supreme Court,^[26] Professor Tushnet came to this conclusion: "Decisions on questions of standing are concealed decisions on the merits of the underlying constitutional claim. The Court finds standing when it wishes to sustain a claim on the merits and denies standing when the claim would be rejected were the merits reached."^[27]

2. Certainly, a voter whose right of suffrage^[28] is allegedly impaired by the optional block voting scheme is entitled to judicial redress. The "enfranchised citizen," to refer anew to Justice Laurel's opinion in *Moya v. Del Fierro*,^[29] is "a particle of popular sovereignty and [is] the ultimate source of the established authority."^[30] Such a thought was given expression by Chief Justice Concepcion in *Ozamis v. Zosa*^[31] in words with a similar ring, characterizing the right to vote as "an attribute of sovereignty."^[32] It follows then, to quote from *Puñgutan v. Abubakar*,^[33] that it is "a constitutional guarantee of the utmost significance. It is a right without which the principle of sovereignty residing in the people becomes nugatory."^[34] It is thus evident that petitioners who are registered voters cannot be denied the right to be heard. This Court is committed to such a principle.^[35] So it is under American law where a denial of the right to vote could even be made the basis for a money claim. That was the ruling in the leading case of *Nixon v. Herndon*,^[36] the opinion being penned by the illustrious Justice Holmes: "The objection that the subject-matter of the suit is political is little more than a play upon words. Of course, the petition concerns political action, but it alleges and seeks to recover for private damage. That private damage may be caused by such political action, and may be recovered for in a suit at law, hardly has been doubted for over two hundred years, since *Ashby v. White*, * * * and has been recognized by this court."^[37] Justice Black, in *Wesberry v. Sanders*,^[38] was quite eloquent when he spoke on the matter: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."^[39] No possible objection based on standing can be raised either when the suit is instituted by a candidate for public office^[40] as well as a political party or aggrupation.^[41] Concerning a constitutional convention delegate, there had been no previous decisions on the matter. By analogy, however, inasmuch as members of the legislative body both in the Philippines^[42] and in the United States^[43] could file actions to assail the validity of a challenged legislation or even a resolution of the Constitutional Convention, a delegate or former delegate is entitled to the same privilege.

3. It is unthinkable then for this Court not to inquire into any allegation of constitutional infirmity imputed to a provision of the Election Code that would emasculate the right to vote. Five of the six petitions assailed the optional block voting scheme with unwonted severity, but the denunciation fell far short of overcoming the presumption of validity. To be more specific, three of the petitioners, Pedro G. Peralta,^[44] B. Asuncion Buenafe,^[45] and Juan T. David,^[46] did manifest grave concern as to its possible adverse effects on their candidacies, the first two stressing their running as independents. The censure that came from the Youth Democratic Movement^[47] was peripheral to its main submission. That leaves only petitioner De la Liana,^[48] who filed a suit for declaratory relief treated by this Court as an action for prohibition, distinguished, if that is the appropriate term, by condensing the matter in four pages. Ostensibly, it is an attack on the optional block voting scheme, yet, instead of stressing the right to vote, it would premise its plea on the ground that no party could be accredited by the Commission on Elections and subsequently no party could be voted for in the coming elections, referring to Article XII C, Section 2, paragraph 5 and Section 8 of the same Article.^[49] All that was stated by him as to the optional block voting is that it "will result to (sic) the commission of gross electoral frauds and malpractices and the election will only be a farcical political exercise and a death blow to our democratic

system." [50] What other conclusion can there be from such a bare assertion except that it is decidedly unpersuasive? It assumes what must be shown. There is nothing axiomatic about his conclusion. It cannot just be taken for granted. There seems to be lack of awareness of the rudimentary concept in constitutional law that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or decree is void on its face. [51] Without developing further how the right to vote of an elector, who is given the freedom of choice between casting his ballot for individual candidates or for the favored party or aggrupation, had been infringed, it may be a rash assumption to affirm categorically that "the election will only be a farcical political exercise and a death blow to our democratic system." History need not repeat itself. Precisely, measures to avoid abuses in the utilization of a device neutral in character and on its face not infected with the vice of nullity could be taken. It does not suffice to link past agonies with present hopes. Let me not be misunderstood. The desirability of any block voting provision, even if optional, is not by any means suggested. All that is set forth here is that respect for the deeply-rooted principle of according the presumption of constitutionality to a legislative act or a presidential decree cautions against sustaining the plea of petitioner De la Llana. There was a dismal failure to sustain the burden incumbent upon him to demonstrate invalidity. The thirteen-page petition of the Youth Democratic Movement [52] is distinguished by a more conscientious and diligent appraisal of the constitutional issues. Its major thrust, however, is on the limitation of the election period, arousing the fear on the part of petitioner that the balloting would not reflect the true popular will. There is, however, this stray comment bearing on the optional block voting provision: "And this will be worse confounded by the introduction of the infamous block voting scheme which millions of our voters do not understand. Even intelligent professionals are confused. The result will be countless (sic) of stray ballots and a defeat of popular will." [53] Such a rather curt summary invites a similar appraisal. Clearly, the presumption of validity has not been overcome.

4. Petitioner Peralta was rather vehement in contending that the optional block voting scheme is violative of this provision of the Constitution: "Bona fide candidates for any public office shall be free from any form of harassment and discrimination." [54] He sought the shelter of its protection for himself and other independent candidates who, according to him, would be thus made to suffer if the assailed provision is not nullified. Essentially, in terms of individual rights, he would raise a due process and equal protection question. [55]

5. First, as to the due process aspect. It is undoubted that if the optional block voting scheme, in the language of Cardozo, would outrun the bounds of reason and result in sheer oppression, it offends against such a guarantee. An executive or legislative act must satisfy the rational basis test. It is equally undoubted that with such a provision an advantage is afforded party candidates. Does that stamp it with invalidity? The answer is in the negative. The importance of political parties or political aggrupations to a republican state, especially so for a parliamentary system, calls for such a response. On that point, there is this categorical declaration by Schattschneider: "The rise of political parties is indubitably one of the principal distinguishing marks of modern government. The parties, in fact, have played a major role as makers of governments, more especially they have been the makers of democratic government. It should be stated flatly at the outset that this volume is devoted to the thesis that the political parties created democracy and that modern democracy is unthinkable save in terms of the parties. As a matter of fact, the condition of the parties is the best possible evidence of the nature of any regime." [56] It is, to quote him anew, "first of all an organized attempt to get power." [57] As observed by Truman: "Whatever else it may be or may not be, the political party in the United States most commonly is a device for mobilizing votes, preferably a majority of votes." [58] As a vote mobilizer, he stated further, "a party must be an 'alliance of interests' — to use Herring's phrase." [59] It is through a political party then that the shifting desires and pressure intensities of the various groups that compose the electorate may be ascertained. This is not to say though that it does not reflect the deep clash of forces within the community, but the crucial element in their campaign for votes, to repeat, is the drive for power. "The single purpose," to quote from Friedrich, "[is]

victory." [60] Thus it has to be responsive to the needs and outlook of the elector. At times, it may be unavoidable that there be compromises with both political principles and doctrinal symmetry. Nor is that necessarily undesirable for that could minimize the sharpness of conflicts which, with leaders of undeviating rigidity in their approach to political problems, could have caused an undue strain in the body politic. Through a political party, the feelings of the electorate about their own tangled problems and institutions may be canalized and thus be clarified. Likewise, it serves as a source of resiliency and cohesion. The party system, according to Lerner, "has given American democracy a rough kind of politically functioning unity without the social cast that the unity of a single-party totalitarian system would have involved." [61] What was said by the eminent British political scientist Laski is equally relevant. According to him, subject to a small number of exceptions, members are not elected "to Parliament for exceptional beauty of character, or distinction of mind; they have been returned there to support a party to which their supporters hope will win enough seats to be able to form a government under the Premiership of its leader." [62] He elucidated further: "No doubt the party system, as we know it, has a special pathology of its own. It is hostile to the independent member; it makes the rise of new parties a difficult matter; it secures a general vote of confidence in men rather than a mandate upon measures; and once it has brought the new House of Commons into being, the character of its party pattern gives both the House and the electorate a government which party discipline will usually maintain in office for a period pretty close to the five years set as its legal term by the Parliament Act of 1911." [63] It cannot be said, therefore, that the added advantage afforded parties or aggrupations by the optional block voting device is an infringement of the due process guarantee. Whatever deficiencies may be attributed to it cannot go so far as to warrant the conclusion that thereby the rational basis test for governmental action had been disregarded.

6. Now as to the equal protection question. It is undoubted that independent candidates are at a disadvantage under an optional block voting scheme. Does that in itself justify a finding that it suffers from the corrosion of constitutional infirmity? The answer, if due regard be had to the authoritative and controlling doctrines, is in the negative. The teaching of our decisions is plain and unmistakable. It is too clear to be misread. So it has been from *People v. Vera*, [64] the second landmark opinion in constitutional law of Justice Laurel, to *Felwa v. Salas*, [65] cited in the opinion of Justice Antonio. The ponencia of Chief Justice Concepcion in *Felwa* is a succinct but comprehensive statement of the matter. Thus: "It is well settled that the equal protection clause applies only to persons or things identically situated and does not bar a reasonable classification of the subjects of legislation, and that a classification is reasonable where: (1) it is based upon substantial distinctions which make real differences; (2) these are germane to the purpose of the law; (3) the classification applies, not only to present conditions, but also to future conditions which are substantially identical to those of the present; and (4) the classification applies equally to all those who belong to the same class." [66] It is of interest to note that the applicable constitutional law doctrine in Malaysia is not dissimilar. So it is apparent in the masterly opinion of Lord President Tun Suffian of the Federal Court of Malaysia, promulgated in 1977, in *Datuk Haji Harun bin Haji Idris v. Public Prosecutor*. Like our Constitution, the federal charter of Malaysia has an equality provision. [67] As was made clear by the Lord President, it is not absolute but qualified. [68] As in the Philippines, such a guarantee "applies to both substantive and procedural law" but "envisages that there may be lawful discrimination based on classification." [69] That the formulation of Justice Laurel in *People v. Vera* as to when there is a reasonable classification applies as well in Malaysia is evident from this portion of the opinion citing the *Shri Ram Krishna Dalmia* decision of the Indian Supreme Court to the effect that a discriminatory law is good law as long as there is reasonable and permissible classification which "is founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group; and the differentia has a rational relation to the object sought to be achieved by the law in question. The classification may be founded on different bases such as geographical, or according to objects or occupations and the like. What is necessary is that there must be a nexus between the basis of classification and the object of the law in question." [70] Succinctly put, to quote anew from

People v. Vera, what is condemned is invidious discrimination.

A recent decision, *J.M. Tuason and Co., Inc. v. Land Tenure Administration*,^[71] has this relevant excerpt: "To assure that the general welfare be promoted, which is the end of law, a regulatory measure may cut into the rights to liberty and property. Those adversely affected may, under such circumstances, invoke the equal protection clause only if they can show that the governmental act assailed, far from being inspired by the attainment of the common weal was prompted by the spirit of hostility, or at the very least, discrimination that finds no support in reason. It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."^[72]

7. Petitioner Peralta's contention that there was an infringement of the equal protection clause is thus devoid of support in law. The optional block voting scheme, it cannot be too strongly emphasized, is one of the means of strengthening a party government which is a valid state objective. To the extent, therefore, that independent candidates may be placed in a less favorable category, it is not a suspect classification to which the rigid scrutiny test applies.^[73] This Court is not called upon then to nullify such a provision. Such a conclusion follows from another avenue of approach. In *Aglipay v. Ruiz*,^[74] a 1937 decision of major importance, Justice Laurel as ponente rejected the contention that the issuance of postage stamps referring to Manila as the Seat of the XXXIII International Eucharistic Congress was violative of the constitutional provision against the use of public money or property for the use, benefit, or support of any seat or church or system of religion.^[75] He explained why: "What is emphasized is not the Eucharistic Congress itself but Manila, the capital of the Philippines, as the seat of that congress. It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation."^[76] So in this case, in the emphatic language of Justice Laurel: "The main purpose should not be frustrated by its subordination to mere incidental results not contemplated."^[77] If the independent candidates are to be prejudiced by the adoption of the optional block voting scheme, the resulting harm to their candidacy is attributable to their decision to run as such. There is nothing to prevent them from joining a party or aggrupation and hoping to be nominated as candidates. Any adversity suffered by them comes under the heading of a self-inflicted wound.

Petitioner Peralta, undeterred, would seek to lend a semblance of deceptive plausibility by the assertion that in the Vera opinion of Justice Laurel, a law may be considered bad not only when it actually denies but also when it permits inequality. There is a grave misapprehension on his part. *People v. Vera* declared unconstitutional the former Probation Act^[78] in view of the fact that its Section 11 would leave its applicability to the appropriation by the Provincial Board of the salary of the probation officers. Since the Act was intended to operate equally in the Philippines, there certainly would be inequality if certain provinces failed to make the necessary appropriation. As the purpose was for an enactment nationwide in operation, all provinces belong to the same class. To assert in the light of such undoubted statutory objective that a similar kind of inequality may be attributed to the optional block voting scheme that would thus favor political parties or aggrupations is to flounder in the mire of elusive analogy. For in the challenged provision, as in the cases of usury laws making a distinction between debtors and creditors, the Recto Installment Sales Law making a distinction between vendors and vendees, and in labor legislation making a distinction between management and the workingmen, the statute treats

a separate class in a much more favorable manner without thereby incurring the vice of offending against the equal protection clause. So it is in the case of the assailed optional block voting scheme. The denunciatory favor in which the contention was made is thus unpersuasive. It cannot stand the test of scrutiny, not to mention the fact that the element of hyperbole was clearly apparent. The assertion that there is a denial of equal protection thus falls to the ground.

8. The questions raised in the David, the Youth Democratic Movement, and the Fajardo petitions, all of which bore evidence of considerable thought and reflection, with one of them characterized by objectivity seeming to melt away under the fierce fire of intense indignation, were squarely met and, to my mind, satisfactorily resolved, in the opinion of Justice Antonio. Nothing remains to be added except to point out that in the first two, with petitioner David being himself a candidate in the forthcoming elections and petitioner Youth Democratic Movement being a political aggrupation with intent to present, so its petition stated, a complete ticket for the Metro Manila region,[79] it would appear that the doctrine of estoppel, which admittedly is not to be applied indiscriminately, enters into the picture and constitutes a bar, although not insurmountable, to the grant of the relief prayed for.[80] It is perhaps understandable why the Fajardo petition appears to be less than fully aware of the implications of the doctrine of primary jurisdiction and ripeness of the constitutional question raised to call for adjudication, since petitioner is not a member of the bar.[81] It may likewise be stated that considering the tensions of our days and the crisis of our times, it may be a counsel of wisdom not to anticipate the serious constitutional law problems that would arise under situations where only a tentative judgment is dictated by prudence. This is a decade of transition and, as pointed out in the opinion of Justice Antonio, there is a great deal of allowable latitude for experimentation. It is only when there is a clear denial of a constitutional right evident on the face of a statute or decree that even in the absence of any evidentiary proof, it will be time, to borrow from the language of Justice Laurel, "to make the hammer of [judicial review] fall, and heavily, but not until then." [82] To my mind, that stage had not been reached in the last three petitions.

9. It is quite obvious then that this separate opinion is essentially and almost wholly one of concurrence. If there is a dissent, it is submitted *ex abundante cautela*. As was made plain at the outset, it is not to an explicit ruling but merely the reference to Section 155 paragraph 28 of the Election Code that precluded, on my part, an agreement full and entire. The opinion of the Court set forth as the first issue: "Whether or not the voting system provided for in Sections 140 and 155, sub-paragraphs 26 to 28 of the 1978 Election Code, granting to the voter the option to vote either for individual candidates by filling in the proper spaces in the ballot the names of candidates he desires to elect, or to vote for all the candidates of a political party, group or aggrupation by simply writing in the space provided for in the ballot the name of the political party, group or aggrupation, violates Section 1 of Article IV and Section 9 (1) of Article XII-C of the Constitution." [83] Then the aforesaid provision was quoted in full: "Sec. 155, par. 28: If a voter has written in the proper space of his ballot the name of a political party, group or aggrupation which has nominated official candidates and the names of individual candidates not belonging to the ticket of the same political party, group or aggrupation in the spaces provided therefor, all of the votes indicated in the ballot shall be considered as stray votes and shall not be counted: * * *." [84] Reference was likewise made to Section 4 of Commonwealth Act No. 666 which provided: "(g) If a voter had voted for the straight ticket of a political party and at the same time had written on one or more blank spaces of the ballot the names of candidates of other party or parties or of independent candidates, said names shall be deemed as not written and the vote shall be counted as cast for each and every one of the official candidates of the party voted for in the ballot." [85] It is that rule in the appreciation of ballots that to my mind is free from any unconstitutional taint. The will of the voter expressed in a manner free from doubt was given force and effect. This is not the case with paragraph 28 of Section 155 of the Election Code. After such a categorical expression of his will to vote for specified candidates whose names he had taken the trouble to write, I am unable to accept any implication in the opinion of the Court

that just because he had also made use of the optional block voting scheme, a statutory provision setting at naught his will as to such candidates individually singled out could be viewed as free from any constitutional deficiency. I would not want then to be placed on record as having failed to express my conviction on the matter. Hence, this brief dissent.

A few more words. Solicitor General Mendoza in the course of his oral argument observed that two of the most eminent constitutionalists who sat on this bench, Jose P. Laurel and Claro M. Recto, while undoubtedly cognizant of the abuses to which block voting could give rise and did suffer as a consequence, did not challenge its validity in an appropriate case or proceeding. Their failure to do so is, to my mind, impressed with significance considering that in the post World War II period, until they died, they had participated as counsel de parte or as amici curiae or had been consulted on major constitutional law cases.[86] They were to follow Thomas Reed Powell, silently vocal on the matter. It would seem that for them such a question had more of a policy rather than a legal connotation, thus appropriately belonging to the political branches. It is to stress anew that it is primarily on that ground, with full reliance on the authoritative pronouncements in the aforecited cases of Angara, Pasay Transportation, and Lorenzo, the opinions coming from the pens of Justices Laurel and Malcolm, that I am persuaded to concur in the dismissal of these petitions. So I am led to conclude because, for me, there was no clear showing of invalidity based on the impairment of the right of suffrage or the denial of due process and equal protection guarantees. The presumption of validity accorded a legislative act or executive decree was not therefore overcome. Stress must equally be made on what was said before that the dismissal of these petitions, especially those impugning the validity of the optional block voting scheme, cannot be construed as an admission of its desirability. That is a matter the cognizance of which belongs to the other branches. Nor is it to deny that, as unfortunately happened in the past, it could be perverted from its legitimate use and could be a source of electoral frauds. As early as 1816, Justice Story, in the oft-cited case of *Martin v. Hunter's Lessee*,^[87] characterized an argument "from the possibility of an abuse" as "unsatisfactory."^[88] He emphasized: "It is always a doubtful course, to argue against the use or existence of a power, from the possibility of its abuse."^[89] This excerpt from an opinion of Justice Cardozo in *Williams v. Baltimore*^[90] is equally relevant: "The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretence. Within the field where men of reason may reasonably differ, the legislature [or the executive] must have its way."^[91]

At any rate, there is solace in the thought that outside of the 1978 Election Code being applicable only for this year's poll, there are built-in provisions therein to guard against the perpetration of electoral misdeeds. Moreover, it is to the interest of the present Administration that every effort should be made to avoid such evil practices. If it fails, its achievements would stand discredited and the New Society itself condemned. There must be a true expression of the popular will, which, thereafter, must be obeyed. So both constitutionalism and democracy mandate.

[1] Cf. *Javellana v. The Executive Secretary*, L-36142, March 31, 1973, 50 SCRA 30; *Aquino, Jr. v. Ponce Enrile*, L-35546, Sept. 17, 1974, 59 SCRA 183; *Aquino, Jr. v. The Commission on Elections*, L-40004, Jan. 31, 1975, 62 SCRA 275; *Aquino, Jr. v. Military Commission No. 2*, L-37364, May 9, 1975, 63 SCRA 547; *Sanidad v. The Commission on Elections*, L-44640, Oct. 12, 1976, 73 SCRA 333; *De la Llana v. The Commission on Elections*, L-47245, Dec. 9, 1977; *Hidalgo v. Honorable Ferdinand E. Marcos*, L-47329, Dec. 9, 1977.

[2] *Tañada v. Cuenco*, 103 Phil. 1051, 1061-1062 (1967).

[3] *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, 605 (1932).

[4] 63 Phil. 139 (1936).

[5] Ibid, 158-159.

[6] *Lorenzo v. Director of Health*, 50 Phil. 595, 597 (1927). Justice Malcolm cited *I Cooley*, *Constitutional Limitations*, 8th ed., 379 (1927).

[7] According to Article 10, Section 1 of the Constitution: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws."

[8] According to Article II, Section 1 of the Constitution: "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them."

[9] 69 Phil. 199 (1939).

[10] Ibid, 204.

[11] 3 Willoughby on the Constitution, 2nd ed. 1591 (1929). The Law of the American Constitution (1922) by Burdick and Constitutional Law of the United States by Willis discussed the matter in the same fashion.

[12] 327 US 304, 322 (1946).

[13] The writer of this concurrence had expressed such views in his separate opinions in *Aquino, Jr. v. Ponce Enrile*; *Aquino, Jr. v. Military Commission*; and *Sanidad v. The Commission on Elections* referred to above.

[14] He was assisted by Assistant Solicitors General Vicente V. Mendoza and Reynato S. Puno.

[15] 65 Phil. 56 (1937).

[16] Ibid, 89.

[17] 110 Phil. 331 (1960).

[18] Ibid, 342-343.

[19] L-34161, February 29, 1972, 43 SCRA 677.

[20] Ibid, 680.

[21] L-47767, *De la Liana v. The Commission on Elections* and L-47803, *David v. The Commission on Elections*.

[22] L-47771, *Peralta v. The Commission on Elections* and L-47791, *Buenafe v. The Commission on Elections*.

[23] L-47816, *Youth Democratic Movement v. The Commission on Elections* and L-47827, *Fajardo v. The Commission on Elections*.

[24] 391 US 83.

[25] 262 US 447.

[26] Cf. *United States v. Richardson*, 418 US 166 (1974); *Sosna v. Iowa*, 419 US 393 (1975); *Warth v. Seldin*, 422 US 490 (1975); *Franks v. Bonman Transportation Co.*, 424 US 747 (1976); *Hospital Building Co. v. Trustees of Rex Hospital*, 425 US 738 (1976); *Simon v. Eastern Ky. Welfare Rights Organization*, 426 US 26 (1976).

[27] Tushnet, *The New Law of Standing: A Plea for Abandonment*, 62 Cornell Law Review 663 (1977).

[28] According to Article VI, Section 1 of the Constitution: "Suffrage shall be exercised by citizens of the

Philippines not otherwise disqualified by law, who are eighteen years of age or over, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. The National Assembly shall provide a system for the purpose of securing the secrecy and sanctity of the vote."

[29] 69 Phil. 199 (1939).

[30] Ibid, 204.

[31] L-28228, August 31, 1970, 34 SCRA 424.

[32] Ibid, 431.

[33] L-33541, January 20, 1972, 43 SCRA 1.

[34] Ibid, 11.

[35] Cf. *Abañil v. Justice of the Peace*, 70 Phil. 28 (1940); *Cristobal v. Labrador*, 71 Phil. 34 (1940); *Teves v. The Commission on Elections*, 90 Phil. 370 (1951); *Mayor v. Villacete*, 112 Phil. 442 (1961).

[36] 273 US 536 (1927).

[37] *Nixon v. Herndon* was cited with approval in *Nixon v. Condon*, 286 US 73 (1932) and *Baker v. Carr*, 369 US 186 (1962), constitutional decisions of just more than ordinary significance.

[38] 376 US 1 (1964).

[39] Ibid, 17.

[40] Cf. *Sanagustin v. Barrios*, 68 Phil. 475 (1939); *Perez v. Suller*, 69 Phil. 196 (1939); *Moya v. Del Fierro*, 69 Phil. 199 (1939); *Torres v. Mayo*, 69 Phil. 208 (1939); *Imperial v. Secretary of Interior*, 70 Phil. 454 (1940); *Agado v. Del Rosario*, 71 Phil. 243 (1941); *Pelobello v. Palatino*, 72 Phil. 441 (1941); *Cesar v. Abaya*, 73 Phil. 316 (1941); *Lava v. Lopez Vito*, 73 Phil. 390 (1941); *Gallego v. Verra*, 73 Phil. 453 (1941). The above decisions were all promulgated during the Commonwealth period.

[41] *Sumulong v. Commission on Elections*, 70 Phil. 703 (1940); *Sumulong v. Commission on Elections*, 71 Phil. 12 (1940); *Tigbatas Party v. Lopez Vito*, 73 Phil. 219 (1941); *Vinzons v. Commission on Elections*, 73 Phil. 228 (1941); *Moncado v. Commission on Elections*, 73 Phil. 237 (1941); *Vinzons v. Commission on Elections*, 73 Phil. 247 (1941); *Sumulong v. Commission on Elections*, 73 Phil. 257 (1941); *Sumulong v. Commission on Elections*, 73 Phil. 288 (1941); *Santiago v. Far Eastern Broadcasting*, 73 Phil. 408 (1941); *Lagasca v. De Vera*, 79 Phil. 376 (1947); *Nacionalista Party v. Angelo Bautista*, 85 Phil. 101 (1949); *Nacionalista Party v. De Vera*, 85 Phil. 176 (1949); *Nacionalista Party v. Commission on Elections*, 85 Phil. 149 (1949).

[42] Cf. *Mabanag v. Lopez Vito*, 78 Phil. 1 (1947); *Macias v. Commission on Elections*, 113 Phil. 1 (1961); *Tolentino v. Commission on Elections*, L-34150, October 16, 1971, 41 SCRA 702.

[43] Cf. 307 US 433 (1940).

[44] *Peralta v. The Commission on Elections*, L-47771.

[45] *Buenafe v. The Commission on Elections*, L-47791.

[46] *David v. The Commission on Elections*, L-47803.

[47] Youth Democratic Movement v. The Commission on Elections, L-47816.

[48] De la Llana v. The Commission on Elections, L-47767.

[49] Petition, par. IV. Article XII C, Section 2, par. 5 reads as follows: "Register and accredit political parties subject to the provisions of Section eight hereof." Section 8 thereof is worded thus: "A political party shall be entitled to accreditation by the Commission if, in the immediately preceding election, such party has obtained at least the third highest number of votes cast in the constituency to which it seeks accreditation. No religious sect shall be registered as a political party, and no political party which seeks to achieve its goals through violence or subversion shall be entitled to accreditation."

[50] Ibid, par. VII.

[51] Cf. Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila L-24693, July 31, 1967, 20 SCRA 849.

[52] Youth Democratic Movement v. The Commission on Elections, L-47816.

[53] Ibid, 9.

[54] Article XII C, Section 9, par. 9 of the Constitution.

[55] According to Article IV, Section 1 of the Constitution: "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."

[56] Schattschneider, Party Government 1 (1941).

[57] Ibid, 35.

[58] Truman, The Governmental Process 270-271 (1965).

[59] Ibid, 271. The author quoted a phrase in Herring's The Politics of Democracy 55 (1940).

[60] Friedrich, Man and His Government 120 (1963).

[61] Lerner, America as a Civilization 383 (1957).

[62] Laski, Reflections on the Constitution, 37 (1951).

[63] Ibid, 55-56.

[64] 65 Phil. 56 (1937).

[65] L-26511, October 29, 1966, 18 SCRA 606.

[66] Ibid, 612. This doctrine has been adhered to in the following cases after People v. Vera and prior to the Felwa decision: People v. Cayat, 68 Phil. 12 (1939); People v. Rosenthal, 68 Phil. 328 (1939); Antamok Goldfields v. Court of Industrial Relations, 70 Phil. 340 (1940); Int. Hardwood and Veneer Co. v. Pañgil Fed of Labor, 70 Phil. 602 (1940); Austria v. Solicitor General, 71 Phil. 288 (1941); Laurel v. Misa, 76 Phil. 372 (1946); People v. Carlos, 78 Phil. 535 (1947); Manila Electric Co. v. Public Utilities Employees' Assn., 79 Phil. 409 (1947); People v. Isnain, 85 Phil. 648 (1950); Tolentino v. Board of Accountancy, 90 Phil. 83 (1951); In re Cunanan, 94 Phil. 534 (1954); Suarez v. Santos, 96 Phil. 302 (1954); Ichong v. Hernandez, 101 Phil. 1155 (1957); People v. Solon, 110 Phil. 39 (1960); People v. Ventura, 114 Phil. 162 (1962) and Phil. Constitution Assn. v. Gimenez, L-23326, Dec. 18, 1965, 15 SCRA 479. Subsequent decisions after Felwa follow: Viray v. City of Caloocan, L-23118, July 26, 1967, 20 SCRA 791; Rafael v. Embroidery and Apparel Control and Inspection Board, L-19978, Sept. 29, 1967,

21 SCRA 336; Ermita-Malate Hotel and Motel Operators Association v. City Mayor, L-24693, Oct. 23, 1967, 21 SCRA 449; Ormoc Sugar Co. v. Treasurer of Ormoc City, L-23794, Feb. 17, 1968, 22 SCRA 603; Luque v. Villegas, L-22545, Nov. 28, 1969, 30 SCRA 408; J.M. Tuason and Co. v. Land Tenure Administration, L-21064, Feb. 18, 1970, 31 SCRA 413; In re Subido, L-32436, Sept. 9, 1970, 35 SCRA 1; Imbong v. Ferrer, L-32432, Sept. 11, 1970, 35 SCRA 28; Gumabon v. Director of Prisons, L-30026, Jan. 30, 1971, 37 SCRA 420; Central Bank v. Cloribel, L-26971, April 11, 1972; 44 SCRA 307; Victoriano v. Elizalde Rope Workers' Union, L-25246, Sept. 12, 1974, 59 SCRA 54; Basa v. Federacion Obrera, L27112, Nov. 19, 1974, 61 SCRA 93.

[67] Article 8 of the Malaysian Constitution.

[68] Idris v. Public Prosecutor, Federal Court Criminal Appeal No. 19, 32.

[69] Ibid.

[70] Ibid, 33.

[71] L-21064, February 18, 1970, 31 SCRA 413.

[72] Ibid, 435.

[73] Cf. Gunther, In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv. Law Rev. 1-48 (1972) and Morris, Constitutional Alternatives to Racial Preferences in Higher Education, 17 Santa Clara Law Review, 279-327 (1977).

[74] 64 Phil. 201.

[75] That was formerly Article VI, Section 12, par. 3 of the amended 1935 Constitution. It is now found in Article VIII, Section 18, par. 2 of the new Constitution which reads as follows: "No public money or property shall ever be appropriated, applied, paid, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium

[76] Ibid, 209-210.

[77] Ibid, 210.

[78] Act No. 4421 (1934).

[79] Youth Democratic Movement v. The Commission on Elections, L-47816, 2.

[80] Cf. Zanduetta v. de la Costa, 66 Phil. 615 (1938) and Tañada v. Cuenco, 103 Phil. 1051 (1957).

[81] Cf. Jaffe, Judicial Control of Administrative Action, Chapter 10, Ripeness and Review of All Orders, 395-423 (1965) and Jaffe, Primary Jurisdiction, 77 Harvard Law Review 1037-1070 (1964).

[82] Laurel, J., concurring, in Zanduetta v. de la Costa, 66 Phil. 615, 627 (1957).

[83] Opinion of Justice Antonio, 2.

[84] Ibid, 4.

[85] Ibid, 6 and 7.

[86] Laurel v. Misa, 77 Phil. 856 (1947); Mabanag v. Lopez Vito, 78 Phil. 1 (1947); Vargas v. Rilloraza, 80 Phil. 297 (1948); Araneta v. Dinglasan, 84 Phil. 368 (1949); Nacionalista Party v. Bautista, 85 Phil. 101 (1949);

Nacionalista Party v. De Vera, 85 Phil. 126 (1949); Nacionalista Party v. The Commission on Elections, 85 Phil. 149 (1949); Nava v. Gatmaitan, 90 Phil. 172 (1951); Montenegro v. Castañeda, 91 Phil. 882 (1952); Lacson v. Roque, 92 Phil. 456 (1953); Rodriguez, Sr. v. Gella, 92 Phil. 603 (1953); Rutter v. Esteban, 93 Phil. 68 (1953); Salaysay v. Castro, 98 Phil. 515 (1956). If a personal allusion were permissible, the writer of this opinion, who had himself appeared or been consulted in the above cases, except for Laurel v. Misa, had sat in on conferences where both jurists gave freely of their time and extensive knowledge regarding the constitutional issues raised.

[87] 1 Wheat 304 (1816).

[88] Ibid, 345.

[89] Ibid.

[90] 289 US 36, 41 (1933).

[91] Ibid, 42.

CONCURRING OPINION

BARREDO, J., concurring:

I concur in the disposition of all the petitions in these six cases made in the scholarly main opinion of Mr. Justice Antonio. I just want to articulate a few thoughts I have about the matters therein involved which I deem relevant, appropriate and timely.

To begin with, I wish to make it clear that the series of interpellations I made during the hearings which might have created the impression that I am not in agreement with the defenses interposed and ably discussed by the Solicitor General were really intended to test whether or not what appeared to me to be vulnerable points in the position of the Government had any rational explanation.

-1-

Actually, I have my misgivings about the propriety of blockvoting, and I wanted to be sure that in formulating my judgment, I am not influenced more by its allegedly being unfair and laden with potentialities of fraud rather than its demonstrated inconsistency with any provision of the charter or of any established constitutional principle. I fully realize that as a member of the Court, my vote here must be based on indubitable unconstitutionality. At the same time, as a Filipino. I have been entertaining the feeling that perhaps, in this particular stage of our transition from the old political traditions to the idealistic concepts of the New Society, there could be enough justification to disregard the strict rule that unconstitutionality must be based only on manifest and indubitable collision between a questioned legislation or actuation, on the one hand, and the provisions of the Constitution, on the other. I feel that in these formative period of our new government, it might not be very helpful to disregard the issue of wisdom or unwisdom in favor of pure legality, such that any instance where the language of the Charter can somehow be construed in a manner that would promote more effectively the objective of establishing a parliamentary system with its inherent concomitants in our country, that construction should be adopted, even if in doing so, there might be a slight departure from the area circumscribed within the literal meaning of the words

employed in the statutory provisions under scrutiny. After mature reflection, however, I have come to the conclusion that even my best efforts along such line of thinking would not suffice to tilt the balance in favor of petitioners. Perhaps, it may not be in the context of the situations confronting Us in these cases that the approach I cherish may be applied.

In any event, I am constrained, as a Filipino, to voice my deep regret that blockvoting has been adopted in the impending elections of April 7th next, even conceding as I do that it is not unconstitutional. I perceive shades of its incongruity with what lies at the bottom of Amendment No. 1 of the Constitution, seemingly blurred ironically enough by the plain connotation of Its tenor, indeed, the very reason advanced by the respondents that blockvoting has been adopted in order to more or less insure representation for the small provinces and the old congressional districts and thereby remove the undue advantage that individual voting affords to the more populous provinces or districts does not appeal to me to be within the original intent and contemplation of the amendment. The Solicitor General himself has explained during his oral argument against the petition of Atty. Juan David that the fact that the amendment fixes the number of members or delegates to compose the interim Batasang Pambansa at 120. when viewed, on the one hand, in the light of the provision that implicitly includes in that number the sectoral representatives to be separately elected and the members of the Cabinet to be selected by the President, and, on the other, the number of existing congressional districts, of nearly that number, eloquently attests for the obvious original intent of the amendment that the district concept of representation ordained for the members of the regular National Assembly is not yet to be in force.

I have no doubt whatsoever that such pose of the Solicitor General is correct. I would add, importantly however, that it is quite apparent that the original concept must have been adopted for two fundamental reasons. First, in that manner alone is it possible to reduce the size of the Batasan to the manageable and efficient body it was conceived to be. After all, it is going to be no more than a temporary transitional body whose legislative power would only be dual with the President until martial law shall have been lifted, the main purpose of its creation being to preserve the framework laid down by the Constitution that there be an interim legislature to carry out the provisions of Sections 5 and 6 of Article XVI and thus pave the most expedient way to the establishment of the parliamentary system of government envisaged by the people thru the main body of the Charter. Relatedly, there is the consideration also of economizing as much as possible with such reduced legislative structure. All these, to be faithful to the clamor of the people thru the referendum of January 10-15, 1973 for the scuttling of the interim National Assembly which was condemned for being not only somehow immorally constituted, what with its automatically selected members, but also because of its being disproportionately large and unwieldy, contrary to the ideals of efficiency, expeditiousness and thrift of the New Society.

Secondly, the concept of regional representation appears to be an innovative feature which could be tried in our search for an indigenous political set-up less western and more consonant with our political traditions, customs, expertise and experience. In other words, the regional idea is a trial or experimental breakaway from the district type of representation to which the people were accustomed in the past and to which could probably be traced the ease with which political bossism and warlordism, so much detested and feared by all sectors of the people became not only possible but prevalent. I cannot divine any better intendment to attribute to the regional set-up provided for in the amendment and I am not persuaded that circumstances have so changed in less than a year and a half since its approval that a return to the old system is now warranted.

The foregoing are the compelling considerations that make it incomprehensible to me why the proposal of some members of the Batasang Bayan to adopt blockvoting had to be accepted and made part of (the election code. I find it difficult to avoid saddening disillusion and apprehension that somehow the pervasive influence of the so-called Old Society politics has not yet been entirely eradicated and that, on the contrary, it may yet, God

forbid, resuscitate, if it has somehow been deadened, with a vengeance. If in any sense there was, on the part of the authors of the proposal, any design to reap undue political over-advantage by its adoption. I like to believe that such factor was not considered by the Batasan for it would certainly detract from the image of fairness and square dealing portrayed by the New Society. It is of secondary importance, whether it was because of the monstrous electoral frauds and anomalies it brought in its wake that such modality of voting was legislated out by the Congress of the Philippines. What cannot be denied is that it was popular clamor against it that compelled the legislature to abandon it. And what would be a strange phenomenon is that something that the Old Society discarded as not suited to our principles and ideals about suffrage is apparently deemed as a blessing and a necessity by the New Society.

In brief, while it may be full of political wisdom to enlarge the base of suffrage and representation in the manner now provided for in the Election Code of 1978, and perhaps, this could make the people in the congressional districts happier than they would otherwise could be. I would not want the high idealism and innovative spirit so apparent to me in Amendment No. 1 to pass away without the least semblance of some necrological lamentation. Granting that such evident underlying motivations as I have mentioned may not be enough to constrain or drown out what the language of the amendment in question seems to allow, I would like to at least go on record that I honestly believe that the adoption of the district concept of representation that brought forth the need, for practical purposes, to adopt blockvoting does not square exactly with what I have always cherished to be the idealistic and purifying tenets of the New Society. As a member of the Court, I cannot condemn it because it has not been shown to be against the fundamental law of the land, but I am truly saddened by it because, in my considered opinion, the New Society does not stand to gain from it in the plain of the principles for which it stands. I reiterate that it is not the element of unfairness that others see in blockvoting that makes me feel as I do about it, since viewed in the light of the considerations so ably discussed in the main opinion, such unfairness is not legally and factually apparent. Rather, it is the disconcerting thought that because of it, the elaborate scheme framed by Amendment No. 1, of an interim legislative body exercised of the evils that characterized politics in the past, to prepare our people for the new type of government intended to be ushered in by the Constitution itself will no longer materialize. What comes as the sole consolation for me is that great and deliberate care has been taken in the selection of the candidates, who if elected may be able to redeem the situation.

But there is yet another very important consideration that impelled me to write this separate opinion. It relates to the golden "opportunity, in my estimation, that has been allowed to pass, to bring about a more desirable, if not perfect unity, of the nation.

It has not been without passion that as a member of the Supreme Court I have always defended Our decision in the Javellana case as the foundation of the legitimacy of the existing government. It is a matter of public knowledge, more so in the ranks of the members of the bar and the bench, that I have always maintained with all vehemence I can master that, viewed in the correct perspective of political and constitutional law, Proclamation 1102 on the ratification of the 1973 Constitution cannot be legally faulted, if only because the Amendment Clause of the 1935 Constitution was inapplicable thereto, considering that it refers to the ratification of amendments only and not of a new constitution, which it is within the sovereign prerogative of the people to adopt and ratify in any feasible manner under the prevailing circumstances, as attested by no less momentous a precedent than the ratification of the present Constitution of the United States of America which was not done in accordance with the amendment clause of the Articles of Confederation. Neither Javellana, which hindsight teaches could have been more felicitously worded, nor any later decision of Ours has in any degree discouraged, much less quieted, the dissent of a quite respectable sector of our people to the view that the 1973 Constitution is the legitimate supreme law of the land. Much as we want to believe otherwise, the transcendental division of the country on this score has persisted through all the five years since January, 1973, That the size of the opposition portended no danger to the

peace and order of the country simply because it has lingered more as a whispering campaign does not detract from the unwholesome implications of its existence. Without intending to claim any credit for it, if any could be due, it has been a self-assigned mission on my part to keep abreast of the developments related thereto, and I have long been hoping and praying that this seismic wound that has been pestering the nation would soon be healed.

I may be naive in this respect, but I sincerely felt that when the leaders of the Liberal Party, former Senators Gerardo Roxas, Jovito Salonga and Francisco "Soc" Rodrigo, conditioned their participation in the forthcoming suffrage on the elimination of blockvoting, among others. — these others have been substantially agreed to by the administration — I thought that without in any way agreeing with their stand and tactics, this was the chance I had long dreamed of. If for any reason, blockvoting should result in any advantage at all for the administration, it is my very conviction that the unity I have in mind is worth much more than the complete victory of the administration ticket, which after all, political pundits consider safe to predict with or without blockvoting, what with the unprecedented record of achievement and unfailing loyalty to the interests of the country and the people that it can proudly present to the world. All relevant considerations duly taken into account. I feel grieved by the loss of that chance to make even the dissenters to Javellana to unite in support of the government under the New Constitution not that those dissenters could be exempt from owing loyalty to it otherwise, but it always gives a wonderful feeling to think that more weapons to mute their objectives are available.

Anent the invocation by petitioners of the provisions of Section 9(1) of Article XII C of the Constitution which enjoins that "Bona fide candidates for any public office shall be free from any form of harassment and discrimination." I cannot share the holding in the main opinion that what the harassment and discrimination contemplated therein are comprehended already within the compass of the equal protection clause of the Bill of Rights in Article IV of the Charter, for which reason, the test applied to the complaint of petitioners against blockvoting as a form of harassment and discrimination is the rational classification test. Having in mind the peculiar, unique and ingenious forms and ways of harassment and discrimination practiced by our politicians before, which could conceivably defy the equal protection test of rational classification or discrimination. I prefer to hold that the provision in question refers to any form or means of harassment or discrimination, including those that might otherwise be sanctionable under the equal protection clause. The framers of the Constitution cannot be assumed to have indulged in an extravagant waste of words by phrasing the provision the way it appears. There was absolutely no need for Section 9(1), if all that the constitution makers had in mind was to guarantee all candidates equal protection of the laws. The unforgettable experience undergone by even members of the convention that spelled injustice and oppression during electoral combats should be read into this provision. This is a new provision and it was adopted because the most expansive construction of the old equal protection clause was found not to be enough guarantee against injustice and unfairness in the electoral arena.

This is not saying, however, that the system of blockvoting under the Election Code of 1978 being assailed by petitioners contains the elements of harassment and discrimination under Section 9(1). I see nothing of harassment in optional blockvoting. Neither is there any degree of discrimination therein that is unduly oppressive. The argument that because neither the Kilusang Bayan nor the Lakas ng Bayan aggregations are political parties, the candidates in their respective tickets should be deemed also as independent candidates who must be voted individually by their respective name to avoid discrimination overlooks the fact that said candidates have formally, if loosely, grouped together in the pursuit, not only of a common victory but of some common political beliefs, ideals and objectives revolving fundamentally around the promotion of the aims of the New Society. It is thus neither harassment to their independent opponents nor discrimination against them to treat the former as aggregations.

- 2 -

Coming now to the plea of petitioners that the provisions on turn-coatism under Section 10 of Article XII C and on accreditation of political parties in Section 8 of the same article be declared as in force and applicable in these cases, I am in full accord with the holding in the main opinion that application of the same to the coming election is entirely out of the question. Of course the said provisions are in force, but how could they be applied?

I simply cannot see how one can talk of the political parties, which the Constitution obviously contemplates, in the context of our political situation today. Let us not forget that in the scheduled election of April 7, what is involved is not an institution established by the Constitution itself. The Batasan is not a creation of the Constitution but of Amendment No. 1. In fact, it is undeniable that the Constitution does not contemplate the election of an interim legislature. The interim National Assembly it created was not designed to be an elective body. The Constitution itself designated who its members were supposed to have been. It is but fitting and proper, therefore, that, since the amendment itself does not provide for any specific manner of electing the members of the Batasan, such manner should be "prescribed and regulated by law," meaning necessarily, by a Presidential Decree.

Although Amendment No. 8 does provide that "all provisions of this Constitution not inconsistent with any of these amendments shall continue in full force and effect," plain common sense dictates that no constitutional provision can be applied when and where the situation contemplated for such application does not exist. In my view, the establishment of a parliamentary system of government by the Constitution and the proclamation of martial law which brought forth the institution of the New Society have together given birth to a new era in the political life of the Philippines that can hardly justify the recognition of the political parties existing in January, 1973, when the Constitution took effect, for purposes of the accreditation referred to in Section 8 of Article XII C.

Examining this provision closely, it will be noted that the system of accreditation established thereby constituted in itself a new process, which cannot be altered or modified by the legislature, thru which a more responsible party system could be developed. While it does not directly prohibit the creation of more than three political parties, it in effect compels all such parties to so conduct themselves as to be worthy of the confidence of a substantial element of the voting populace, otherwise, those who cannot obtain the third highest number of votes in the preceding election would not be able to enjoy in the next one the rights and privileges usually needed to carry on a significant campaign. In this connection, the question that presents itself is this: Can the Nacionalista Party and the Liberal Party be accredited for the purposes of the coming election, taking into account the votes garnered by them in the last election held before the new Constitution came into being? The ready answer to this question is No, for the simple reason that by the letter of the code, this election is regional, hence the constituency for which accreditation can only be asked is the region where it seeks to have candidates, just as the criterion for its accreditation has to be the number of votes it obtained in that region. And to be true to the concept of a constituency implicit in the system, the previous election must have also been regional, which everyone knows has not been held anywhere in the country. Indeed, there is no way of knowing exactly when the accreditation system envisaged in the Constitution will start to operate. Consequently, since no existing political party can be legitimately accredited, the rights and privileges which should accrue to accredited parties should be allowed to be enjoyed by any new group or aggrupation of candidates who happen to possess the nearest semblance of a political party by. in the words of Section 199 of the Code, "pursuing the same political ideals in government," if only for the purposes of the impending election. All these in the interest of holding an orderly election and enabling the sovereign people to exercise the right of suffrage in the manner most proximate to that designed in the Constitution.

At the same time, the existence of groups or aggrupations in default of fully and duly organized political parties

should pave the way to the organization of the kind of political parties that perhaps is envisioned by the Constitution. If the New Society is to mean anything at all, and if the vociferous and incessant condemnation of the politics of pre-martial law is to bear any useful fruit, any idea of applying the provisions of the Constitution on political parties to the existing ones must be discarded, until they have so reorganized and reformed as to fit within the concepts of the New Society.

In the light of the foregoing considerations, I cannot see my way clear to considering the inclusion of members of the Liberal Party in the ticket of the Kilusan ng Bayan as a change of party on their part, within the proscription of Section 10 of Article XII C of the Constitution. The Kilusan is not a party, and whatever it enjoys now that should pertain only to a party, has to be given to it only by force of necessity for the purposes of this election. Section 10 was conceived to eradicate turncoatism — a very laudable objective. But the concept of turncoatism it condemns does not apply to the situation of those members of other political parties who have joined the Kilusan and, for that matter, those who joined the Lakas ng Bayan or any other opposition or independent group. The nation is now precisely in that stage of its political life where the citizens who have the general welfare and the country's freedom, happiness and prosperity in their hearts, are trying to look for their respective rightful places where they can be of maximum utility in the reform movement that has engulfed everyone and every human activity in this part of the world. To leave any of the old political parties now and join another is not turncoatism that is to be disdained: it is a patriotic endeavor that is in keeping with the paramount objective of helping the Philippines to be great again.

SEPARATE DISSENTING OPINION

TEEHANKEE, J., dissenting:

I. I dissent from the majority's dismissal of the petitions on the fundamental ground in consonance with my stand in earlier cases^[1] that the so-called October 27, 1976 amendments to the 1973 Constitution which sought to create the Interim Batasang Pambansa in lieu of the interim National Assembly provided for in Article XVII of the 1973 Constitution were constitutionally void and invalid since the constituent power to propose constitutional amendments during the transition period (between enforcement of the 1973 Constitution and election and assumption of office of the members of the regular National Assembly) is expressly vested in the interim National Assembly (not in the incumbent President) and the only way to fulfill the express mandate of the Constitution in proposing and effecting any constitutional amendments is the convening of the interim National Assembly to exercise the constituent power to propose amendments.

This was not done, although it is universally recognized that the Constitution is a "superior paramount law, unchangeable by ordinary means"^[2] but only by the particular mode and manner therein prescribed for otherwise "there will not be stability in our constitutional system, and necessarily no stability in our government."^[3]

But with the majority vote in *Sanidad*, supra, the proposed amendments were proclaimed as ratified and in full force and effect as of October 27, 1976 under Presidential Proclamation No. 1595. And elections have been called for April 7, 1978 under Presidential Decree No. 1296 (1978 Election Code) for electing the members of the Interim Batasang Pambansa with greatly diluted powers and functions compared to those of the interim National Assembly. (Thus, contrary to the very tenets of the parliamentary system, the Interim Batasang Pambansa which is shorn of the interim and regular Assembly's power to ratify treaties, cannot elect the Prime Minister nor replace the incumbent President as Prime Minister who may however dissolve the Batasan at any time^[4] and who "shall continue to exercise legislative powers until martial law shall have been lifted."^[5] The President (Prime Minister) is further empowered to "issue the necessary decrees, orders, or letters of instructions, which shall form part of the

law of the land" whenever the Interim Batasang Pambansa or the regular National Assembly "fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action." [6])

II. We are thus confronted with the reality of the scheduled April 7, 1978 election of Interim Batasang Pambansa members and the merits of the petitions at bar which in the main assail the validity and constitutionality of the so-called "optional block voting" system now resurrected in Presidential Decree No. 1296 for the said elections and pray that respondent Comelec be enjoined from implementing the same citing the Comelec's own position papers in the Batasan Bayan's last session on January 27, 1978 that "block voting would only make a mockery of the elections, that it is associated with electoral frauds and malpractices, that adopting it would seemingly insure political advantage to the candidates of the administration and, therefore, the credibility of the election would be impaired because of it." [7]

I vote for the granting of the petitions and for the outlawing of the block voting scheme on the following grounds.

1. The block voting scheme offends the due process and equal protection clauses of the Constitution and is furthermore proscribed by the express injunction of the new provision in Article XII, section 9 (1) of the 1973 Constitution that "Bona fide candidates for any public office shall be free from any form of harassment and discrimination."

Petitioner Peralta as an independent La Union candidate complains with reason that he is unfairly discriminated against and prejudiced by the block voting scheme in that "there are three ways to vote for a KIBALI [Kilusan ng Bagong Lipunan] candidate: (1) by writing his name, (2) by writing KIBALI and (3) by writing NACIONALISTA, on the ballot. On the other hand, there is but one way to vote for an independent, like petitioner, only by writing his name." [8] Actually, the arbitrary and oppressive edge given the KBL candidate against an independent candidate amounts to 6 to 1 for judicial notice may be taken of the ballot subject of the petition in Case L-47883 entitled "Lakas ng Bayan (Laban) vs. Comelec" complaining against the double listing of KBL candidates in Metro Manila where the Comelec recognizes three additional ways of voting for a KBL candidate viz by writing (4) BL (5) NP (for Nacionalista Party) or (6) just a plain N - unless enjoined by the Court in said pending case. Said petitioner further aptly observes that "under martial law where the freedom, privileges and immunities of the citizens are curtailed or suspended, the evils of block voting are enhanced to a hundredfold." [9]

2. Historically, it may be noted that block voting was repudiated by the people through Congress which abolished block voting in 1951 and never reinstituted the same. As observed by former Senator Jovito Salonga, "(B)lock voting was used after the Second World War in two elections. In the 1947 elections, the administration almost wiped out the opposition. In the 1949 elections, through the use of block voting, massive frauds were committed and facilitated by the party in power. The two great oppositionists at the time, Jose P. Laurel and Claro M. Recto - who headed the senatorial slate - and the men who ran with them, became easy victims of block voting. So great was the indignation of the people that Congress had to abolish the optional block voting scheme in March, 1951. x x x Block voting makes it easy for fake ballots to be used with maximum effect. Twenty-one names of candidates in Metro Manila need not be written out, only the name of the political party or group. Block voting makes it easy to verify whether the voter who has been bribed will vote according to previous understanding. If he finishes accomplishing his ballot in, let us say, five seconds, the one assigned to watch him can readily conclude that the voter complied with his part of the bargain. One who writes out 21 names on his ballot cannot finish the task in five seconds." [10]

When taken against the backdrop of 5-1/2 years of martial law and its restraints without any political activity so much so that the main opposition party, the Liberal Party, has been urged in vain to take part in the elections and

the government's ticket of KBL candidates throughout the country are all but unopposed "in an awesome display of power" with only three reported "quixotic" pockets of opposition in Metro Manila, Region V (Bicolandia) and Region VII (Central Visayas),^[11] the "invidious discrimination" that is inflicted by the block voting scheme upon the opposition and independent candidates calls for judicial protection of their constitutionally protected rights of due process and equal protection. This is all the more so since the block voting scheme that has been revived is closer to the pre-war scheme under Commonwealth Act 666) of practically compulsory straight party balloting whereby the writing of the name of the party now cancels and invalidates the written names of the candidate(s) not member s) of said party^[12] whereas in the prewar scheme, the writing of the party's name prevailed over the individual candidate's) as distinguished from the postwar scheme in 1947 and 1949 (under Rep. Act 180) which provided that the individual candidates' names as written prevailed over the party's.^[13] It has thus been noted that "since the administration slate has more advantages than the opposition, it assumes a heavier burden in being fair."^[14]

3. The majority's thesis that "in other jurisdictions ballots providing for optional straight party voting have been accepted as a standard form"^[15] and that there is reasonable basis for favoring official candidates against independent candidates who are free to avail of such advantages "by joining a political party, group or aggrupation"^[16] with the observation that block voting "favors the strongly organized parties or groups [and] tends to prevent the proliferation of political parties or groups"^[17] may hold true for other times, places and climes but certainly not in the context of the present martial law situation and the Philippine experience.

It is a matter of daily comment in the press that the government's KBL slate is running practically unopposed and there certainly is no proliferation of parties or groups to even watch out for. Independent candidates under such circumstances will not find it easy to follow the majority's solution that they become official candidates of non-existent or non-participating political parties or groups. Most importantly, aside from the people's repudiation of block voting since 1951, the 1973 Constitution has in effect outlawed the inherent discrimination in block voting against independent candidates through its new provision that bona fide candidates "shall be free from any form of harassment and discrimination."

This new provision which is not found in the Constitutions of other states and jurisdictions manifestly constricts the classifications heretofore permitted in the application of the general equal protection clause by specifically providing that in elections for any public office, bona fide candidates may not be subjected to any form of discrimination (such as that of block voting) which might otherwise have been permissible against independent candidates.

Petitioner Reynaldo T. Fajardo who was chairman of the Committee on Political Parties in the 1971 Constitutional Convention submitted his committee's printed report which bears out his contention that block voting was outlawed by this new Constitutional provision. The committee's explanatory note on the draft of said provision (which was adopted practically verbatim save that protection against harassment was added) further emphasized that "T)his provision is to be understood as having special reference to unaffiliated or partyless bona fide candidates. Extending to them the equal protection of the law is but a matter of elementary justice. If the State guarantees equal protection to groups of individuals, such as political parties, it is but logical that the same protection be made available to individuals, separately, without discrimination in any form."

4. The basic consideration is the principle of due process and equal protection of the laws as enshrined in the very first clause of the Bill of Rights which negates state power or that of the party in power to act in an arbitrary or oppressive manner and stands as the embodiment of the sporting idea of fair play and the guaranty of justice. In all this, U. S. Chief Justice Earl Warren had well stressed that it is the spirit and not the form of law that makes justice alive.

The late Justice Jose P. Laurel (himself a victim of block voting in the 1949 elections[18] had earlier enjoined us that "(R)epublicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it." [19]

It was in this same spirit that U. S. Chief Justice Earl Warren in formulating the "one man, one vote" formula as the constitutional rule to be followed in the reapportionment of representation in State legislatures[20] held in upholding plaintiffs' contention that they were denied "equal suffrage in free and equal elections ... and the equal protection of the laws", that ". . . (E)specially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized . . ." and "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us. x x To the extent that a citizen's right to vote is debased, he is that much less a citizen."

5. Finally, petitioner Juan T. David has raised the prejudicial question that since P.D. 1296, the 1978 Election Code, has not yet been published in the Official Gazette (as per certification dated February 16, 1978 of the Government Printing Office[21]) the provisions thereof particularly those imposing penal sanctions may not be enforced until after the lapse of 15 days from publications in the Official Gazette and that block voting as therein provided may not be enforced because the Election Code of 1971 (which does not provide for block voting) should be deemed as still in force and as not having been legally repealed.

This has sound basis under the pertinent laws, Article 2 of the Civil Code which provides that "Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided x x" and Section 11 of the Revised Administrative Code which likewise requires that "(W)hen laws take effect. -- A statute passed by the Philippine Legislature (National Assembly) shall, in the absence of special provision, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette, the date of issue being excluded. For the purpose of fixing such date the Gazette is conclusively presumed to be published on the day indicated therein as the date of issue."

The Court held through then Chief Justice Ricardo Paras in *People vs. de Dios*[22] that "it is an elementary rule of fair play and justice that a reasonable opportunity to be informed must be afforded to the people who are commanded to obey before they can be punished for its violation' citing the general principle enunciated in an earlier case[23] that "before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties."

Such legal requirement of publication in the Official Gazette for the effectivity of laws is vital and indispensable and may not be waved away with the contention that copies of the election decree have been published and distributed or the people advised thereof through the newspapers. In a time of proliferating decrees, orders and letters of instructions which all form part of the law of the land, the requirements of due process and of the Rule of Law demand that the Official Gazette as the official government repository promulgate and publish the texts of all such decrees, orders and instructions so that the people may know where to obtain their official and specific contents.

[1] *Sanidad vs. Comelec*, 73 SCRA 333 (Oct. 12, 1976); *De la Llana vs. Comelec*, L-47245, Dec. 9, 1977; *Hidalgo vs. Marcos*, L-47329, Dec. 9, 1977; *Aquino vs. Comelec*, 62 SCRA 275 (Jan. 31, 1975); and *Gonzales vs.*

Comelec, L-40117, Feb. 22, 1975.

[2] Marshall, C.J. in *Marbury vs. Madison*, 1 Cranch 137 (1803)

[3] Zaldivar, J., dissenting op. in *Javellana vs. Exec. Sec.*, 50 SCRA 30 (1973). See *Tolentino vs. Comelec*, 41 SCRA 702 (1971) and Resolution denying motion for reconsideration dated Nov. 4, 1971.

[4] Amendment No. 3, October 27, 1976 amendments.

[5] Amendment No. 5, *idem*.

[6] Amendment No. 6, *idem*.

[7] Petition of Pedro G. Peralta in L-47771, page 7.

The Bulletin Today issue of January 28, 1978 reported: "(S)olicitor General Estelito R. Mendoza, chairman of the committee on revision of laws and the election code, read on the floor the official stand of the commission on elections. The Comelec said block voting belonged to a period of the nation's history associated more with electoral frauds and malpractices. It added that the people may take it as a form of political backsliding 'incompatible with the reformist image of the New Society.' The poll body said that in block voting there is strong possibilities that only the administration may present candidates because opposition groups would shy away from the polls." (at page 11)

The Times Journal issue of the same day reported: "(C)ommission on Elections Chairman Leonardo B. Perez said in his position paper that block voting would only make a mockery of the elections as there is a strong possibility that only the administration party will present nominees. 'The credibility of the results of the elections would then be impaired,' he said. Even Solicitor General Estelito P. Mendoza, chairman of the Batasang Bayan's committee on revision of laws which drafted the 1978 electoral code, denounced the Espinosa proposal, saying it was an easy way of suppressing the free and deliberate exercise in judgment." (at page 1)

The Evening Express in its editorial of January 31, 1978 entitled "Block voting needs a second hard look" commented that: "(W)hen certain pro-administration leaders and independent minded individuals and even the Commission on Elections come out against block voting because it is associated more with electoral malpractices in the past than with electoral reformation, then it's time to have a second hard look. What is most important, to our mind, is not only to insure free, orderly and honest elections but also to make them credible. When the Comelec, the watchdog of political exercises, says that the credibility of the elections may be impaired because of 'block voting' then we can say that this independent (constitutional) body has the best of intention - to protect and preserve the popular will."

[8] Peralta supplementary memorandum, page 1.

[9] Peralta petition, page 8.

[10] Panorama magazine Bulletin Today) issue of Feb. 26, 1978, page 6.

[11] Orlando F. Aquino: "Keeping Posted", Evening Post issue of March 8, 1978.

[12] Sec. 155 of P.D. 1296, par. 28 provides: "If a voter has written in the proper space of his ballot the name of a political party, group or organization which has nominated official candidates and the names of individual candidates not belonging to the ticket of the same political party, group or aggrupation in the spaces provided therefor, all of the votes indicated in the ballot shall be considered as stray votes and shall not counted; x x " (emphasis supplied)

[13] See main opinion, pages 5-6.

[14] Apolonio Batalla: Second Thoughts, Bulletin Today issue of March 9, 1978.

[15] At main opinion, pages 6-7, 11.

[16] Idem, page 14.

[17] Idem, page 16.

[18] Supra, par. 2 hereof at page 5.

[19] Moya vs. del Fierro, 69 Phil. 199, 204 (1939).

[20] Reynolds vs. Sims, 377 U. S. 533 (1964).

[21] Petitioner David's Memorandum of Feb. 26, 1978, Annex A.

[22] L-11003, August 31, 1959.

[23] People vs. Que Po Lay, 94 Phil. 640 (1954); See also Lim vs. Central Bank, 104 Phil. 573 (1958) and Comm. of Civil Service vs. Cruz, 15 SCRA 638 (1965).

SEPARATE DISSENTING OPINION

MUÑOZ PALMA, J., dissenting:

"The Constitution shall be the bedrock of our Republic."

(From the Speech of President Ferdinand E. Marcos at the opening of the 1971 Constitutional Convention. June 1, 1971)

La Constitucion, x x x es la ley de la paternidad y de los afectos, del poder creador, que rige la vida en sus diversos ordenes. Obra del pueblo, y no de un partido, ha de ser, por tanto, la Constitucion para que el pueblo deba amarla y defenderla y los gobernantes respetar y cumplirla." , . .[*]

(From the Speech of President Claro M. Recto at the opening of the 1934 Constitutional Convention, July 30, 1934: emphasis supplied)

The Malolos Constitution 'Is the most glorious expression of the noble aspirations of the Filipino people a mirror of their culture and a clear proof before the world of their capacity to govern themselves."

(From the Speech of President Emilio Aguinaldo, Proclamation of the Malolos Constitution. January 21, 1899)

It was in the spirit of the transcendental principles enunciated in the foregoing statements and of similarly inspired pronouncements, too many to be quoted, of our forbears and leaders of thought and of government of the past, that I wrote my dissenting Opinion in Sanidad, et al. v. COMELEC, et al., L-44640, October 12, 1976. and the accompanying cases.

What was challenged in Sanidad was the constitutionality of Presidential Decree Nos. 991 and 1033 which called for a referendum-plebiscite on October 16, 1976. on certain proposed constitutional amendments, one of which was to substitute the Interim National Assembly with an Interim Batasang Pambansa. I expressed there the opinion that the incumbent President did not have constituent powers, that is, the power to propose amendments to the 1973 Constitution, and that if there was need of amending the Constitution the amendatory process

provided for in Art. XVI, Section 1(1) and (2). or Art. XVII. Section 1 5. of the 1973 Constitution, was to be followed. I said:

XXX XXX XXX

"1. That sovereignty resides in the people and all government authority emanates from them is a fundamental, basic principle of government which cannot be disputed, but when the people have opted to govern themselves under the mantle of a written Constitution, each and every citizen, from the highest to the lowliest, has the sacred duty to respect and obey the Charter they have so ordained.

XXX XXX XXX

"The Filipino people, wanting to ensure to themselves a democratic republican form of government, have promulgated a Constitution whereby the power to govern themselves has been entrusted to and distributed among three branches of government: they have also mandated in clear and unmistakable terms the method by which provisions in their fundamental Charter may be amended or revised. Having done so. the people are bound by these constitutional limitations. For while there is no surrender or abdication of the people's ultimate authority to amend, revise, or adopt a new Constitution, sound reason demands that they keep themselves within the procedural bounds of the existing fundamental law." (73 SCRA 455.456)

My view in Sanidad was reiterated by me in *Dela Llana v. COMELEC, et al.*, L-47245. and *Hidalgo v. COMELEC et al.* L-47329. December 9, 1977. The issue was on the validity of another national referendum for December 17, 1977. which referred to the 1976 amendments Nos. 3 and 7 of the Constitution. In these two cases. I stated that inasmuch as amendments Nos. 3 and 7 were not validly proposed and ratified. Presidential Decree No. 1229 which implements said amendments is and void.

The cases now before Us raise legal questions which center on the election of representatives to the Interim Batasang Pambansa. Without necessity of giving my views on the different issues raised in these Petitions, I vote to declare as unconstitutional the challenged portions of "The 1978 Election Code" as they are without constitutional basis, conformably to my opinion in Sanidad that the Interim Batasang Pambansa is not validly constituted and suffers from a basic constitutional infirmity.

I strongly reiterate here what I wrote in Sanidad that the only possible measure that can lead our country and people to a "condition of normalcy" is the lifting and ending of the state of martial rule and the implementation of the Transitory Provisions of the 1973 Constitution for the convening of the Interim National Assembly in order that the latter may carry out the objectives for its creation as decreed in the 1973 Constitution, (supra, p. 459.)

[*]"In order that it may be effective as an instrument for organizing the powers of the State and for safeguarding the rights of the citizen and of soviet): in order that it may command the respect and reverence of all governors as well as governed: in short, in order that the people may consider it their duty to love and defend it. the Constitution should be the work of the people, their legitimate creation, moulded from their hands, like a gem from the hands of the artificer, like the universe from those of God. It is the law of paternity and of the affections, of the creative power, that rules life in its diverse manifestations, The Constitution must be, therefore, the work of

the people and not of a political party if the people are to love and defend it, and if the governors are to respect and obey it." (President Recto's Inaugural Address. *The Framing of the Philippine Constitution* by Jose M. Aruego. Vol. 1. p. 54. italics supplied)

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.