

**ABELARDO SUBIDO, COMMISSIONER OF CIVIL SERVICE,
PETITIONER, IN RE: VALIDITY OF SECTION 4 AND SECTION 8(A),
PARA-GRAPH 2, REPUBLIC ACT 6132. IN THE MATTER OF THE
PETI-TION FOR D...**

G.R. Nos. L-32436 & L-32439. September 09, 1970

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The above-entitled petitions for declaratory relief, cognate in nature and similar in purpose, having been filed with this Court pursuant to Section 19 of Republic Act 6132, to which petitions the Solicitor General has filed the corresponding answers; and hearings having been held wherein not only the parties but also amici curiae, namely, Senators Lorenzo Tañada, Arturo Tolentino, Jovito Salonga and Emmanuel Pelaez, orally argued;

IT APPEARING:

That on 16 march 1967, acting pursuant to Section 1, Article XV of the Constitution, the Congress in joint session assembled, by a vote of three-fourths of all the members of the Senate and of the House of Representatives voting separately, passed Resolution No. 2 calling a Convention to propose amendments to the Constitution and providing inter alia as follows:

"SEC. 3. The office of Delegate shall be honorary and shall be compatible with any other public office: Provided, That Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the Convention or in any of its committees: Provided, however, That every Delegate shall be entitled to necessary travelling expenses to and from his place of residence when attending sessions of the Convention or of its committees."

That on 17 June 1969 the Congress in the same manner passed Resolution No. 4 amending Sections 1 and 2 of Resolution No. 2 and adding a new provision as Section 8 thereof, which reads:

"SEC. 8. Any other details relating to the specific apportionment of delegates, election of delegates to, and the holding of, the Constitutional Convention shall be embodied in an implementing legislation: Provided, That it shall not be inconsistent with the provisions of this Resolution."

That Republic Act No. 6132, approved on 24 August 1970, which is the implementing legislation called for in Section 8 of Resolution No. 2 as added by Resolution No. 4, provides in its Sections 4 and 8(a), paragraph 2, as follows:

"SEC. 4. Persons Holding Office. - Any person holding a public office or position, whether elective or appointive, including members of the armed forces and officers and employees of corporations or enterprises, owned and/or controlled by the government, shall be considered resigned upon the filing of his certificate of candidacy: Provided, That any government official who resigns in order to run for delegate and who does not yet qualify for retirement under existing laws, may, if elected, add to his length of service in the government the period from the filing of his certificate of candidacy until the final adjournment of the Constitutional Convention."

"SEC. 8 Prohibited Acts. - In addition to and supplementing prohibited acts provided for in the Revised

Election Code, in the election of delegates:

(a) x x x

Likewise, no head of any executive department, bureau or office, official or officer nominated or appointed by the President of the Philippines, head or appointing officer of any government-owned or controlled corporation, shall intervene in the nomination of any such candidate, or in the filing of his certificate of candidacy or give aid or support, directly or indirectly, material or otherwise, in favor of or against his campaign for election."

That the petitioners in these two cases, who are all government officials and employees, assail the validity of Section 4 of Republic Act No. 6132, and the petitioner in G. R. No. L-32436 assails likewise the validity of Section 8(a), paragraph 2, of the same Act, on the grounds: (a) that they are contrary to and inconsistent with Section 3 of Resolution No. 2, and violate the proviso in the aforementioned Section 8 thereof which states that the implementing legislation "shall not be inconsistent with the provisions of this Resolution," Republic Act No. 6132 being an enactment of the Congress, sitting as a legislative body, which cannot validly amend the Resolution passed by it as a constituent assembly; and (b) that Section 4 of the said Act constitutes class legislation which denies the equal protection of the laws, since in effect it disqualifies public officials and employees from serving as Delegates to the Constitutional Convention by considering them resigned from office upon the filing of their certificates of candidacy - a disqualification that does not apply to persons employed in private enterprises:

CONSIDERING:

1. That Section 3 of Resolution No. 2, in providing that "the office of Delegate shall be honorary and shall be compatible with any other public office," is a mere declaration which does not affect the intrinsic nature of the Office of Delegate from the standpoint of its compatibility or incompatibility with any other public office within the meaning of the Constitution; that a compatible office does not necessarily preclude its being subject to such restrictions as may be imposed by the Congress in the exercise of its legislative power as long as such restrictions do not contravene the Constitution;
2. That viewed in this light there is no inconsistency between the declaration in Section 3 of Resolution No. 2 and the provision of Section 4 of Republic Act No. 6132, and that in fact this Section, as well as Section 8(a), paragraph 2, are in accord with Section 2, Article XII of the Constitution, which prohibits officers and employees in the Civil Service, including members of the armed forces, from engaging "directly or indirectly in partisan political activities" or taking part "in any election except to vote";
3. That whatever the Congress (as a constituent assembly) might have intended by the declaration aforesaid it could not have been to allow government officials and employees, without exception, to run for or hold the office of Delegate to the Constitutional Convention without relinquishing their positions, considering that the Congress itself (as a constituent assembly), in line with the prohibition in Section 2, Article XII of the Constitution, provided in Section 2 of the same Resolution No. 2 that "The Delegates to the Convention shall be elected in an election to be held on the second Tuesday in November, 1970, in accordance with the provisions of the Revised Election Code;" and Sections 26 and 27 of the said Code provide as follows:

"SEC. 26. Automatic cessation of appointive officers and employees who are candidates. - Every person holding a public appointive office or position shall ipso facto cease in his office or position on the date he files his certificate of candidacy."

"SEC. 27. Candidate holding office. - Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

4. That although the aforequoted clause of Section 2 of Resolution No. 2 was subsequently omitted in Resolution No. 4, it is nevertheless indicative of the intent of the Congress (as a constituent assembly), in respect of Section 3, the two sections having been passed at the same time and in the same Resolution, and that in fact the said omission was left to be filled by implementing legislation, as it was in effect filled by Section 4 of Republic Act No. 6132, in conformity with Section 8 of Resolution No. 2, which latter section was added by Section 3 of Resolution No. 4.

5. That while Section 4 of Republic Act No. 6132 applies exclusively to officials and employees of the government or of government-owned and/or controlled corporations, it does not constitute discriminatory legislation which offends against the equal protection clause of the Constitution, since the classification is germane to the purpose of the Act and is based on substantial differences between the situation of said officials and employees and that of persons outside of the government service.*

6. Finally, that under Section 4 of Republic Act No. 6132 government officials and employees are not absolutely barred from becoming candidates for the office of Delegate to the Constitutional Convention, the only condition being that when they do so they should relinquish their positions; that this condition is imposed for reasons of public interest, among the most important of which are, first, that there are certain government offices which afford their occupants many built-in advantages not available to others and which may be used or abused to enhance their own candidacies, contrary to the very spirit of the equal protection clause invoked by the petitioners; and second, that to allow government officials and employees to campaign for the Convention and, if elected, to sit as Delegates therein without vacating their positions would be clearly detrimental to the government and to the public at large, which would thereby be deprived of their services for the unpredictable length of time that the Convention may last, without such positions being filled through new appointments, resulting in disruption of public service:

WHEREFORE, the Court resolved to DENY the prayers in the petitions and to declare that Sections 4 and 8(a), paragraph 2, of Republic Act No. 6132 are not invalid or unconstitutional.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Fernando, and Makasiar, JJ., concur.

Villamor, J. concurs in the result.

Zaldivar, J., dissents in a separate opinion.

Castro, J., concurs in a separate opinion.

Barredo, J., concurs and dissents in separate opinion.

Teehankee, J., on leave.

* "It is a well-settled rule in constitutional law that a legislation which affects with equal force all persons of the same class and not those of another, is not class legislation and does not infringe the constitutional guaranty of equal protection of the laws, if the division into classes is not arbitrary and is based on differences which are apparent and reasonable." *Manila Electric Co. vs. Public Utilities Employees' Assn.*, 79 Phil. 410, 412. See also *People vs. Carlos*, 78 Phil. 535, 542.

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CONCURRING AND DISSENTING OPINION

BARREDO, J.:

I concur in the Court's resolution to overrule petitioners' objection on constitutional grounds to the second paragraph of Section 8(a) of Republic Act 6132, but I cannot agree to view similarly the majority's position and reasoning in so far, as Section 4 thereof is concerned.

To say that the Court's resolution regarding said Section 4 disappoints me and has made me very unhappy is to put it mildly. When the majority wittingly adopts subrosa a premise that implies legislative deception upon the people, I consider it my bounden duty to take a stand which, to my mind, is more in keeping with my usefulness as a member of this Court. I claim no nobler sentiments nor deeper sense of duty, much less more wisdom, than those of any of my distinguished and learned brethren, but in these days when constitutionalism and everything it implies are in the air, it is my firm conviction that as the highest court of the land, the supreme tribunal to which the Constitution of this Republic has entrusted alone the final authority to interpret and construe its provisions in order to guide the citizenry and everyone else as to the true meaning and purposes thereof, it is incumbent upon Us to meet constitutional questions squarely after exhausting Our efforts in determining the relevant factual backgrounds of the disputed act, instead of resorting to equivocations and theoretical premises, hardly logical in themselves. I am sure that another occasion like this will not arise in the foreseeable future. In these cases now before Us, the Court is called upon to pass upon the constitutional validity of an act of the legislature enacted, not in relation to ordinary matters of legislation, but to the proper steps needed to amend the present constitution or to make an entirely new one. That anything like this will not again be presented to this Court during the balance of my constitutional term here even if, God willing, I live beyond it, is a certainty. Withal, Our decision in these cases will affect all our people more deeply than ordinary laws. Unaccustomed yet, unlike my senior colleagues, to momentous situations like this, I have tried my level best to see it in their light, but the more I consider the pros and cons during Our deliberations, the more I am convinced that I cannot join them. I regret I have to say that I find the majority's posture, much more the expressed and unexpressed arguments supporting the resolution, to be not invulnerable, as I am sure the majority considers mine less sustainable, but I am firmly resolved that if I must err, I would rather err on the side of giving every Filipino an unhampered freedom to participate, in the manner he deems best fit for him in his circumstances, in the remaking of the fundamental law of the land, as long as he does not cause thereby any permanent injury to public interest. If none of us is certain he is correct, since there are formidable arguments for and against our respective positions, why should I vote to deny to any of our countrymen what the founding fathers of this nation might have decided he should enjoy?

Contrary to what its language readily implies and what, I am convinced, is the commonly accepted interpretation of Section 3 of Constituent Resolution No. 2, or better still; what I strongly believe to be its discernible intent, the majority opinion holds that said section which reads thus:

"SEC. 3. The office of Delegate shall be honorary and shall be compatible with any other public office; Provided, That Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the Convention or in any of its committees: Provided, however, That every Delegate shall be entitled to necessary travelling expenses to and from his place of residence when attending sessions of the Convention or of its committees."

cannot be interpreted as permitting officers and employees of the civil service, etc. to be candidates for Delegate in the coming constitutional convention without resigning from their respective positions or forfeiting the same, because according to the majority's expressed premise, said provision is "a mere declaration which does not affect the intrinsic nature of the office of delegate from the standpoint of its compatibility or incompatibility with any other public office within the meaning of the constitution." In other words, the majority maintains that

whether the office of Delegate is compatible or incompatible with another public office is not for the constituent Congress to say, but for the courts to determine, in the light of the intrinsic nature of the offices concerned, regardless of what the congressional view or determination on the matter may be, hence, such "declaration" does not bar Congress from making, in the exercise of its ordinary legislative powers, any of the offices involved a prohibited one, inspite of their being compatible.

The point of weakness that I perceive in this ruling of the majority lies in that it assumes that the constituent Congress or, for that matter, the legislative Congress, cannot allow one person to occupy simultaneously two or more incompatible offices, a hypothesis the correctness of which cannot be assumed. There is nothing in the constitution that generally enjoins such a practice. It is only with respect to members of the legislature that the constitution specifically prohibits them from accepting any other office or position in the government. (Sec. 16, Art. VI) On the other hand, Section 3 of Article XII which prohibits officers and employees from receiving double compensation would seem to imply that one person may occupy several positions, provided he is not doubly compensated, and the constitution is silent as to whether the offices are compatible or incompatible. As a matter of fact, how many officials are there in the government today who are occupying several positions which can be more or less incompatible? In any event, it is agreed that the familiar principle in the law of public officers that in the public interest, it is improper for one person to occupy simultaneously incompatible offices does not preclude the power of the legislature to make exceptions to said principle. With these considerations in mind, I hold, contrary to the majority's opinion, that the provision of Section 3 saying that the "office of Delegate shall be honorary and shall be compatible with any other public office" was not an empty declaration, resolving no question, guiding no one. Parenthetically, the majority has significantly omitted to say what is being declared by their own conceived "declaration". Is it a declaration of what need not be declared because it is palpable to everyone that intrinsically the office of Delegate cannot be incompatible with any other office in the government? Is it a declaration of policy? It is a declaration of what? The truth is that it is no mere declaration, in the empty sense the majority sees it. Contrary to the majority's view, I hold that the intention of Section 3 is to make it plain or to declare, and this is where the word declaration is more appropriate, that it is the will of the constituent Congress that the office of Delegate should be considered as compatible with any other office and that any occupant of the latter may be elected and may act simultaneously as Delegate in the constitutional convention, any doubts about the matter notwithstanding.[1]

To make its will more patent, Section 3 further expressly provides that "Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the convention or in any of its committees - - (and) (T)hat every Delegate shall be entitled to necessary travelling expenses, etc.", meaning to say that government officers or employees, who may be Delegates shall not receive any per diem because of their salaries, but as to travelling expenses, they will be entitled thereto like every other Delegate. The majority, however, passes over and does not make mention of these additional provisions. The explanation given during the deliberations is that these provisions are mere consequence of the "declaration" of compatibility. If the 'declaration' is "a mere declaration" indeed; which may not be availed of as a grant of authority to government people to run as such for the convention, why these provisions for the manner of compensating Delegates receiving salaries from the government?

Moreover, if it may be conceded that the plain words of Section 3 refer, as some of my colleagues argue, only to those who do not receive salaries from the government, (in other words, they do not necessarily, refer to persons in the government payroll) I find that Section 4 of Republic Act 4914 which was approved by the same senators and congressmen who passed the constituent resolution, for the purpose precisely of implementing the said resolution, provides as follows:

"SEC. 4. The office of Delegate shall be compatible with any other public office: Provided, That Delegates who do not receive any salary from the Government shall be entitled to a per diem of fifty pesos for every day of attendance in the convention or any of its committees: Provided, however, That a delegate who is receiving salary from the Government may choose to receive his salary or the per diem herein provided: Provided, further, That every delegate shall be entitled to the necessary travelling expenses to and from his place of residence when attending sessions of the convention or of its committee."

As can be seen, this provision speaks clearly and definitely of "a delegate who is receiving salary from the Government." In view of these words, can there still be any doubt that the Congress, both as a constituent body and as a legislature, had in mind allowing government officials and employees to sit as Delegates in the convention while at the same time being salaried by the government? As far as the majority is concerned, there is absolutely nothing in these words and phrases of our senators and congressmen in Section 3 of Resolution 2 and Section 4 of Republic Act 4914 to indicate that they intended to allow officers and employees of the government to be Delegates without resigning or forfeiting their positions. What makes me very unhappy, as I have said at the outset of this opinion, is that my limited knowledge and experience do not permit me to enjoy the luxury of indulging in the same process of reasoning which the majority has magnificently pursued in this case. I must confess I am envious of minds that can read in words a meaning that We ordinary mortals would commonly understand otherwise.[2]

Now that I have mentioned Republic Act 4914, might just as well say at this juncture that the majority's main thesis that the provision of Section 3 of Resolution 2 is a mere declaration was, during the deliberations, said to mean that such declaration, considering its somewhat equivocal or ambiguous phraseology, is not a rule of conduct permitting government employees to be Delegates but only a way of telling Congress, as a Legislature, that the constituent Congress had no objection to the former giving the permission in question. Granting such an unorthodox proposition to be correct, how does the majority view Section 4 of Republic Act 4914, which is practically a verbatim reproduction of Section 3 of Resolution 2? Also as a mere declaration, whatever that means, and not a rule or grant of authority, particularly because of the insertion therein of the clause which makes express mention of delegates receiving salary from the government? To me this question is purely rhetorical; it is interesting to find out if the majority has any answer to it. Personally, I cannot conceive of a legislative act intended to establish the procedure of electing Delegates to a convention as being "a mere declaration". And to see that Section 4 of Republic Act 4914 was not "a mere declaration", all We have to do is to consider that if the Congress had not approved Resolution 4 and Republic Act 6132, and an election were held under the provisions of Resolution 2 and Republic Act 4914 only, there would have been no question that officers and employees of the government would have been able to run therein without resigning, unless stopped by this Court's declaration in an appropriate proceeding that the resolution and the law are unconstitutional for being in conflict with Section 2 of Article XII of the constitution reading thus:

"Sec. 2. Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote."

As I see it, this is what the majority is reluctant to do. It has no desire to meet squarely the real question herein involved which is that constitutional question I have just referred to. Instead, the majority insists that "there is no inconsistency between the declaration in Section 3 of Resolution No. 2 and the provision of Section 4 of Republic Act 6132." Assuming section 3 of Resolution No. 2 to be a mere "declaration", whatever that means, again I ask, how about Section 4 of Republic Act 4914, aforequoted? I can conceive of a constituent resolution as being a mere "declaration", but I frankly cannot see how Section 4 of Republic Act 4914, being worded in the manner it appears can also be considered as a mere declaration.

In other words, the majority has chosen to base its resolution on the theoretical, not very logical, premise suggested by the amici curiae, Senators Arturo Tolentino and Jovito Salonga, that there is no inconsistency between the constituent resolution, on the one hand, and Section 4 of Republic Act 6132, on the other, rather than on the obvious factual predicate that the constituent resolution has been intended precisely to allow government officers and employees to be Delegates in the Constitutional Convention without forfeiting their positions. In support of this factual premise, I am referring to, I submit the following observations:

1. As already stated, Section 4 of Republic Act 4914, which indisputably is the legislative implementation of the constituent resolution in question, expressly mentions compensation for Delegates receiving salaries from the government. Why would Delegates receive salaries from the government unless they are employees? Why would the law speak of a Delegate choosing between his salary and the per diem unless such Delegate is an employee at the same time?
2. Resolution No. 2 was approved together with Resolution No. 3. As will be recalled Resolution No. 3 was intended to clear the way for members of Congress to be Delegates without forfeiting their seats. A cursory glance at the resolution would convince anyone of the truth of this proposition. The resolution reads:

"SECTION 1. Section sixteen, Article VI of the Constitution of the Philippines is amended to read as follows:

'SEC. 16. No Senator or Member of the House of Representatives may hold any other office or employment in the Government without forfeiting his seat, nor shall any Senator or Member of the House of Representatives, during the time for which he was elected, be appointed to any civil office which may have been created or the emolument whereof shall have been increased while he was a Member of the Congress. He may, however, be a Member of a Constitutional Convention.'"

Such being the case, it stands to reason that Resolution No. 2 had a parallel purpose insofar as officers and employees in the civil service are concerned.[3] Resolution No. 3 had to be submitted to the people for ratification and it is now a historical fact that the same was rejected. It is clear to me, however, that said rejection does not and cannot affect the original purpose and intent of Resolution No. 2. Withal, it is evident that whereas Resolution No. 3 was submitted to the people because there was at least some doubt as to whether or not the purpose thereof could be achieved without amending the constitution, it was believed unnecessary to do so with Resolution No. 2 because it must have been felt by the majority in the constituent Congress that the same is consistent with the constitution. No less than the amicus curiae, Senator Tolentino, expounded on this proposition when he was asked whether or not Section 2 of Article XII, which I have quoted earlier in this opinion, enjoining partisan political activity among employees in the civil service is applicable to the election of Delegates to the Constitutional Convention and he answered in the negative.

Incidentally, in his separate concurring opinion, Mr. Justice Castro argues that if the constituent Congress had really intended to give more effect to Section 3 of Resolution No. 2 than that of a "declaration", whatever he means by that, the Resolution No. 2 would have been submitted to the people for ratification in like manner as Resolution No. 3. I humbly submit that it is sufficient answer to this argument to point out that, as have just stated, there must have been a consensus that the resolution and the ordinary legislation to implement it would suffice to make officers and employees eligible in the convention without giving up their positions, notwithstanding Section 2 of Article XII of the Constitution. If such were not the belief of the legislators then, how could they have approved this resolution, even as a mere declaration, knowing the sense thereof to be unconstitutional?

3. It is a fact of common knowledge that after the passage of Republic Act 4914, government officials and employees interested in running for the convention took the said law as a permission for them to do so, notably

among them, the petitioner Commissioner of Civil Service who went to the extent of issuing an official opinion along this line to all offices of the government for the information of all the members of the civil service. (Opinion No. 17, 1970, Annex I of Subido Petition) No one ever questioned said circular. What is more, the Committee Report signed by Senator Pelaez, the senate sponsor of the measure in question, recommended the government officers and employees who will run should be considered to be on official leave until they are defeated or the end of the convention, should they win. I would like to quote from said report:

"The Committee favors this view particularly in the sense that the position of Delegate is not strictly speaking a 'Public office', not having the essential element of permanency or continuity required of a public office. It recommends however that adequate safeguards be embodied in the Convention law so as not to impair public service while allowing civil servants to seek delegate positions or to participate openly in the campaign."

At this juncture, I feel it is my duty to the people to state here that in following the line of reasoning it has pursued, the majority gave credence to the information that the real reason behind Section 3 of Resolution No. 2 was not to favor government officers and employees but, rather, like Resolution No. 3, it was to enable senators and congressmen to run. In other words, according to this information, the two constituent resolutions had exactly the same purpose, that is, to favor the legislators themselves, but one, Resolution No. 2, was worded in such an ambiguous and equivocal manner as to seem to refer to the other officers and employees in the government, thereby concealing the selfish and egoistic intent of the members of Congress. Such information swallowed by the majority chokes me. If such information is true, I am at a loss as to what words can best be used to denounce such deception upon the people, and the mere thought that this Supreme Court could base its decision in this important constitutional case on it naturally disappoints me.

I cannot believe, however, that the constituent Congress that approved Resolutions 2 and 3 could have really had such a deceptive purpose. There was absolutely nothing to be gained by it. With the rejection of Resolution No. 3, it is inconceivable that our legislators would still avail of Resolution No. 2 to run for the convention without forfeiting their seats. I am of the considered view that precisely because Resolutions 2 and 3 were approved at the same time, they were intended, as I have explained earlier, to favor the members of Congress and the other government officers and employees separately. Consequently, since the majority opinion is fundamentally anchored on an unacceptable predicate, it must necessarily fall.

I have earlier stated that Section 3 of Resolution 2 was approved by the constituent Congress notwithstanding doubts as to its possible conflict with Section 2 of Article XII. Judging from the fact that Republic Act 4914 practically reiterated in its Section 4, the Section 3 of Resolution 2, it can reasonably be assumed that the prevailing opinion in Congress has always been that it is not violative of the constitution for Congress to allow officers and employees of the government to run for the office of Delegate in the constitutional convention and to sit therein if elected without resigning their positions.

Under these circumstances, I have to take Section 4 of Republic Act 6132 as a manifestation of a complete change of heart on the part of Congress. I do understand that the reason for this new attitude of Congress could be the conviction that with the rejection of Resolution No. 3, there is a discernible indication that the people would also not favor members of the civil service to be delegates in the convention without resigning their positions, even if personally I do not share such view. In any event, if as I have just stated, Congress has seen fit to repeal Republic Act 4914, in order precisely to equalize the position of government employees with those of the members of Congress, the question arises as to whether such repeal can have any legal effect, considering that Section 4 of Republic Act 4914 practically incorporates bodily the provisions of Section 3 of Constituent Resolution No. 2. Accordingly, this Court cannot escape the duty of passing on the constitutionality of the constituent Resolution. The only way by which the legal effectivity of the repeal of Republic Act 4914 by

Republic Act 6132 can be sustained is to declare that Republic Act 4914 is repugnant to the Constitution, inasmuch, as the consensus in the Court is that what the constituent resolution provides cannot be amended or repealed by ordinary legislation. In fact, Section 3 of Resolution 4 expressly provides that the implementing legislation "shall not be inconsistent with the provisions of this Resolution", meaning Resolution 2 as amended by Resolution 4, which amend-ments preserved the controversial Section 3 of Resolution 2.

Of course, such a consensus is not mentioned in the majority's resolution, for to do so would have been disas-trous to its conclusion. Instead, the majority skirted, the consensus by the process of attempting to reconcile Section 3 of Resolution No. 2 with Section 4 of Republic Act 6132 by holding that the real law is the latter and that the former is "a mere declaration" of I do not know what. If the reconciliation made by the majority were only logical, not by pure rationalization, but in the context of contemporary developments I have discussed above, I would have heartily joined my esteemed colleagues because I be-lieve with them that the traditional presumption of consti-tutionality that accompanies all legislative and executive acts compels that every effort to sustain constitutionality must be exhausted before unconstitutionality may be declared. I must hasten to add, however, that the reconciliation must be reasonable and not merely forced, if not ab-surd, as I believe it is, in this case.

Coming now to the constitutional issue I have urged the Court to resolve, that is, whether or not Sec-tion 3 of Resolution No. 2 is repugnant to Section 2, Article XII of the Constitution, I am convinced that it is not.

For emphasis, it may be reiterated that Section 2 of Article XII prohibits officers and employees of the government to engage in partisan political activities and to take part in any election except to vote. Hav-ing in view the intent and purpose of this constitutional mandate, I feel very strongly, like the amicus curiae, Senator Tolentino, that the reasons that can be cited to justify its application to the election of Delegates to the constitutional convention are far outweighed by the fundamental considerations that inform the contrary con-clusion.

To start with, let it not be said that it is only in connection with the forthcoming constitutional convention that the non-partisan character thereof is being safeguarded. It is to the credit of our great lead-ers during the first constitutional convention, Quezon, Osmeña, Recto, Laurel, Roxas, and others that said con-vention and the election of the Delegates thereto were markedly non-partisan. This was as it should always be. Indeed, greater efforts have been made and more effect-ive measures have been designed and are now in operation to insure that the impending elections be non-partisan. If this is so, what fear is there that the officers and employees in the civil service should participate therein just like any other citizen without any sword of De-mocles over their heads of possible administrative sanc-tions against their campaigning for their candidates? I think it is but reasonable to believe that the purpose in insuring that the election should be non-partisan is in line with the idea to give every Filipino whether in or out of the government equal right and opportunity to work for candidates that he believes will fashion, thru an amended or new constitution, a better Philippines, and not, as in the case of ordinary elections, just for ones who will man a new administration, which more often than not does not necessarily mean a better government, much less a better Philippines. The election of Delegates to the constitutional convention cannot be equated with ordinary elections. The choice of men to conduct the ordinary and daily affairs of government can well be left in the hands of less than all the citizenry, but when it comes to the election of the men who more or less will shape the fundamental law that will affect all their lives and liberties, it is but fitting and proper that the restrictions ordinarily applied to certain segments of the people, like the members of the civil service and the armed forces, should be relaxed, if not altogether rendered temporarily inapplicable, in order that no one may say that he has been denied his natural share as a component part of the sovereign people.

In the light of these considerations, I find it dif-ficult to agree that in ordaining Section 2 of Article XII, it is the intent of the constitution to prohibit all officers and employees in the civil service, including the members of the

armed forces, from enjoying nothing more than the right to vote in the election of Delegates to the constitutional convention. It is simply absurd to think that it is the purpose of the disputed constitutional provision to exclude such a big and substantial portion of the people from any activity in such an election except to vote. After all, constitutional conventions are not called more than once, if at all, in every generation, hence, the feared evils that attend ordinary elections cannot visit the people any oftener. True, the issues in such an election are of the highest political nature, but that is precisely why he must be given utmost, if not unrestrained participation in the election of those who will decide those issues and even in the making of them, if he can, by being a Delegate in the convention, since such decisions are bound to affect his life, rights and liberties more effectively, pervasively and permanently, than ordinary acts of the legislature or of the executive.

The argument of the majority that Section 4 of Republic Act 6132 does not really prohibit a person who is in the civil service or the armed forces to be a candidate, if he wants to run, because all he has to do is to resign from his position in order to be capacitated to run is, to my mind, a narrow view of the situation. It overlooks, in the first place, the plight of a man who by reason of his naturally possessed qualifications and his long, honest and distinguished service in the government could be an invaluable asset in the convention. He is willing to be a Delegate, but because he has been honest and dedicated, he cannot afford to lose his job; never mind if he wins, at least, he would have the honor of being Delegate, but how about, if he loses? So, to a great extent, this prohibition hampers the freedom of the man to run for the convention. Viewing it from another angle, the government itself would be permanently losing his valued services, rare as he is, when he can very well be on leave for only a few months. Besides, the public has also an interest in his candidacy. The country needs the best talents for the convention. If these talents are restricted beyond their personal capacities to run, the country also, not that man alone stands to lose.

It is further argued that it would be "detrimental to the government and the public at large" to allow government officers and employees to be candidates without resigning because the government would be deprived of their services "for the unpredictable length of time that the convention may last". Weighed against the inestimable contribution they may make to the framing of the fundamental law, this alleged detriment is insignificant, particularly because the "unpredictable length of time that the convention may last" cannot, reasonably speaking, be really longer than a few months. How many offices in the government are presently without permanent incumbents? Indeed, I have reason to believe that the positions that will be affected because of the officers and employees of the civil service who will run for the convention, cannot outnumber those with "acting" incumbents now. To be sure, there will be quite a number of civil service officers and employees who will run, but it is ridiculous to suppose that their number will really disrupt, much less paralyze, the functions of government.

In closing, I must confess that all I have said above notwithstanding, if I am reading the feelings and inclinations of each of my esteemed colleagues more or less correctly in relation to these cases, the decision of the Court would not be different, even if what I consider the proper approach had been observed by the majority. I am personally convinced that with the present composition of the Court, Section 3 of Resolution No. 2 and Section 4 of Republic Act 4914, assuming it may not be considered repealed, may not successfully hurdle the constitutional barrier, if only because all of the members of the Court who have concurred in the view that Section 4 of Republic Act 6132 is in accord with Section 2, Article XII of the Constitution, may not be reasonably expected to uphold the constitutionality of Section 3 of Resolution No. 2 and Section 4 of Republic Act 4914 assuming these are to be considered as inconsistent with Sec. 4 of Republic Act 6132. This is the only thought that consoles me. Otherwise, I would decry with all vehemence the fact that by the present resolution, this Court is rendering ineffective and inoperative a solemn constituent resolution of Congress, approved by three-fourths vote of the two Houses thereof voting separately, without declaring it unconstitutional. Likewise, this Court is virtually

recognizing the legal effect of the repeal of Republic Act 4914 by Section 22 of Republic Act 6132 without passing on the question of whether or not, Congress can, in the exercise of its ordinary legislative powers, repeal what Congress as a constituent body has provided as to matters related to a call for a constitutional convention, considering that Section 4 of Republic Act 4914, is nothing more or less than Section 3 of Constituent Resolution No. 2 and logically, the repeal of said Section of Republic Act 4914 would amount to a repeal of Section 3 of the constituent resolution, not to mention the fact that, as I have stated earlier, there is that consensus we arrived at in the deliberations of the Court on this matter, even with the somewhat different view of Mr. Justice Fernando, and because of this, it would appear that the majority has swept aside that relevant consensus without even saying so, much less justifying such a move, a practice which, I regret to say, is not very commendable.

These are my personal feelings and opinions. I propose to stand by them. Nonetheless, if the Bench and the Bar and the general public can understand and sanction the peculiar manner in which the Court's resolution has been evolved, as appears in the resolution itself and the unexpressed premises I have heretofore mentioned, I am ready to reverse myself. Anyway, as I have stated, the resulting decision would have been the same. All I am longing for is that the decision be more forthright than equivocal, more factual than theoretical, and more illuminating as to the meaning of the constitution and less timid in resolving the constitutional issues that confront us.

In conclusion, my vote is to declare that Section 4 of Republic Act 6132 is invalid because it is inconsistent with Section 3 of Constituent Resolution 2, which should be given effect inasmuch as the Court has not declared it unconstitutional, considering that by the consensus arrived at in Our deliberations, Congress as a legislative body may not amend, alter or repeal what Congress, as a constituent body, has approved in respect to matters related to the calling of a constitutional convention.

As regards the attack against the second paragraph of Section 8(a) of Republic Act 6132, I concur with the majority.

[1] More on this anon.

[2] Actually, as will be explained later, the reason for the rather unusual rationalization of the majority is that it has accepted the explanation given by some legislative quarters that Section 3 of Resolution 2, was really intended, like Resolution 3, to enable members of Congress, and not other officers and employees of the Government to be Delegates.

[3] See further discussion at this point in the latter part of this opinion.

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CONCURRING OPINION

CASTRO J.:

I concur fully in the majority resolution, but would add, what to my mind, is an observation of fundamental import.

It will be recalled that Resolutions Nos. 1, 2 and 3* were passed by the Congress, sitting as a constituent

assembly, on the same date, or more precisely on March 16, 1967, and that the Constitutional amendments proposed by Resolutions Nos. 1 and 3 were thereafter submitted to the people for ratification (but were resoundingly rejected by the electorate in the plebiscite conducted on November 14, 1967).

If the Congress (as a constituent assembly) had intended section 3 of Resolution No. 2 as a mandatory rule of conduct (considering that it apparently conflicts with the provisions of Section 2 of Article XII of the Constitution),** it would have likewise necessarily and advisedly referred the said section to the people for ratification as an amendment to the Constitution. This deliberate non-submission reinforces my view that the said section is to be regarded as, at best, a mere declaration.

* Resolution No. 1 proposed that Section 5 of Article VI of the Constitution of the Philippines be amended so that the House of Representatives shall be composed of not more than one hundred eighty members, the apportionment thereof being set forth in detail in the said Resolution. Resolution No. 2 embodies the call for a Convention, and provides in section 3 thereof as follows:

"The office of Delegate shall be honorary and shall be compatible with any other public office: Provided, That Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the Convention or in any of its committees: Provided, however, That every Delegate shall be entitled to necessary travelling expenses to and from his place of residence when attending sessions of the Convention or of its committees."

Resolution No. 3 proposed the following amendment to Section 16 of Article VI of the Constitution:

"No Senator or Member of the House of Representatives may hold any other office or employment in the Government without forfeiting his seat, nor shall any Senator or Member of the House of Representatives, during the time for which he was elected, be appointed to any civil office which may have been created or the emoluments whereof shall have been increased while he was a member of the Congress. He may, however, be a Member of a Constitutional Convention."

** Sec. 2 of Art. XII provides as follows: "Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote."

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DISSENTING OPINION

ZALDIVAR, J.:

Like my worthy colleague, Mr. Justice Antonio Barredo, I hold the view that when the Congress of the Philippines, on March 16, 1967, acting as a constituent body pursuant to Section 1, Article XV of the Constitution, approved Resolution No. 2, which, among others, provides in Section 3 thereof the following:

"SEC. 3. The office of the Delegate shall be honorary and shall be compatible with any other public office:

Provided, That Delegates who do not receive any salary from the government shall be entitled to a per diem of fifty pesos for every day of attendance in the Convention or in any of its committees: Provided, however, That every Delegate shall be entitled to necessary travelling expenses to and from his place of residence when attending sessions or the Convention or of its committees."

the intention and purpose of Congress, acting as a constituent body, was to permit any person holding a public office or position, whether elective^[1] or appointive^[2], to be a candidate for delegate to the constitutional convention, which was set for the second Tuesday of November, 1970, without resigning from his office or being considered resigned from office upon the filing of his certificate of candidacy. Mr. Justice Barredo has elaborately discussed the reasons for holding that view, and I fully concur with him in the arguments that he adduced in support of the view. I only wish to add a few thoughts to what have been expressed by Mr. Justice Barredo.

I have taken note of the fact that in Act 4125, passed by the Ninth Philippine Legislature, known as the Convention Law of 1934, Section 2 thereof provides as follows:

"SEC. 2. The office of delegate shall be honorary and shall be compatible with any other public office not subject to the civil service rules."

It is undisputed that when Act 4125 was enacted on May 26, 1934, there were existing civil service rules which were promulgated by the Director of the Bureau of Civil Service in the exercise of his powers under Section 661 of the Revised Administrative Code. It is clear that the legislative intent then, as clearly stated in the afore-quoted Section 2 of Act 4125, was to consider the office of delegate to the constitutional convention as compatible with any other public office not subject to the civil service rules at the time of the enactment of said law. In other words, under that law a person holding an office subject to civil service rules was prohibited from holding the office of delegate to the convention without forfeiting the public office that he was then holding.

It will be noted that when both Houses of Congress of the Philippines, assembled in joint session and acting as a constituent body on March 16, 1967, approved Resolution No. 2, the first sentence of Section 3 of the said resolution used the same words as the provisions of Section 2 of Act No. 4125 of the Philippine Legislature, except that the words "not subject to the civil service rules" were eliminated. To me, the elimination of the words "not subject to the civil service rules", in Section 3 of Resolution No. 2, is a clear indication of the intention of the Congress of the Philippines, as a constituent body, to allow any person holding a public office, including an office subject to civil service rules, to be a candidate for the office of delegate to the constitutional convention and to hold office as such delegate without forfeiting the office that he presently holds. It is my humble view that this intention of Congress, acting as a constituent body, as indicated by the elimination of the words "not subject to the civil service rules" is in consonance with the idea, which I observed, that opportunity should be afforded all capable and qualified persons in our country to participate in the great task of amending, if not altogether redrafting completely, the Constitution of our Republic. I do not share the view of the majority of the Court that to allow government officials and employees to campaign for the convention, and, if elected, to sit as delegates without vacating their positions would be detrimental to the government and to public interest. While there may be several thousands of persons who may run as candidates for delegate to the convention, there are only 320 that will be elected. And I do not believe that there will be hundreds of those who are now in the government service who will run as candidates for delegates to the convention. Certainly not all that will be elected as delegates to the convention will be persons presently holding a public office. There will be very many, and most likely the preponderant number, who will be elected as delegates who will come from the private sector, or who are not government officials or employees. It may be that during the two-month period of campaign persons who are in the government service may temporarily leave their respective offices in order to campaign, but it cannot be denied that there will always be officials or employees who can temporarily assume the duties of their respective

offices during the period or the campaign. Likewise, I do not share the fear that if those who are in the government service would get elected and assume their duties as delegates to the convention, the work in the government would be disrupted because the convention may last for an indeterminate period of time. This fear is more apparent than real. As I have adverted to, of the 320 delegates that will be elected to the constitutional convention, not all of them would come from the ranks of those who are now holding office in the government.

It is my humble view that the provisions of Section 4 of Republic Act 6132 is null and void because it is inconsistent with the provisions of Resolution No. 2, as amended by Resolution No. 4. I consider the provisions of Section 8(a) paragraph 2 as corollary to the provisions of Section 4 of the same act, and, therefore, said Section 8(a) paragraph 2 is also inconsistent with Resolution No. 2, and is null and void.

In view of what I have hereinabove stated, in addition to the views expressed by Mr. Justice Barredo in his concurring and dissenting opinion in so far as they refer to Section 4 of Republic Act 6132, I dissent from the opinion of the majority of the Court.

[1] Except Senators and Representatives, because in the plebiscite held on November 14, 1967 the electorate disapproved Resolution No. 3 of Congress, acting as a constituent body, which sought to amend Section 16, Article VI of the Constitution so as to authorize Senators and Members of the House of Representatives to become delegates to the convention without forfeiting their respective seats in Congress.

[2] Those subject to civil service rules and regulations pursuant to the Civil Service Law.

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