

IN THE MATTER OF PETITION FOR DECLARATORY RELIEF RE-CONSTITUTIONALITY OF REPUBLIC ACT 4880. ARSENIO GONZALES AND FELICISIMO R. CABIGAO, PETITIONERS, VS. COMMISSION ON ELECTIONS,...

G.R. No. L-27833. April 18, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

A statute designed to maintain the purity and integrity of the electoral process by Congress calling a halt to the undesirable practice of prolonged political campaigns, bringing in their wake serious evils not the least of which is the ever-increasing cost of seeking public office, is challenged on constitutional grounds. More precisely, the basic liberties of free speech and free press, freedom of assembly and freedom of association are invoked to nullify the act. Thus the question confronting this Court is one of transcendental significance.

It is faced with the reconciliation of two values esteemed highly and cherished dearly in a constitutional democracy. One is the freedom of belief and of expression availed of by an individual whether by himself alone or in association with others of similar persuasion, a goal that occupies a place second to none in the legal hierarchy. The other is the safeguarding of the equally vital right of suffrage by a prohibition of the early nomination of candidates and the limitation of the period of election campaign or partisan political activity, with the hope that the time-consuming efforts, entailing huge expenditures of funds and involving the risk of bitter rivalries that may end in violence, to paraphrase the explanatory note of the challenged legislation, could be devoted to more fruitful endeavors.

The task is not easy, but it is unavoidable. That is of the very essence of judicial duty. To paraphrase a landmark opinion,[1] when we act in these matters we do so not on the assumption that to us is granted the requisite knowledge to set matters right, but by virtue of the responsibility we cannot escape under the Constitution, one that history authenticates, to pass upon every assertion of an alleged infringement of liberty, when our competence is appropriately invoked.

This then is the crucial question: Is there an infringement of liberty? Petitioners so alleged in this action, which they entitled Declaratory Relief with Preliminary Injunction, filed on July 22, 1967, a proceeding that should have been started in the Court of First Instance, but treated by this Court as one of prohibition in view of the seriousness and the urgency of the constitutional issue raised. Petitioners challenged the validity of two new sections now included in the Revised Election Code, under Republic Act No. 4880, which was approved and took effect on June 17, 1967, prohibiting the too early nomination of candidates[2] and limiting the period of election campaign or partisan political activity.[3]

The terms "candidate" and "election campaign" or "partisan political activity" are likewise defined. The former according to Act No. 4880 "refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political

party as its candidate." "Election campaign" or "partisan political activity" refers "to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office." Then the acts were specified. There is a proviso that simple expression of opinion and thoughts concerning the election shall not be considered as part of an election campaign. There is the further proviso that nothing stated in the Act "shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports." [4]

Petitioner Cabigao was, at the time of the filing of the petition, an incumbent councilor in the 4th District of Manila and the Nacionalista Party official candidate for Vice-Mayor of Manila to which he was subsequently elected on November 11, 1967; petitioner Gonzales, on the other hand, is a private individual, a registered voter in the City of Manila and a political leader of his co-petitioner. It is their claim that "the enforcement of said Republic Act No. 4880 in question [would] prejudice [their] basic rights . . . , such as their freedom of speech, their freedom of assembly and their right to form associations or societies for purposes not contrary to law, guaranteed under the Philippine Constitution," and that therefore said act is unconstitutional.

After invoking anew the fundamental rights to free speech, free press, freedom of association and freedom of assembly with a citation of two American Supreme Court decisions, [5] they asserted that "there is nothing in the spirit or intention of the law that would legally justify its passage and [enforcement] whether for reasons of public policy, public order or morality, and that therefore the enactment of Republic Act [No.] 4880 under the guise of regulation is but a clear and simple abridgment of the constitutional rights of freedom of speech, freedom of assembly and the right to form associations and societies for purposes not contrary to law, ..." There was the further allegation that the nomination of a candidate and the fixing of period of election campaign are matters of political expediency and convenience which only political parties can regulate or curtail by and among themselves through self-restraint or mutual understanding or agreement and that the regulation and limitation of these political matters invoking the police power, in the absence of clear and present danger to the state, would render the constitutional rights of petitioners meaningless and without effect.

To the plea of petitioners that after hearing, Republic Act No. 4880 be declared unconstitutional, null and void, respondent Commission on Elections, in its answer filed on August 1, 1967, after denying the allegations as to the validity of the act "for being mere conclusions of law, erroneous at that," and setting forth special affirmative defenses, procedural and substantive character, would have this Court dismiss the petition.

Thereafter, the case was set for hearing on August 3, 1967. On the same date a resolution was passed by us to the following effect: "At the hearing of case L-27833 (Arsenio Gonzales, et al. vs. Commission on Elections), Atty. F. Reyes Cabigao appeared for the petitioners and Atty. Ramon Barrios appeared for the respondent, and they were given a period of four days from today within which to submit, simultaneously, their respective memoranda in lieu of oral argument."

On August 9, 1967, another resolution, self-explanatory in character, came from this Court. Thus: "In case G.R. No. L-27833 (Arsenio Gonzales, et al. vs. Commission on Elections), the Court, with eight (8) Justices present, having deliberated on the issue of the constitutionality of Republic Act No. 4880; and a divergence of views having developed among the Justices as to the constitutionality of Section 50-B, pars. (c), (d) and (e) of the Revised Election Code: considering the Constitutional provision that 'no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the (Supreme) Court' (Sec. 10, Art. VII), the Court [resolved] to defer final voting on the issue until after the return of the Justices now on official leave."

The case was then reset for oral argument. At such hearing, one of the co-petitioners, now Vice-Mayor Felicisimo

Cabigao of the City of Manila, acting as counsel, assailed the validity of the challenged legislation, relying primarily on American Supreme Court opinions that warn against curtailment in whatever guise or form of the cherished freedoms of expression, of assembly, and of association, all embraced in the First Amendment of the United States Constitution. Respondent Commission on Elections was duly represented by Atty. Ramon Barrios.

Senator Lorenzo M. Tañada was asked to appear as *amicus curiae*. That he did, arguing most impressively with a persuasive exposition of the existence of undeniable conditions that imperatively called for regulation of the electoral process and with full recognition that Act No. 4880 could indeed be looked upon as a limitation on the preferred rights of speech and press, of assembly and of association. He did justify its enactment however under the clear and present danger doctrine, there being the substantive evil of elections, whether for national or local officials, being debased and degraded by unrestricted campaigning, excess of partisanship, and undue concentration in politics, with the loss not only of efficiency in government but of lives as well.

The matter was then discussed in conference, but no final action was taken. The divergence of views with reference to the paragraphs above mentioned having continued, on Oct. 10, 1968, this Court, by resolution, invited certain entities to submit memoranda as *amici curiae* on the question of the validity of R.A. Act No. 4880. The Philippine Bar Association, the Civil Liberties Union, the U.P. Law Center and the U.P. Women Lawyers' Circle were included among them. They did file their respective memoranda with this Court and aided it in the consideration of the constitutional issues involved.

1. In the course of the deliberations, a serious procedural objection was raised by five members of the Court.[6] It is their view that respondent Commission on Elections not being sought to be restrained from performing any specific act, this suit cannot be characterized as other than a mere request for an advisory opinion. Such a view, from the remedial law standpoint, has much to recommend it. Nonetheless, a majority would affirm the original stand that under the circumstances, it could still rightfully be treated as a petition for prohibition.

The language of Justice Laurel fits the case: "All await the decision of this Court on the constitutional question. Considering, therefore, the importance which the instant case has assumed and to prevent multiplicity of suits, strong reasons of public policy demand that [its] constitutionality . . . be now resolved." [7] It may likewise be added that the exceptional character of the situation that confronts us, the paramount public interest, and the undeniable necessity for a ruling, the national elections being barely six months away, reinforce our stand.

It would appear undeniable, therefore, that before us is an appropriate invocation of our jurisdiction to prevent the enforcement of an alleged unconstitutional statute. We are left with no choice then; we must act on the matter.

There is another procedural obstacle raised by respondent to be hurdled. It is not insuperable. It is true that ordinarily, a party who impugns the validity of a statute or ordinance must have a substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.[8] Respondent cannot see such interest as being possessed by petitioners. It may indicate the clarity of vision being dimmed, considering that one of the petitioners was a candidate for an elective position. Even if such were the case, however, the objection is not necessarily fatal. In this jurisdiction, the rule has been sufficiently relaxed to allow a taxpayer to bring an action to restrain the expenditure of public funds through the enforcement of an invalid or unconstitutional legislative measure.[9]

2. In the answer of the respondent as well as its memorandum, stress was laid on Republic Act No. 4880 as an exercise of the police power of the state, designed to insure a free, orderly and honest election by regulating "conduct which Congress has determined harmful because if unrestrained and carried for a long period before elections it necessarily entails huge expenditures of funds on the part of the candidates, precipitates violence and even deaths, results in the corruption of the electorate, and inflicts direful consequences upon public interest as the

vital affairs of the country are sacrificed to purely partisan pursuits." Evidently for respondent that would suffice to meet the constitutional questions raised as to the alleged infringement of free speech, free press, freedom of assembly and freedom of association. Would it were as simple as that?

An eloquent excerpt from a leading American decision^[10] admonishes though against such a cavalier approach: "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. . . . That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. . . ."

Even a leading American State court decision on a regulatory measure dealing with elections, cited in the answer of respondent, militates against a stand minimizing the importance and significance of the alleged violation of individual rights: "As so construed by us, it has not been made to appear that Section 8189, Comp. Gen. Laws, Section 5925, Rev. Gen. St., is on its face violative of any provision of either the state or Federal Constitution on the subject of free speech or liberty of the press, nor that its operation is in any wise subversive of any one's constitutional liberty."^[11] Another leading State decision is much more emphatic: "Broad as the power of the legislature is with respect to regulation of elections, that power is not wholly without limitation. Under the guise of regulating elections, the legislature may not deprive a citizen of the right of trial by jury. A person charged with its violation may not be compelled to give evidence against himself. If it destroys the right of free speech, it is to that extent void."^[12]

The question then of the alleged violation of constitutional rights must be squarely met.

3. Now as to the merits. A brief resume of the basic rights on which petitioners premise their stand that the act is unconstitutional may prove illuminating. The primacy, the high estate accorded freedom of expression is of course a fundamental postulate of our constitutional system. No law shall be passed abridging the freedom of speech or of the press . . .^[13] What does it embrace? At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship or punishment.^[14] There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits,^[15] prosecution for sedition,^[16] or action for damages,^[17] or contempt proceedings^[18] unless there be a clear and present danger of substantive evil that Congress has a right to prevent.

The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change.^[19] The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issue should be uninhibited, robust, and wide-open.^[20] It is not going too far, according to another American decision, to view the function of free speech as inviting dispute. "It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."^[21]

Freedom of speech and of the press thus means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, to take refuge in the existing climate of opinion on any matter of public consequence. So atrophied, the right becomes meaningless. The right belongs as well, if not more, for those who question, who do not conform, who differ. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us.^[22]

So with Emerson one may conclude that "the theory of freedom of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life. The theory grew out of an age that was awakened and invigorated by the idea of a new society in which man's mind was free, his fate determined by his own powers of reason, and his prospects of creating a rational and enlightened civilization virtually unlimited. It is put forward as a prescription for attaining a creative, progressive, exciting and intellectually robust community. It contemplates a mode of life that, through encouraging toleration, skepticism, reason and initiative, will allow man to realize his full potentialities. It spurns the alternative of a society that is tyrannical, conformist, irrational and stagnant." [23]

From the language of the specific constitutional provision, it would appear that the right is not susceptible of any limitation. No law may be passed abridging the freedom of speech and of the press. The realities of life in a complex society preclude however a literal interpretation. Freedom of expression is not an absolute. It would be too much to insist that at all times and under all circumstances it should remain unfettered and unrestrained. There are other societal values that press for recognition. How is it to be limited then?

This Court spoke, in *Cabansag v. Fernandez*, [24] of two tests that may supply an acceptable criterion for permissible restriction. Thus: "These are the 'clear and present danger' rule and the 'dangerous tendency' rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be 'extremely serious and the degree of imminence extremely high' before the utterance can be punished. The danger to be guarded against is the 'substantive evil' sought to be prevented." It has the advantage of establishing according to the above decision "a definite rule in constitutional law. It provides the criterion as to what words may be published."

The *Cabansag* case likewise referred to the other test, the "dangerous tendency" rule and explained it thus: "If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent."

We posed the issue thus: "Has the letter of *Cabansag* created a sufficient danger to a fair administration of justice? Did its remittance to the PCAC create a danger sufficiently imminent to come under the two rules mentioned above?" The choice of this Court was manifest and indisputable. It adopted the clear and present danger test. As a matter of fact, in an earlier decision, *Primicias v. Fugoso*, [25] there was likewise an implicit acceptance of the clear and present danger doctrine.

Why repression is permissible only when the danger of substantive evil is present is explained by Justice Brandeis thus: ". . . the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." [26] For him the apprehended evil must be "relatively serious." For "[prohibition] of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society." Justice Black would go further. He would require that the substantive evil be "extremely serious." [27] Only thus may there be a realization of the ideal envisioned by Cardozo: "There shall be no compromise of the freedom to think one's thoughts and speak them, except at those extreme borders where thought merges into action." [28] It received its original formulation from Holmes. Thus: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree." [29]

This test then as a limitation on freedom of expression is justified by the danger or evil of a substantive character that the state has a right to prevent. Unlike the dangerous tendency doctrine, the danger must not only be clear but also present. The term clear seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. Present refers to the time element. It used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable.

4. How about freedom of assembly? The Bill of Rights as thus noted prohibits abridgment by law of freedom of speech or of the press. It likewise extends the same protection to the right of the people peaceably to assemble. As was pointed out by Justice Malcolm in the case of *United States v. Bustos*,^[30] this right is a necessary consequence of our republican institution and complements the right of free speech. Assembly means a right on the part of citizens to meet peaceably for consultation in respect to public affairs. From the same *Bustos* opinion: "Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion." To paraphrase the opinion of Justice Rutledge, speaking for the majority in *Thomas v. Collins*,^[31] it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights while not identical are inseparable. They are cognate rights and the assurance afforded by the clause of this section of the Bill of Rights wherein they are contained, applies to all. As emphatically put in the leading case of *United States v. Cruikshank*,^[32] "the very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances." As in the case of freedom of expression, this right is not to be limited, much less denied, except on a showing of a clear and present danger of a substantive evil that Congress has a right to prevent.

5. Our Constitution likewise recognizes the freedom to form association for purposes not contrary to law.^[33] With or without a constitutional provision of this character, it may be assumed that the freedom to organize or to be a member of any group or society exists. With this explicit provision, whatever doubts there may be on the matter are dispelled. Unlike the cases of other guarantees, which are mostly American in origin, this particular freedom has an indigenous cast. It can trace its origin to the Malolos Constitution.

In the United States, in the absence of an explicit provision of such character, it is the view of Justice Douglas that it is primarily the first amendment of her Constitution, which safeguards freedom of speech and of the press, of assembly and of petition "that provides [associations] with the protection they need if they are to remain viable and continue to contribute to our Free Society."^[34] He adopted the view of De Tocqueville on the importance and the significance of the freedom to associate. Thus: "The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost an inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundation of society."^[35]

There can be no dispute as to the soundness of the above observation of De Tocqueville. Since man lives in society, it would be a barren existence if he could not freely associate with others of kindred persuasion or of congenial frame of mind. As a matter of fact, the more common form of associations may be likely to be fraternal, cultural, social or religious. Thereby, for almost everybody, save for those exceptional few who glory in aloofness and isolation, life is enriched and becomes more meaningful.

In a sense, however, the stress on this freedom of association should be on its political significance. If such a right were non-existent, then the likelihood of a one-party government is more than a possibility. Authoritarianism may become unavoidable. Political opposition will simply cease to exist; minority groups may be outlawed, constitutional democracy as intended by the Constitution may well become a thing of the past.

Political parties which, as is ordinarily the case, assume the role alternately of being in the majority or in the minority as the will of the electorate dictates, will lose their constitutional protection. It is undeniable, therefore, that the utmost scope should be afforded this freedom of association.

It is indispensable not only for its enhancing the respect that should be accorded a human personality but equally so for its assurance that the wishes of any group to oppose whatever for the moment is the party in power and with the help of the electorate to set up its own program of government would not be nullified or frustrated. To quote from Douglas anew: "Justice Frankfurter thought that political and academic affiliations have a preferred position under the due process version of the First Amendment. But the associational rights protected by the First Amendment are in my view much broader and cover the entire spectrum in political ideology as well as in art, in journalism, in teaching, and in religion. In my view, government can neither legislate with respect to nor probe the intimacies of political, spiritual, or intellectual relationships in the myriad of lawful societies and groups, whether popular or unpopular, that exist in this country." [36]

Nonetheless, the Constitution limits this particular freedom in the sense that there could be an abridgment of the right to form associations or societies when their purposes are "contrary to law." How should the limitation "for purposes not contrary to law" be interpreted? It is submitted that it is another way of expressing the clear and present danger rule for unless an association or society could be shown to create an imminent danger to public safety, there is no justification for abridging the right to form associations or societies. [37] As was so aptly stated: "There is no other course consistent with the Free Society envisioned by the First Amendment. For the views a citizen entertains, the beliefs he harbors, the utterances he makes, the ideology he embraces, and the people he associates with are no concern to government—until and unless he moves into action. That article of faith marks indeed the main difference between the Free Society which we espouse and the dictatorships both on the Left and on the Right." [38]

6. With the above principles in mind, we now consider the validity of the prohibition in Republic Act No. 4880 of the too early nomination of candidates and the limitation found therein on the period of election campaign or partisan political activity alleged by petitioners to offend against the rights of free speech, free press, freedom of assembly and freedom of association. In effect what we are asked to do is to declare the act void on its face, no evidence having been introduced as to its actual operation. There is respectable authority for the court having the power to so act. Such fundamental liberties are accorded so high a place in our constitutional scheme that any alleged infringement manifest in the wording of statute cannot be allowed to pass unnoticed. [39]

In considering whether it is violative of any of the above rights, we cannot ignore of course the legislative declaration that its enactment was in response to a serious substantive evil affecting the electoral process, not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied. To assert otherwise would be to close one's eyes to the realities of the situation. Nor can we ignore the express legislative purpose apparent in the proviso "that simple expressions of opinion and thoughts concerning the elections shall not be considered as part of an election campaign," and in the other proviso "that nothing herein stated shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports." Such limitations qualify the entire provision restricting the period of an election campaign or partisan political activity.

The prohibition of too early nomination of candidates presents a question that is not too formidable in character. According to the act: "It shall be unlawful for any political party, political committee, or political group to nominate candidates for any elective public office voted for at large earlier than one hundred and fifty days immediately preceding an election, and for any other elective public office earlier than ninety days immediately preceding and election." [40]

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

The limitation on the period of "election campaign" or "partisan political activity" calls for a more intensive scrutiny. According to Republic Act No. 4880: "It is unlawful for any person whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office. The term 'candidate' refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate. The term 'election campaign' of 'partisan political activity' refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office"

If that is all there is to that provision, it suffers from the fatal constitutional infirmity of vagueness and may be stricken down. What other conclusion can there be extending as it does to so wide and all-encompassing a front that what is valid, being a legitimate exercise of press freedom as well as freedom of assembly, becomes prohibited? That cannot be done; such an undesirable eventually, this Court cannot allow to pass.

It is a well-settled principle that stricter standards of permissible statutory vagueness may be applied to a statute having inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.[41] Where the statutory provision then operates to inhibit the exercise of individual freedom affirmatively protected by the Constitution, the imputation of vagueness sufficient to invalidate the statute is inescapable.[42] The language of Justice Douglas, both appropriate and vigorous, comes to mind: "Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula." [43] Nor is the reason difficult to discern: "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanction may deter their exercise almost as potently as the actual application of sanctions." [44]

7. The constitutional objections are thus formidable. It cannot be denied that the limitations thus imposed on the constitutional rights of free speech and press, of assembly, and of association cut deeply into their substance. This on the one hand.

On the other, it cannot be denied either that evils substantial in character taint the purity of the electoral process. There can be under the circumstances then no outright condemnation of the statute. It could not be said to be unwarranted, much less arbitrary. There is need for refraining from the outright assumption that the constitutional infirmity is apparent from a mere reading thereof.

For under circumstances that manifest abuses of the gravest character, remedies much more drastic than what ordinarily would suffice would indeed be called for. The justification alleged by the proponents of the measures weighs heavily with the members of the Court, though in varying degrees, in the appraisal of the aforesaid restrictions to which such precious freedoms are subjected. They are not unaware of the clear and present danger that calls for measures that may bear heavily on the exercise of the cherished rights of expression, of assembly, and of association.

This is not to say that once such a situation is found to exist, there is no limit to the allowable limitations on such constitutional rights. The clear and present danger doctrine rightly viewed requires that not only should there be

an occasion for the imposition of such restrictions but also that they be limited in scope.

There are still constitutional questions of a serious character then to be faced. The practices which the act identifies with "election campaign" or "partisan political activity" must be such that they are free from the taint of being violative of free speech, free press, freedom of assembly, and freedom of association. What removes the sting from constitutional objection of vagueness is the enumeration of the acts deemed included in the terms "election campaign" of "partisan political activity."

They are: "(a) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate; (b) holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate or party; (c) making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office; (d) publishing or distributing campaign literature or materials; (e) directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party; (f) giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly." [45] As thus limited, the objection that may be raised as to vagueness has been minimized, if not totally set at rest. [46]

8. This Court, with the aforementioned five Justices unable to agree, is of the view that no unconstitutional infringement exists insofar as the formation of organizations, associations, clubs, committees, or other groups of persons for the purpose of soliciting votes or undertaking any campaign or propaganda or both for or against a candidate or party is restricted [47] and that the prohibition against giving, soliciting, or receiving contribution for election purposes, either directly or indirectly, is equally free from constitutional infirmity. [48]

The restriction on freedom of assembly as confined to holding political conventions, caucuses, conferences, meetings, rallies, parades or other similar assemblies for the purpose of soliciting votes or undertaking any campaign or propaganda or both for or against a candidate or party, [49] leaving untouched all other legitimate exercise of such poses a more difficult question. Nevertheless, after a thorough consideration, and with the same Justices entertaining the opposite conviction, we reject the contention that it should be annulled. Candor compels the admission that the writer of this opinion suffers from the gravest doubts. For him, such statutory prescription could very well be within the outermost limits of validity, beyond which lies the abyss of unconstitutionality.

The other acts, likewise deemed included in "election campaign" or "partisan political activity" tax to the utmost the judicial predisposition to view with sympathy legislative efforts to regulate election practices deemed inimical, because of their collision with the preferred right of freedom of expression. From the outset, such provisions did occasion divergence of views among the members of the Court. Originally only a minority was for their being adjudged as invalid. It is not so any more. [50] This is merely to emphasize that the scope of the curtailment to which freedom of expression may be subjected is not foreclosed by the recognition of the existence of a clear and present danger of a substantive evil, the debasement of the electoral process.

The majority of the Court is thus of the belief that the ban on the solicitation or undertaking of any campaign or propaganda, whether directly or indirectly, by an individual, [51] the making of speeches, announcements or commentaries or holding interview for or against the election for any party or candidate for public office, [52] or the publication or distribution of campaign literature or materials, [53] suffers from the corrosion of invalidity. It lacks however one more affirmative vote to call for a declaration of unconstitutionality.

This is not to deny that Congress was indeed called upon to seek remedial measures for the far-from-satisfactory condition arising from the too-early nomination of candidates and the necessarily prolonged political campaigns. The direful consequences and the harmful effects on the public interest with the vital affairs of the country

sacrificed many a time to purely partisan pursuits were known to all. Moreover, it is no exaggeration to state that violence and even death did frequently occur because of the heat engendered by such political activities. Then, too, the opportunity for dishonesty and corruption, with the right to suffrage being bartered, was further magnified.

Under the police power then, with its concern for the general welfare and with the commendable aim of safeguarding the right of suffrage, the legislative body must have felt impelled to impose the foregoing restrictions. It is understandable for Congress to believe that without the limitations thus set forth in the challenged legislation, the laudable purpose of Republic Act No. 4880 would be frustrated and nullified. Whatever persuasive force such approach may command failed to elicit the assent of a majority of the Court. This is not to say that the conclusion reached by the minority that the above portions of the statute now assailed has passed the constitutional test is devoid of merit.

It only indicates that for the majority, the prohibition of any speeches, announcements or commentaries, or the holding of interviews for or against the election of any party or candidate for public office and the prohibition of the publication or distribution of campaign literature or materials, against the solicitation of votes whether directly or indirectly, or the undertaking of any campaign or propaganda for or against any candidate or party, is repugnant to a constitutional command. To that extent, the challenged statute prohibits what under the Constitution cannot by any law be abridged.

More specifically, in terms of the permissible scope of legislation that otherwise could be justified under the clear and present danger doctrine, it is the considered opinion of the majority, though lacking the necessary vote for an adjudication of invalidity, that the challenged statute could have been more narrowly drawn and the practices prohibited more precisely delineated to satisfy the constitutional requirements as to a valid limitation under the clear and present danger doctrine.

In a 1968 opinion, the American Supreme Court made clear that the absence of such reasonable and definite standards in a legislation of its character is fatal.[54] Where, as in the case of the above paragraphs, the majority of the Court could discern "an overbreadth that makes possible oppressive or capricious application"[55] of the statutory provisions, the line dividing the valid from the constitutionally infirm has been crossed. Such provisions offend the constitutional principle that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." [56]

It is undeniable, therefore, that even though the governmental purposes be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.[57] For precision of regulation is the touchstone in an area so closely related to our most precious freedoms.[58]

Under the circumstances then, a majority of the Court feels compelled to view the statutory provisions in question as unconstitutional on their face inasmuch as they appear to range too widely and indiscriminately across the fundamental liberties associated with freedom of the mind.[59]

Such a conclusion does not find favor with the other members of the Court. For this minority group, no judgment of nullity insofar as the challenged sections are concerned is called for. It cannot accept the conclusion that the limitations thus imposed on freedom of expression were vitiated by their latitudinarian scope, for Congress was not at all insensible to the problem that an all-encompassing coverage of the practices sought to be restrained would seriously pose.

Such an approach finds support in the exposition made by the author of the measure. Senator Lorenzo M. Tañada, appearing before us as *amicus curiae*. He did clearly explain that such provisions were deemed by the legislative body to be part and parcel of the necessary and appropriate response not merely to a clear and present danger but to the actual existence of a grave and substantive evil of excessive partisanship, dishonesty and corruption as well as violence that of late has invariably marred election campaigns and partisan political activities in this country. He did invite our attention likewise to the well-settled doctrine that in the choice of remedies for an admitted malady requiring governmental action, on the legislature primarily rests the responsibility. Nor should the cure prescribed by it, unless clearly repugnant to fundamental rights, be ignored or disregarded.

More than that, he would stress the two provisos already mentioned, precisely placed in the statute as a manifestation of the undeniable legislative determination not to transgress the preferred freedom of speech, of press, of assembly and of association. It is thus provided: "That simple expressions or opinion and thoughts concerning the election shall not be considered as part of an election campaign [and that nothing in the Act] shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports." [60] If properly implemented then, as it ought to, the barrier to free expression becomes minimal and far from unwarranted.

For the minority of the Court, all of the above arguments possess sufficient persuasive force to blunt whatever cutting edge may be ascribed to the fears entertained that Congress failed to abide by what the Constitution commands as far as freedom of the mind and of association are concerned. It is its opinion that it would be premature, to say at least, for a judgment of nullity of any provision found in Republic Act No. 4880. The need for adjudication arises only if in the implementation of the Act, there is in fact an unconstitutional application of its provisions. Nor are we called upon, under this approach, to anticipate each and every problem that may arise. It is time enough to consider it when there is in fact an actual concrete case that requires an exercise of judicial power.

9. To recapitulate, we give due recognition to the legislative concern to cleanse, and, if possible, render spotless, the electoral process. There is full acceptance by the Court of the power of Congress, under narrowly drawn legislation to impose the necessary restrictions to what otherwise would be liberties traditionally accorded the widest scope and the utmost deference, freedom of speech and of the press, of assembly, and of association. We cannot, however, be recreant to the trust reposed on us; we are called upon to safeguard individual rights. In the language of Justice Laurel: "This Court is perhaps the last bulwark of constitutional government. It shall not obstruct the popular will as manifested through proper organs. . . . But, in the same way that it cannot renounce the life breathed into it by the Constitution, so may it not forego its obligation, in proper cases, to apply the necessary corrective, ..." [61]

We recognize the wide discretion accorded Congress to protect vital interests. Considering the responsibility incumbent on the judiciary, it is not always possible, even with the utmost sympathy shown for the legislative choice of means to cure an admitted evil, that the legislative judgment arrived at, with its possible curtailment of the preferred freedoms, be accepted uncritically. There may be times, and this is one of them, with the majority, with all the respect to a coordinate branch, unable to extend their approval to the aforesaid specific provisions of one of the sections of the challenged statute. The necessary two-third vote, however, not being obtained, there is no occasion for the power to annul statutes to come into play.

Such being the case, it is the judgment of this Court that Republic Act No. 4880 cannot be declared unconstitutional.

WHEREFORE, the petition is dismissed and the writ of prohibition prayed for denied. Without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, and Teehankee, JJ., concur in the result.
Dizon, Zaldivar and Capistrano, JJ., concur with the separate opinion of Mr. Justice Fred Ruiz Castro.
Sanchez, Ruiz Castro, Barredo, J., concur and dissent in separate opinions.

[1] West Education State Board of Education v. Barnette, 319 US 624, 640 (1943).

[2] Sec. 50-A, Revised Election Code.

[3] Sec. 50-B, Revised Election Code.

[4] Sec. 2 of Act 4880 further amends Sec. 133 of the Revised Election Code to include the two new above sections among the the serious election offenses.

[5] Poindexter v. Greenhow, 114 US 217 (1885) and Terminiello v. City of Chicago, 337 US 1 (1951).

[6] Chief Justice Concepcion and Justices Reyes, Makalintal, Teehankee and Barredo.

[7] 65 Phil. 56, 94 (1937). Cf. Yu Cong Eng v. Trinidad, 47 Phil. 385 (1926), 271 US 500; 70 Law. ed., 1059.

[8] People v. Vera, 65 Phil. 56 (1937), Manila Race Horse Trainers Asso. v. De la Fuente, 88 Phil. 60 (1951); Bautista v. Mun. Council, 98 Phil. 409 (1956).

[9] Philconsa v. Mathay, L-25554, Oct. 4, 1966, citing Philconsa v. Gimenez, L-23326, Dec. 18, 1965; Pascual v. Sec. of Public Works, L-10405, Dec. 29, 1960; Pelaez v. Auditor General, L-23825, Dec. 24, 1965; Iloilo Palay & Corn Planters Asso. v. Feliciano, L-24022, March 3, 1965. See also Lidasan v. Commission on Elections, L-28089, Oct. 25, 1967.

[10] Thomas v. Collins, 323 US 516, 529-530 (1945).

[11] Ex parte Hawthorne, 96 ALR 572, 580 (1934).

[12] La Follette v. Kohler, 69 ALR 348, 371. Cf. Nixon v. Herndon, 273 US 536 (1927); Nixon v. Condon, 286 US 73 (1932); Smith v. Allwright, 321 US 649 (1944).

[13] Art. III, Sec. 1 (8) Constitution of the Philippines.

[14] Cf. Thornhill vs. Alabama, 310 US 88 (1940). Justice Malcolm identified freedom of expression with the right to "a full discussion of public affairs." (U.S. v. Bustos, 37 Phil. 731, 740 [1918]). Justice Laurel was partial to the ringing words of John Milton, "the liberty to know, to utter, and to argue freely according to conscience, above all liberties." (Planas v. Gil, 67 Phil. 62, 81 [1939]). Justice Johnson spoke of freedom of expression in terms of "a full and free discussion of all affairs of public interest." For him then, free speech includes complete liberty to "comment upon the administration of Government as well as the conduct of public men" (U.S. v. Perfecto, 43 Phil. 58, 62 [1922]). When it is remembered further that "time has upset many fighting faiths" there is likely to be a more widespread acceptance for the view of Justice Holmes "that the ultimate good desired is better reached by free trade in ideas,—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out" (Abrams v. United States, 250 US 616, 630 [1919]).

[15] U.S. v. Bustos, 37 Phil. 731 (1918); Quisumbing v. Lopez, 96 Phil. 510 (1955).

[16] U.S. v. Perfecto, 43 Phil. 58 (1922).

[17] Yap v. Boltron, 100 Phil. 324 (1956).

[18] *People v. Alarcon*, 69 Phil. 265 (1939); *Teehankee v. Director of Prisons*, 76 Phil. 756 (1946); *In re Sotto*, 82 Phil. 595, (1949); *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *People v. Castelo*, H. Abaya, L-11816, April 23, 1962; *Bridges v. California*, 314 US 252 (1941); *Pennekamp v. Florida*, 328 US 331 (1946); *Craig v. Harney*, 331 US 367 (1947); *Woods v. Georgia*, 370 US 375 (1962).

[19] Emerson, *Toward a General Theory of the First Amendment* (1966).

[20] *New York Times Co. v. Sullivan*, 376 US 254, 270 (1964).

[21] *Terminiello v. City of Chicago*, 337 US 1, 4 (1949).

[22] *U.S. v. Schwimmer*, 279 US 644, 655 (1929).

[23] Emerson, *op. cit.*, 14.

[24] 102 Phil. 152, 161 (1957).

[25] 80 Phil. 71 (1948).

[26] *Whitney v. California*, 274 US 357, 377 (1927).

[27] *Bridges v. California*, 314 US 252 (1941).

[28] Cardozo, Mr. Justice Holmes, 44 Harv. Law Rev. 682, 688 (1931). Also: "Neither has the fundamental case of the clear-and-present-danger-rule—that is, the traditional distinction between thought and action—been successfully challenged." Shapiro, *Freedom of Speech* 71 (1966).

[29] *Schenck v. United States*, 249 US 47, 52 (1919). This is not to say that the clear and present danger test has always elicited unqualified approval. Prof. Freund entertains what for him are well-founded doubts. Thus: "Even where it is appropriate, the clear-and-present-danger test is an oversimplified judgment unless it takes account also of a number of other factors: the relative seriousness of the danger in comparison with the value of the occasion for speech or political activity; the availability of more moderate controls than those the state has imposed; and perhaps the specific intent with which the speech or activity is launched. No matter how rapidly we utter the phrase 'clear and present danger,' or how closely we hyphenate the words, they are not a substitute for the weighing of values. They tend to convey a delusion of certitude when what is most certain is the complexity of the strands in the web of freedoms which the judge must disentangle." *The Supreme Court of the United States*, p. 44 (1961).

[30] 37 Phil. 731 (1918).

[31] 323 US 516 (1945).

[32] 92 US 542 (1876).

[33] Article 3, Section 1, Paragraph 6, Constitution.

[34] Douglas, *The Right of Association*, 63 Col. Law Rev. 1362 (1963).

[35] *Ibid*, 1363.

[36] *Ibid*, pp. 1374-1375.

[37] Cf. *Thomas v. Collins*, 323 US 516 (1945).

[38] Douglas, *op. cit.* p. 1376.

[39] *Near v. Minnesota*, 283 US 697 (1913); *Lovell v. Griffin*, 303 US 444 (1938); *Thornhill v. Alabama*, 310 US 88 (1940); *Murdock v. Pennsylvania*, 319 US 105 (1943); *Saia v. New York*, 334 US 558 (1948); *Kunz v. New York*, 340 US 290 (1951); *Staub v. Boxley*, 355 US 313 (1958); *Smith v. California*, 361 US 147 (1959); *Talley v. California*, 362 US 60 (1960); *Cramp v. Board of Public Instruction*, 368 US 278 (1961); *Baggett v. Bullitt*, 377 US 360 (1964); *Aptheker v. Secretary of State*, 378 US 500 (1964).

[40] Section 50-A, Republic Act No. 4880.

[41] *Smith v. California*, 361 US 147, 151 (1959).

[42] Cf. *Cramp v. Board of Public Instruction*, 368 US 278 (1961).

[43] *United States v. Cardiff*, 344 US 174, 176 (1952).

[44] *NAACP v. Button*, 371 US 415, 433 (1963).

[45] Section 50-B, Republic Act No. 4880.

[46] Justices Dizon, Zaldivar, Castro, Capistrano, and Barredo are not in conformity, Section 50-B for them being in its entirety unconstitutional. Justice Makalintal, who would dismiss the petition on the procedural ground previously set forth did not express an opinion.

[47] Paragraph (a), Section 50-B.

[48] Paragraph (f), Section 50-B.

[49] Paragraph (b), Section 50-B.

[50] The votes of the five-named Justices are reinforced by that of Justices Sanchez and Fernando.

[51] Paragraph (e), Section 50-B. Such conduct if through organizations, associations, clubs, or communities or through political conventions, caucuses, conferences, meetings, rallies or parades, is provided for earlier in paragraphs (a) and (b).

[52] Paragraph (c), Section 50-B.

[53] Paragraph (d), Section 50-B.

[54] *Interstate Circuit Inc. v. Dallas*, 20 L ed 2d 225 (1968).

[55] *Whitehill v. Elkins*, 19 L ed 2d 228 (1967).

[56] *NAACP v. Alabama*, 377 US 288 (1964). Cited in *Zwickler v. Koota*, 19 L ed 2d 444, 451 (1967), which refers to *Schneider v. State*, 308 US 147 (1939), *Cartwell v. Connecticut*, 310 US 296 (1940); *Martin v. City of Struthers*, 319 US 141 (1943); *Schware v. Board of Bar Examiners*, 353 US 232 (1957); *Shelton v. Tucker*, 364 US 479 (1960); *Louisiana v. NAACP*, 366 US 293 (1961); *NAACP v. Button*, 371 US 415 (1963); *Aptheker v. Secretary of State*, 378 US 500 (1964).

[57] *Shelton v. Tucker*, 364 US 479, 488. Cited in *Keyishian v. Board of Regents*, 385 US 589 (1966).

[58] *NAACP v. Button*, 371 US 415 (1963).

[59] Cf. *United States v. Robell*, 19 L ed 2d 508 (1967).

[60] Paragraph (f), Section 50-B.

[61] *Zanduetta v. de la Costa*, 66 Phil. 615, 625-626 (1938). Laurel, J., concurring. To the same effect, this excerpt

from a recent opinion of Warren, C.J.: "We are concerned solely with determining whether the statute before us has exceeded the bounds imposed by the Constitution when First Amendment rights are at stake. The task of writing legislation which will stay within those bounds has been committed to Congress. Our decision today simply recognizes that, when legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a less drastic impact on the continued vitality of First Amendment freedoms. . . . The Constitution and the basic position of First Amendment rights in our democratic fabric demand nothing less." *United States v. Robel*, 19 L ed 2d 508, 516 (1967).

CONCURRING AND DISSENTING

SANCHEZ, J.:

Petitioners in the present case aim at striking down as violative of constitutional guarantees, Republic Act 4880, the principal features of which are contained in its Section 1, inserting Sections 50-A and 50-B between Sections 50 and 51 of the Revised Election Code, reproduced herein as follows:[1]

"SECTION 1. Republic Act Numbered One hundred and eighty, as amended, is hereby further amended by inserting new sections to be known as Sections 50-A and 50-B, between Sections 50 and 51 thereof, which shall read as follows:

'SEC. 50-A. Prohibition of too early nomination of Candidates.— It shall be unlawful for any political party, Political Committee, or Political group to nominate candidates for any elective public office voted for at large earlier than one hundred and fifty days immediately preceding an election, and for any other elective public office earlier than ninety days immediately preceding an election.'

'SEC. 50-B. Limitation upon the period of Election Campaign or Partisan Political Activity.— It is unlawful for any person whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.

'The term "Candidate" refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.

'The term "Election Campaign" or "Partisan Political Activity" refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:

'(a) Forming Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate;

'(b) Holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party;

'(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

'(d) Publishing or distributing campaign literature or materials;

'(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any

candidate or party;

'(f) Giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly: Provided, That simple expressions or [2] opinion and thoughts concerning the election shall not be considered as part of an election campaign: Provided, further, That nothing herein stated shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports.'"

Appropriately to be stated right at the start is that violation of the above provisions is considered a serious election offense. The penalty is "imprisonment of not less than one (1) year and one (1) day but not more than five (5) years" with accompanying "disqualification to hold a public office and deprivation of the right of suffrage for not less than one (1) year but not more than nine (9) years" and payment of costs.[3]

1. The issue of constitutionality of R.A. 4880 again brings to the fore the eternally-warring concepts of individual liberty and state authority.

Invalidity is pressed on the ground that the statute violates the rights of free speech and press, of peaceable assembly, and of association.[4] This Court is asked to rule that in the context of the ill-effects to be cured, the legislative remedy adopted, vis-a-vis the rights affected, does not meet what petitioners claim to be rational basis test; that, on the contrary, the relief prescribed would more likely produce the very evils sought to be prevented. This necessitates a circumspect discussion of the issue.

In proceeding, the working assumption is that individual liberty is not absolute. Neither is state authority, in spite of its sweep, illimitable. Fixed formulas and ready-made rules that seek to balance these two concepts could well redeem one from the unnerving task of deciding which ought to prevail.

It is at this point that we call to mind the principle that the relation between remedy and evil should be of such proximity that unless prohibited, conduct affecting these rights would create a "clear and present danger that will bring about the substantive evils that Congress has a right to prevent." [5]

Withal, doctrines which conceal behind the cloak of authoritative origin a tendency to muffle the demands of society, must pass the glaring light of contemporaneity. For, in the consideration of questions on constitutionality, one should remain receptive to the implication of John Marshall's resonant words that "it is a constitution we are expounding." [6]

State authority here manifests itself in legislation intended as an answer to the strong public sentiment that politics is growing into a way of life, that political campaigns are becoming longer and more bitter. It is a result of a legislative appraisal that protracted election campaign is the root of undesirable conditions. Bitter rivalries precipitate violence and deaths. Huge expenditures of funds give deserving but poor candidates slim chances of winning. They constitute an inducement to graft to winning candidates already in office in order to recoup campaign expenses. Handouts doled out by and expected from candidates corrupt the electorate. Official duties and affairs of state are neglected by incumbent officials desiring to run for reelection. The life and health of candidates and their followers are endangered. People's energies are dissipated in political bickerings and long drawn-out campaigns. [7]

Indeed, a drawn-out political campaign taxes the reservoir of patience and undermines respect of the electorate for democratic processes. Sustained and bilious political contests eat away even the veneer of civility among candidates and their followers and transplant brute force into the arena.

Such legislative appraisal, such ill-effects, then must constitute a principal lever by which one concept could win mastery over the other.

R.A. 4880 is a police power legislation. It was enacted by virtue of the inherent power of Congress to legislate on matters affecting the public interest and welfare,[8] as well as in pursuance of the constitutional policy of insuring a free, honest and orderly election.[9] Basically, the undefined scope of that power extends as far as the frontiers of public interest would advance. Fittingly, legislative determination of the breadth of public interest should command respect. For, Congress is the constitutional body vested with the power to enact laws. Its representative composition induces judgment culled from the diverse regions of the country. Normally, this should assure that a piece of police legislation is a reflection of what public interest contemporaneously encompasses.

2. It is, however, postulated that the right of peaceable assembly is violated by the prohibition on holding political assemblies for a period lasting more than one year; that the right to form associations is contravened by forbidding, for the same period, the formation of political groups; that, finally, freedom of speech and of the press is unduly restricted by a legislative fiat against speeches, announcements, commentaries or interviews favorable or unfavorable to the election of any party or candidate, publishing or distributing campaign literature or materials, and directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party, except during a number of days immediately preceding the election.

What has repeatedly been urged is the view that the underlying historic importance of the foregoing specific rights in democratic societies requires that the posture of defense against their invasion be firmer and more uncompromising than what may be exhibited under the general due process protection.[10] The absolute terms by which these specific rights are recognized in the Constitution justifies this conclusion.[11]

And yet, sight should not be lost of the fact that Congress has made a determination that certain specific evils are traceable directly to protracted election activities. Congress has found a solution to minimize, if not prevent, those evils by limiting the period of engaging in such activities. The proponents of validity would rely upon experience to deduce the connection between the cited evils and prolonged political campaign. By limiting the period of campaign, so they say, it is expected that the undesirable effects will be wiped out, at least relieved to a substantial degree.

This, of course, is largely an assumption. Congress, we must stress, has put up an untried measure to solve the problematic situation. Deduction then is the only avenue open: for Congress, to determine the necessity for the law; for the Court, its validity. The possibility of its inefficaciousness is not remote. But so long as a remedy adopted by Congress, as far as can logically be assumed, measures up to the standard of validity, it stands.

We give our imprimatur to Section 50-A. We may not tag as unconstitutional 50-B, and its subsections (a), (b) and (f). We fear no serious evil with their enforcement. They do not offend the constitutionally protected speech and press freedoms, and rights of peaceable assembly and association. The latter must yield. The proscriptions set forth in all of them are clear-cut, not open to reasonable doubt, nor easily susceptible to unreasonable interpretation. Public interest and welfare authorize their incorporation into the statute books.

3. To this writer, however, the center of controversy is to be found in subsections (c), (d) and (e) of Section 50-B.

Those who espouse validity assert that no undue restriction results because, by jurisprudence, solicitation and campaign are outside the ambit of protected speech.[12] But this rule, it would seem to us, has relevance only to commercial solicitation and campaign. There is no point here in delving into the desirability of equating, in social importance, political campaigns with advertisements of gadgets and other commercial propaganda or solicitation.[13] For, the statute under consideration goes well beyond matters commonly regarded as solicitation and campaign. Suffice it to say that jurisprudence tends to incline liberally towards freedom of expression in any form when placed in juxtaposition with the regulatory power of the State.[14]

Legislative history of the statute now before us indicates that what Congress intends to regulate are partisan activities and active campaigning.

Campaigning, as defined by the sponsor of Senate Bill 209 in the Senate, is a "series of operations." This, evidently, must have been adopted from the dictionary meaning of campaign: a connected series of operations to bring about some desired result.

The term "partisan political activity" has somehow acquired a more or less definite signification. It is not a new feature in Philippine political law. It has been regulated to stem dangers to specific state interests. The Constitution itself contains an injunction against civil service officers and employees from engaging directly or indirectly in partisan political activity or taking part in any election except to vote.[15] The civil service law[16] and the Revised Election Code[17] echo this absolute prohibition which is obviously aimed at the possible neglect of public service and its prostitution with partisan interests. The following are cited in the Civil Service Rules as examples of partisan political activity: candidacy for elective office; being a delegate to any political convention or member of any political committee or officer of any political club or other similar political organization; making speeches, canvassing or soliciting votes or political support in the interest of any party or candidate; soliciting or receiving contributions for political purposes either directly or indirectly; and becoming prominently identified with the success or failure of any candidate or candidates for election to public office.[18]

In the context in which terms "partisan political activity" and "election campaign" are taken together with the statutory purposes, the following from Justice Holmes would be particularly instructive: "Wherever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk." [19]

4. Perhaps if the phrases "election campaign" or "partisan political activity" were left to be explained by the general terms of the law as solely referring "to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office," it would be difficult to say that such prohibition is offensive to speech or press freedoms. But when the law itself sought to expand its meaning to include an area of prohibited acts relating to candidates and political parties, wider than an ordinary person would otherwise define them.

Specifically, discussion—oral or printed—is included among the prohibited conduct when done in the following manner (Section 50-B):

"(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

(d) Publishing or distributing campaign literature or materials;

(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party."

Defined only as lawful discussion is the following:

"Provided, That simple expressions of opinion and thoughts concerning the election shall not be considered as part of an election campaign: Provided, further, That nothing herein stated shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports."

The conduct involved in the discussion as to make it illegal is not clearly defined at all. The implication then is that what is prohibited is discussion which in the view of another may mean political campaign or partisan political activity. The speaker or writer becomes captive under the vigilant but whimsical senses of each listener

or reader. His words acquire varying shades of forcefulness, persuasion and meaning to suit the convenience of those interpreting them. A proposition becomes solicitation. An admonition becomes a campaign or propaganda.

As worded in R.A. 4880, prohibited discussion could cover the entire spectrum of expression relating to candidates and political parties. No discussion is safe. Every political discussion becomes suspect. No one can draw an indisputable dividing line between lawful and unlawful discussion. More so that statutory restraint falls upon any person whether or not a voter or candidate.

Candidacy is not enjoined during the proscriptive period. A person may thus make public his intention to run for public office. So may an incumbent official profess his desire to run for reelection. The law therefore leaves open, especially to the electorate, the occasion if not the temptation for making statements relating to a candidacy. The natural course is to comment upon or to discuss the merits of a candidate, his disqualifications, his opponents for public office, his accomplishments, his official or private conduct. For, it can hardly be denied that candidacy for public office is a matter of great public concern and interest.

Yet, this normal reaction to discuss or comment is muzzled by an unqualified prohibition on announcements or commentaries or interviews for or against the election of any party or candidate, on publishing campaign literature, and on indirect solicitation and campaign or propaganda for or against any party or candidate. Even incumbent officials are stopped. Every appearance before the public, every solicitous act for the public welfare may easily become tainted.

5. Nor does the proviso offer any corresponding protection against uncertainty. "Simple expressions of opinion and thoughts concerning the election" and expression of "views on current political problems or issues" leave the reader to conjecture, to guesswork, upon the extent of protection offered, be it as to the nature of the utterance ("simple expressions of opinion and thoughts") or the subject of the utterance ("current political problems or issues"). The line drawn to distinguish unauthorized "political activity" or "election campaign"—specifically, a speech designed to promote the candidacy of a person—from a simple expression of opinion on current political problems is so tenuous as to be indistinguishable.[20] If we are to paraphrase Mr. Justice Holmes, then the thought should run something like this: The only difference between expression of an opinion and the endorsement of a candidate is "the speaker's enthusiasm for the result." [21]

Only one area is certain. A person may only mention the candidate whom he supports. Beyond mentioning the name, it is no longer safe. But is it not unduly constricting the freedom of rational-minded persons to back up their statements of support with reasons?

The peculiarity of discussion, be it oral or printed, is that it carries with it varying degrees of "enthusiasm and inclination to persuade," [22] depending upon the listener or reader. It falls short of a partisan political activity when it is devoid of partisan interest in the sense that it is not made in the interest of a candidate or party. This is the only criterion for validity. But who is to decide this? And how? The law does not even require that there be an operation or a series of operations in order to measure up to an election campaign as it is commonly understood. In this way, the law may well become an instrument of harassment. Worse, it could lull the potential defendant into a false sense of security. It then becomes a dragnet that may trap anyone who attempts to express a simple opinion on political issues.

6. More than this, the threat of punishment will continually hound a speaker who expounds his views on political issues. Because of its punitive provisions, the statute surely tends to restrict what one might say lest his utterance be misunderstood as "designed to promote the candidacy of a person." A person would be kept guessing at the precise limits of the permissible "simple expression." To play safe, he would be compelled to put reins on his words for fear that they may stray beyond the protected area of "simple expression." The offshoot could only be a

continuous and pervasive restraint on all forms of discussion which might come within the purview of the statute. This thought is not new. It is underscored in *NAACP vs. Button*, 371 U.S. 415, 9 L. ed. 405, in language expressive, thus:—

"The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of first amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. . . . These freedoms are delicate and vulnerable as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of the sanctions. Because the first amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." [23]

It is thus in the self-imposed restraint that works in the minds of ordinary, law-abiding citizens that a vague statute becomes unjust.

Because of the indefiniteness created in subsections (c), (d) and (e) of Section 50-B, they readily lend themselves to harsh application. Vagueness of the law opens a wide latitude to law enforcers. Arbitrary enforcement of the letter of the law by an expansive definition of election campaign or partisan political activity, should not be branded as improbable. For, political rivalries spawn persecution. The law then becomes an unwitting tool. Discussion may be given a *prima facie* label as against the harassed. This is not altogether remote. To be sure, harassment and persecution are not unknown to the unscrupulous.

7. Those who favor validity find comfort in the theory that it is better for the meantime to leave the statute well enough alone. They say that it is preferable that courts of justice be allowed to hammer out the contours of the statute case by case. This may not, however, be entirely acceptable. To forego the question of constitutionality for now and take risks may not be the wiser move. As well advocated elsewhere, [24] a series of court prosecutions will touch only portions of a statute, still leaving uncertain other portions thereof. And then, in deciding whether or not an offending vague statute can be salvaged, one must not hedge and assume that when it is enforced in the courts, ambiguities will be resolved in favor of upholding free speech and press.

More important, there is the heavy penalty prescribed. A candidate, or any person for that matter, can unreasonably be saddled by court suits. Even if the accused were later to be declared innocent, thoroughly unnecessary is the burden of lawyers' fees, bail bonds and other expenses, not to say of energy to be consumed, effort to be expended, time to be spent, and the anxieties attendant in litigation.

It cannot really be said that the courage to speak out, barring all risks, is an ordinary human trait. Timorous men should not grow in number. And yet, it would appear that this is the effect of the enforcement of the law. The constant guide should be the warning of Justice Brandeis "that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies." [25]

As we analyze the import of the law, we come to the conclusion that subsections (c), (d) and (e) of Section 50-B inserted into the Revised Election Code by Republic Act 4880, heretofore transcribed, run smack against the constitutional guarantees of freedom of speech and of the press.

Hence, this concurrence and dissent.

[1] As published in 63 O.G. No. 44, pp. 9886-9888.

[2] Should be "of." The bills and the congressional debates attest to this.

[3] Section 185, Revised Election Code.

[4] "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." Sec. 8, Art. III, Philippine Constitution.

"The right to form associations or societies for purposes not contrary to law shall not be abridged." Sec. 6, Art. III, Philippine Constitution.

[5] The earliest enunciation of this doctrine is in *Schenk vs. United States* (1919), 249 U.S. 47, 52, 63 L. ed. 470, 473-474, and adopted in subsequent cases: *Whitney vs. California* (1927) 274 U.S. 357, 373, 71 L. ed. 1095, 1105; *Bridges vs. California* (1941), 314 U.S. 252, 262, 86 L. ed. 192, 202-203; *West Virginia State Bd. of Education vs. Barnette* (1943), 319 U.S. 624, 639; *Thomas vs. Collins* (1944), 323 U.S. 516, 530; *Dennis vs. United States* (1950), 341 U.S. 494, 510, 95 L. ed. 1137, 1153; *Terminiello vs. Chicago* (1957), 337 U.S. 1, 5; *Edwards vs. So. Carolina* (1963), 372 U.S. 229, 237, 9 L. ed. 2d. 697, 703. See: *American Bible Society vs. City of Manila*, 101 Phil. 386, 398. See also: *Primicias vs. Fugoso*, 80 Phil. 71, 87-88, which quoted with approval the *Whitney* case.

[6] *McCulloch vs. Maryland* (1819), 17 U.S. 316, 407, 4 L. ed. 579, 602.

"The pole-star for constitutional adjudications is John Marshall's greatest judicial utterance that 'it is a constitution we are expounding.' *McCulloch v. Maryland* (US), 4 Wheat 316, 407, 4 L. ed 579, 602. That requires both a spacious view in applying an instrument of government 'made for an undefined and expanding future', *Hurtado v. California*, 110 US 516, 530, 28 L. ed 232, 237, 4 S. Ct. 111, 292, and as narrow a delimitation of the constitutional issues as the circumstances permit. Not the least characteristic of great statesmanship which the Framers manifested was the extent to which they did not attempt to bind the future. It is no less incumbent upon this Court to avoid putting fetters upon the future by needless pronouncements today." Concurring Opinion of Mr. Justice Frankfurter in *Youngstown Sheet & Tube Co. vs. Sawyer* (1951), 343 U.S. 579, 596-597, 96 L. ed. 1153, 1172.

[7] Explanatory Notes to Senate Bill 209 and House Bill 2472, which eventually became Republic Act 4880.

[8] *Ichong vs. Hernandez* (1957), 101 Phil. 1155, 1163-1164.

[9] Sec. 2, Art. X, Philippine Constitution.

[10] *West Virginia Bd. of Education vs. Barnette* (1943), 319 U.S. 624, 639, 87 L. ed. 1638; *Thomas vs. Collins* (1944), 323 U.S. 516, 530, 89 L. ed. 430, 440; *Saia vs. New York* (1948), 334 U.S. 558, 561, 92 L. ed. 1574, 1577.

[11] "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. *Schneider v. Irvington*, 308 US 147, 84 L. ed 155, 60 S. Ct. 146; *Cantwell v. Connecticut*, 310 US 296, 84 L. ed 1213, 60 S. Ct. 900, 128 A.L.R. 1352; *Prince v. Massachusetts*, 321 US 158, 88 L. ed 645, 64 S. Ct. 438. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard govern the choice. Compare *United States v. Carolene Products Co.*, 304 US 144, 152, 153, 82 L. ed 1234, 1241, 1242, 58 S. Ct. 778. [But See concurring opinion of Mr. Justice Frankfurter in *Kovacs v. Cooper* (1949), 336 U.S. 77, 90, 93 L. ed. 513, 524, that the preferred position of freedom of speech does not imply that "any law touching communication is infected with presumptive invalidity."]

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clean support in public danger, actual or impending." Opinion of Mr. Justice Rutledge in *Thomas vs. Collins*, *supra*, at 529-530.

[12] Respondent's Memorandum, pp. 10-11, citing authorities.

[13] See: *New York Times Co. vs. Sullivan*, 376 U.S. 254, 265, 11 L. ed. 2d. 686, 698 (1964).

[14] *De Jonge vs. Oregon* (1936), 299 U.S. 353, 365, 81 L. ed. 278, 284. Also *NAACP vs. Button* (1963), 371 U.S. 415, 429, 9 L. ed 2d. 405, 415-416: "We meet at the outset the contention that 'solicitation' is wholly outside the area of freedoms protected by the First Amendment. To this contention there are two answers. The first is that a State cannot foreclose the exercise of constitutional rights by mere labels. The second is that abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. *Thomas vs. Collins*, 323 US 516, 537, 89 L ed. 430, 444, 65 S. Ct. 315; *Herndon vs. Lowry*, 301 US 242, 259-264, 81 L ed. 1066, 1075-1078, 57 S. Ct. 732. Cf. *Cantwell vs. Connecticut*, 310 US 296, 84 L ed. 1213, 60 S. Ct. 900, 128 A.L.R. 1352; *Stromberg vs. California*, 283 US 359, 369, 75 L ed. 1117, 1123, 51 S. Ct. 532, 73 A.L.R. 1484; *Terminiello vs. Chicago*, 337 US 1, 4, 93 L ed 1131, 1134, 69 S. Ct. 894."

[15] Sec. 2, Article XII, Philippine Constitution.

[16] Section 29, R.A. 2260, Civil Service Act of 1959.

[17] Section 54, Revised Election Code.

[18] Sec. 8, Rule 13, Rules and Regulations of the Civil Service Commission.

[19] *United States vs. Wurzbach* (1930), 280 U.S. 396, 399, 74 L. ed. 508, 510, in referring to the term "any political purpose whatever."

[20] During the deliberations of Senate Bill No. 209, Senator Gerardo M. Roxas, referring to the terms "mere expression of opinion" and "solicitation of votes", remarked that "it is difficult to distinguish one from the other." (Session of February 20, 1967).

[21] See: Dissenting opinion of Justice Holmes in *Gitlow vs. New York* (1925), 69 L. ed. 1138, 1149; italics supplied.

[22] See: *Thomas vs. Collins*, *supra*.

[23] Italics supplied. See also: *Dombrowski vs. Pfister*, *infra*.

[24] *Dombrowski vs. Pfister* (1965), 380 U.S. 479, 490-491, 14 L. ed. 2d. 22, 30.

[25] Concurring in *Whitney vs. California* (1927), 274 U.S. 357, 375, 71 L. ed. 1095, 1106.

CONCURRING AND DISSENTING

RUIZ CASTRO, J.:

Presented for consideration and decision is the constitutionality of Sections 50-A and 50-B of the Revised Election Code, which were inserted as amendatory provisions by Republic Act 4880.[1] These sections read in full as follows:

"SEC. 50-A. Prohibition of too early nomination of Candidates.— It shall be unlawful for any political party, Political Committee or Political group to nominate candidates for any elective public office voted for at large earlier than one hundred and fifty days immediately preceding an election, and for any other elective public office earlier than ninety days immediately preceding an election."

"SEC. 50-B. Limitation upon the period of Election Campaign or Partisan Political Activity.— It is unlawful for any person whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.

"The term 'Candidate' refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.

"The term 'Election Campaign' or 'Partisan Political Activity' refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:

"(a) Forming Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate;

"(b) Holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate or party;

"(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

"(d) Publishing or distributing campaign literature or materials;

"(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party;

"(f) Giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly. Provided, That simple expressions of opinion and thoughts concerning the election shall not be considered as part of an election campaign; Provided, further, That nothing herein stated shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports."

Violations of these two sections are classified as "serious election offenses" under Section 183 of the Revised Election Code, as amended by R.A. 4880, punishable with "imprisonment of not less than one year and one day but not more than five years" and "disqualification to hold a public office and deprivation of the right of suffrage for not less than one year but not more than nine years." [2]

The basic purpose of R.A. 4880 is easily discernible. Congress felt the need of curtailing excessive and extravagant partisan political activities, especially during an election year, and, to this end, sought to impose limitations upon the time during which such activities may be lawfully pursued. The legislative concern over excessive political activities was expressed in the following terms in the explanatory note of Senate Bill 209,

which finally became R.A. 4880:

"There is nothing basically wrong in engaging in an election campaign. Election campaign is indispensable part of election just as election is one of the most important fundamental requirements of popular government.

"It is also during election campaign that the stands of prospective political parties on vital national and local issues are made known to the public, thereby guiding the enfranchised citizenry in the proper and appropriate expression of its sovereign will.

"Past experience, however, has brought to light some very disturbing consequences of protracted election campaigns. Because of prolonged exposure of both candidates and the people to political tension, what starts out at first as gentlemanly competition ends up into bitter rivalries precipitating violence and even deaths. Prolonged election campaigns necessarily entail huge expenditures of funds on the part of the candidates. Now, no matter how deserving and worthy he is, a poor man has a very slim chance of winning an election. Prolonged election campaigns indeed carry with it not only the spectre of violence and death, not only the objectionable dominion of the rich in the political arena, but also the corruption of our electorate. We must adapt our democratic processes to the needs of the times."

I

The prohibitions introduced by R.A. 4880 purport to reach two types of activities, namely, (a) early nomination of candidates for elective public offices (Sec. 50-A), and (b) early election campaigns or partisan political activities (Sec. 50-B). The first prohibition is specifically directed against political parties, committees, and groups; the second prohibition is much more comprehensive in its intended reach, for it operates upon "any person whether or not a voter or a candidate" and "any group or association of persons, whether or not a political party or political committee."

Section 50-B brings within the ambit of its proscription a wide range of activities. The catalogue of activities covered by the prohibition against early election campaigning embraces two distinguishable types of acts: (a) giving, soliciting or receiving contributions for election campaign purposes, either directly or indirectly; and (b) directly or indirectly soliciting votes or undertaking any campaign or propaganda for or against any candidate or party, whether by means of speech, publication, formation of organizations, or by holding conventions, caucuses, meetings or other similar assemblies. The term "candidate" is itself broadly defined to include "any person aspiring for or seeking an elective public office," whether or not such person has been formally nominated.

The sweeping character of the prohibitions in Section 50-B is sought to be mitigated and delimited by the provisos exempting from their operation (a) "simple expressions of opinion and thoughts concerning the election," (b) expression of "views on current political problems or issues," and (c) "mentioning the names of the candidates for public office" whom one supports.

Before assaying the constitutional quality of Sections 50-A and 50-B, it is relevant to point out that these two sections are not wholly consistent with each other, and that considerable practical difficulties may be expected by those who would comply with the requirements of both. Under Section 50-A, political parties are allowed to nominate their official candidates for offices voted for at large within 150 days immediately preceding the election. At the very least, this section would seem to permit a political party to hold a nominating convention within the 150-day period. Section 50-B, however, makes it unlawful to promote or oppose the candidacy of any person seeking such office, whether or not such person "has been nominated by any political party," and to engage in an election campaign "for and against a candidate or party," except within the period of 120 days immediately preceding the election. I find it difficult to see how a political party can stage a nominating convention 150 days before an election if, at such time, neither any person nor group within such party may seek a nomination by

campaigning among the delegates to the convention. By its very nature, a nominating convention is intrinsically a forum for intensely partisan political activity. It is at the nominating convention that contending candidates obtain the formal endorsement and active support of their party for the ultimate purpose of victory at the polls. A nominating convention, at which activity promoting or opposing the candidacies of particular persons seeking nominations is forbidden, is a practical impossibility. Thus, the very broadness of the prohibitions contained in Section 50-B has the effect of reducing, as a practical matter, the time period specified in Section 50-A for nomination of candidates for national offices from 150 days to 120 days before an election.

II

We turn to the central issue of constitutionality. That the legislature has, in broad principle, competence to enact laws relative to the conduct of elections is conceded. Congress may not only regulate and control the place, time and manner in which elections shall be held, but may also provide for the manner by which candidates shall be chosen. In the exercise of the police power, Congress may regulate the conduct of election campaigns and activities by political parties and candidates, and prescribe measures reasonably appropriate to insure the integrity and purity of the electoral process. Thus, it has not been seriously contested that Congress may establish restraints on expenditures of money in political campaigns,[3] prohibit solicitation of votes for a consideration,[4] and penalize unlawful expenditures relative to the nominations of candidates.[5] Laws of this kind lie fairly within the area of permissible regulation, and I think that, in shaping specific regulations, Congressional discretion may be exercised within a wide range without remonstrance from the courts.

If no more were at stake in Sections 50-A and 50-B than the political or personal convenience of a candidate, faction or political group, we could with the least hesitation resolve the issue of constitutionality in favor of the legislative intentment. But infinitely more is at stake, for, in enacting the prohibitions of Sections 50-A and 50-B, Congress has placed undeniable burdens upon the exercise of fundamental political and personal freedoms encased in the Bill of Rights from legislative intrusion. There is, firstly, a manifest restriction on the free exercise of the rights of speech and of the press in the provisions of Section 50-B imposing a limitation of time on the following activities:

"(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate or party;

"(d) Publishing or distributing campaign literature or materials;

"(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party."

Likewise, the regulation of the time within which nominations of candidates by political parties may take place, under Section 50-A, and fixing a time limit for holding "political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies" for campaign purposes, under paragraph (b) of Section 50-B, curtails the freedom of peaceful assembly. And finally, the right to form associations for purposes not contrary to law is impinged upon by the provision of paragraph (a) of Section 50-B regulating the forming of "Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate."

It is fairly accurate to say that legislations imposing restrictions upon the right of free expression, and upon the right of assembly and of political association indispensable to the full exercise of free expression, have commonly been subjected to more searching and exacting judicial scrutiny than statutes directed at other personal activities. As aptly said by the United States Supreme Court in *Schneider v. Irvington*:[6]

"In every case, . . . where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preference or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

Thomas v. Collins[7] exemplifies the same approach: "The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on other grounds, will not suffice. These rights [of expression and assembly] rest on firmer foundations."

The belief that more exacting constitutional tests are appropriately applied upon statutes having an actual or potential inhibiting effect on the right of speech, and the cognate rights of assembly and association, flows from recognition of the nature and function of these rights in a free democratic society. Historically the guarantees of free expression were intended to provide some assurance that government would remain responsive to the will of the people, in line with the constitutional principle that sovereignty resides in the people and all government authority emanates from them.[8] The viability of a truly representative government depends upon the effective protection and exercise of the rights of the people to freely think, to freely discuss and to freely assemble for redress of their grievances; for these underlie the mechanisms of peaceful change in a democratic polity. There is ample authority in history for the belief that those who value freedom, but are frustrated in its exercise, will tend to resort to force and violent opposition to obtain release from their repression.

So essential are these freedoms to the preservation and vitality of democratic institutions that courts have on numerous occasions categorized them as occupying a "preferred position" in the hierarchy of civil liberties.[9] "That priority," intoned the court in Thomas v. Collins, supra, "gives these liberties a sanctity and a sanction not permitting dubious intrusions."

This is not to say that the rights of free expression and of peaceful assembly may not be constitutionally restricted by legislative action. No one has seriously doubted that these rights do not accord immunity to every possible use of language or to every form of assembly. Circumstances may arise in which the safety, perhaps the very survival of our society, would demand deterrence and compel punishment of whomsoever would abuse these freedoms as well as whomsoever would exercise them to subvert the very public order upon the stability of which these freedoms depend.

". . . It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or unrestricted or unbridled license that gives immunity for every possible use of language and prevents the punishments of those who abuse this freedom."[10]

"The right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign 'police power,' which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people.[11]

But in every case where there arises a clash between an assertion of State authority and the exercise of free speech and assembly, it is ultimately the high function and duty of this Court to locate the point of accommodation and equilibrium and draw the line between permissible regulation and forbidden restraint.

It is now conventional wisdom that this function of delimitation and adjustment cannot meaningfully be carried

out through the iteration of abstract generalizations. The restriction that is assailed as unconstitutional must be judged in the context of which it is part, taking into account the nature and substantiality of the community interest sought to be protected or promoted by the legislation under assay, in relation to the nature and importance of the freedom restricted and the character and extent of the restriction sought to be imposed.

III

Various standards have been evolved for the testing of the validity of a rule or regulation curtailing the rights of free speech, free press, and peaceful assembly. At the earlier stages in the development of jurisprudence on the matter, it was said that the State has the power to proscribe and punish speech which "creates a dangerous tendency which the State has the right to prevent." [12] The "dangerous tendency" rule, as this formulation has been called, found favor in many decisions of this Court. [13]

In the United States, the "dangerous tendency" doctrine was early abandoned, and superseded by the "clear and present danger" rule. By the year 1919, the majority of the members of the United States Supreme Court got around to accepting Justice Holmes' view that "The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." [14] To sustain legislation imposing limitations upon freedom of speech or of assembly, a court must find that the evil sought to be avoided by the legislative restriction is both serious and imminent in high degree. As stated in *Bridges v. California*: [15]

"... the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of the speech or the press. The evil itself must be 'substantial' ...; it must be 'serious' ..."

"What clearly emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished ..."

The "clear and present danger" rule has been cited with approval, in at least two decisions of this Court. [16]

The "dangerous tendency" and "clear and present danger" doctrines, it should not escape notice, were fashioned in the course of testing legislation of a particular type—legislation limiting speech expected to have deleterious consequences on the security and public order of the community. The essential difference between the two doctrines related to the degree of proximity of the apprehended danger which justified the restriction upon speech. The "dangerous tendency" doctrine permitted the application of restrictions once a rational connection between the speech restrained and the danger apprehended—the "tendency" of one to create the other—was shown. The "clear and present danger" rule, in contrast, required the Government to defer application of restrictions until the apprehended danger was much more visible, until its realization was imminent and nigh at hand. The latter rule was thus considerably more permissive of speech than the former, in context for the testing of which they were originally designed.

In other types of context, however, where the "substantive evil" which Congress seeks to avoid or mitigate does not relate to the maintenance of public order in society, the adequacy or perhaps even the relevancy of these doctrines cannot be casually assumed. It would appear to me that one of these contexts would be that where the legislation under constitutional attack interferes with the freedom of speech and assembly in a more generalized way and where the effect of speech and assembly in terms of the probability of realization of a specific danger is not susceptible even of impressionistic calculation. I believe that Sections 50-A and 50-B come within such context. Congress enacted these provisions not because it feared that speeches and assemblies in the course of election campaigns would, probably or imminently, result in a direct breach of public order or threaten national security. Sections 50-A and 50-B explicitly recognize that such speech and assembly are lawful while seeking to

limit them in point of time.

However useful the "clear and present danger" formulation was in the appraisal of a specific type of situation, there is fairly extensive recognition that it is not a rule of universal applicability and validity, not an automatic mechanism that relieves a court of the need for careful scrutiny of the features of a given situation and evaluation of the competing interests involved.

In *American Communications Ass'n. v. Douds*,^[17] the United States Supreme Court unequivocally said that "in suggesting that the substantive evil must be serious and substantial, it was never the intention of this Court to lay down an absolutist test measured in terms of danger to the Nation." Rejecting the criterion of "clear and present danger" as applicable to a statute requiring labor union officers to subscribe to a non-Communist affidavit before the union may avail of the benefits of the Labor Management Relations Act of 1947, the Court, speaking through Chief Justice Vinson, said:

"When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented. . . . We must, therefore, undertake the 'delicate and difficult task . . . to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights'. . ."^[18]

In enunciating a standard premised on a judicial balancing of the conflicting social values and individual interests competing for ascendancy in legislation which restricts expression, the court in *Douds* laid the basis for what has been called the "balancing-of-interests" test which has found application in more recent decisions of the U.S. Supreme Court.^[19] Briefly stated, the "balancing" test requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.^[20]

In the actual application of the "balancing-of-interests" test, the crucial question is: how much deference should be given to the legislative judgment? It does not seem to me enough to say that this Court should not concern itself with the wisdom of a particular legislative measure but with the question of constitutional power. I believe that we cannot avoid addressing ourselves to the question whether the point of viable equilibrium represented by the legislative judgment embodied in R.A. 4880 is an appropriate and reasonable one, in the light of both the historic purpose of the constitutional safeguards of speech and press and assembly and the general conditions obtaining in the community.

Although the urgency of the public interest sought to be secured by Congressional power restricting the individual's freedom, and the social importance and value of the freedom so restricted, "are to be judged in the concrete, not on the basis of abstractions,"^[21] a wide range of factors are necessarily relevant in ascertaining the point or line of equilibrium. Among these are (a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation; (b) the specific thrust of the restriction, i.e., whether the restriction is direct or indirect, whether or not the persons affected are few; (c) the value and importance of the public interest sought to be secured by the legislation—the reference here is to the nature and gravity of the evil which Congress seeks to prevent; (d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and (e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.^[22]

In my view, the "balancing-of-interests" approach is more appropriately used in determining the constitutionality of Sections 50-A and 50-B. Both the "dangerous tendency" and "clear and present danger" criteria have minimum relevancy to our task of appraising these provisions. Under these two tests, the statute is to be assayed by considering the degree of probability and imminence with which "prolonged election campaigns" would increase

the incidence of "violence and deaths," "dominion of the rich in the political arena" and "corruption of electorate." This kind of constitutional testing would involve both speculation and prophecy of a sort for which this Court, I am afraid, has neither the inclination nor any special competence.

IV

Applying the "balancing-of-interest" test or approach outlined above, I am persuaded that Congress did not exceed constitutional limits in enacting Section 50-A. This Section, it will be recalled, makes it unlawful for any political party or group to nominate a candidate for an elective public office earlier than the period of 150 or 90 days, as the case may be, immediately preceeding the election. No political party or group can claim a constitutional right to nominate a candidate for public office at any time that such party or group pleases. The party nomination process is a convenient method devised by political parties and groups, as a means of securing unity of political action.[23] As a device designed for expediency of candidates and of political parties, the process of nomination—or at least the time aspect thereof—must yield to the requirements of reasonable regulations imposed by the State. It may be well to note that in many jurisdictions in the United States, the nomination of candidates for public office is regulated and controlled in many aspects by statutes.[24] While the act of nominating a candidate has speech and assembly aspects, the restrictive effect of Section 50-A would appear negligible. The reach of the statute is itself limited: it applies only to political parties, political committees or political groups, leaving everyone else free from restraint. The thrust of Section 50-A is also limited: it does not prohibit political parties from holding nominating conventions or from doing any lawful thing during such conventions; what it controls is the scheduling of the nominating conventions. While control of the scheduling of conventions of course involves delimitation of the time periods which the formally revealed candidates have to convince the electorate of their respective merits, those periods—150 days and 90 days—do not appear unreasonably short, at least not in this age of instantaneous and mass media.

On the other hand, the legitimacy and importance of the public interest sought to be promoted by Section 50-A must be conceded. Congress has determined that inordinately early nominations by political parties or groups have the tendency of dissipating the energies of the people by exposing them prematurely to the absorbing excitement of election campaigns as we know them, and detracting from the attention that ought to be given to the pursuit of the main task of a developing society like ours, which is the achievement of increasing levels of economic development and social welfare.

The rational connection between the prohibition of Section 50-A and its object, the indirect and modest scope or its restriction on the rights of speech and assembly, and the embracing public interest which Congress has found in the moderation of partisan political activity, lead us to the conclusion that the statute may stand consistently with and does not offend against the Constitution. The interest of the community in limiting the period of election campaigns, on balance, far outweighs the social value of the kind of speech and assembly that is involved in the formal nomination of candidates for public office.

V

I reach a different conclusion with respect to Section 50-B. Here, the restraint on the freedoms of expression, assembly and association is direct. Except within the "open season" of 120 and 90 days preceding the election, the statute prevents and punishes—by heavy criminal sanction—speeches, writings, assemblies and associations intended to promote or oppose the candidacy of any person aspiring for an elective public office, or which may be deemed a direct or an indirect "campaign" or as "propaganda" for or against a political party. The prohibition reaches not only "a relative handful of persons";[25] it applies to any person "whether or not a voter or candidate," and to any group of persons "whether or not a political party or political committee." The effect of the law,

therefore, is to impose a comprehensive and prolonged prohibition of speech of a particular content, except during the 120 or 90 days, respectively, immediately preceding an election.

Thus, the moment any person announces his intention of seeking an elective public office, "regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate," Section 50-B would become immediately operative. Should the aspirant make known his intention, say, one year before the election, the law forthwith steps in to impose a "blackout," as it were, of all manner of discussion in support of or in opposition to his candidacy. The lips of the candidate himself are by the threat of penal sanction sealed, and he may not make a speech, announcement, commentary, or hold an interview to explain his claim to public office or his credentials for leadership until the commencement of the period allowed for an "election campaign." Neither may any person, before that period, speak out in open support or criticism of his candidacy, for that would constitute a prohibited commentary "for or against the election of [a] candidate [albeit not a formally nominated candidate] for public office," within the purview of paragraph (c) of Section 50-B. In practical effect, Section 50-B would stifle comment or criticism, no matter how fairminded, in respect of a given political party (whether in or out of power) and prospective candidates for office (whether avowed or merely intending), and would abide all the citizens to hold their tongues in the meantime.

What of the social value and importance of the freedoms impaired by Section 50-B? The legislation strikes at the most basic political right of the citizens in a republican system, which is the right actively to participate in the establishment or administration of government. This right finds expression in multiple forms, but it certainly embraces the right to influence the shape of policy and law directly by the use of ballot. It has been said so many times it scarcely needs to be said again, that the realization of the democratic ideal of self-government depends upon an informed and committed electorate. This can be accomplished only by allowing the fullest measure of freedom in the public discussion of candidates and the issues behind which they rally; to this end, all avenues of persuasion—speech, press, assembly, organization—must be kept always open. It is in the context of the electoral process that these fundamental rights secured by the Constitution assume the highest social importance.[26]

As to the formation of "organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate,"[27] this is a right which, like freedom of expression and peaceable assembly, lies at the foundation of a libertarian and democratic society.[28] As Professor Kauper has explained, with characteristic lucidity:

"When we speak of freedom of association we may have reference to it in a variety of contexts. Probably the highest form of freedom of association, at least as many would see it, is the freedom to associate for political purposes by means of organization of a political party and participation in its activities. The effective functioning of a democratic society depends on the formation of political parties and the use of parties as vehicles for the formulation and expression of opinions and policies. The minority party or parties become vehicles for registering opposition and dissent. The political party is the indispensable agency both for effective participation in political affairs by the individual citizen and for registering the diversity of views in a pluralistic society. Indeed, under some other constitutional systems political parties are viewed as organs of government and have a high constitutional status."[29]

We turn to the other end of the scales. As I have herein-before observed, the interest of the state in regulating partisan political activity, which is sought to be secured by Section 50-B no less than by Section 50-A, is a legitimate one and its protection a proper aim for reasonable exercise of the public power. I think, however, that that interest, important as it is, does not offset the restrictions which Section 50-B imposes with indiscriminate sweep upon the even more fundamental community interests embodied in the constitutional guarantees of speech, assembly and association. I have adverted to *Mills v. Alabama* where the United States Supreme Court struck down the Alabama Corrupt Practices Act to the extent that it prohibited, under penal sanctions, comments and

criticism by the press on election day. The statutory provision there in question, not unlike Section 50-B here, was sought to be sustained in the interest of preserving the purity and integrity of the electoral process. The restriction which the Alabama statute imposed upon freedom of speech and assembly would seem an inconsequential one—a restriction imposed for one day, only one day, election day; nevertheless, the United States Supreme Court regarded such restriction as sufficient to outweigh the concededly legitimate purpose of the statute. We can do no less in respect of restrictions of such reach, scope and magnitude as to make the limitation of the Alabama statute appear, in comparison, as an altogether trifling inconvenience.

Indeed, if a choice is to be made between licentious election campaigns, which Section 50-B seeks to curtail, and the muzzling, as it were, of public discussion of political issues and candidates, which the provision would effectuate, I have no hesitancy in opting for the former. It is the only choice consistent with the democratic process. Fortunately, there is no need to choose between one and the other; the dichotomy need not be a real one. I am not to be understood as holding that Congress may not, in appropriate instances, forbid the abusive exercise of speech in election campaigns. There is no constitutional immunity for a defamatory attack on a public candidate. Neither is there protection for slander of public officials.[30] It has been held to be within the power of the legislature to penalize specifically the making, in bad faith, of false charges of wrongdoing against a candidate for nomination or election to public office,[31] and to prohibit the publication or circulation of charges against such candidate without serving him a copy of such charges several days before the election.[32] Statutes of this kind have been sustained against broad claims of impairment of freedom of speech and of the press.[33] "But it is an entirely different matter when the State, instead of prosecuting [offenders] for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as a basis for a criminal charge." [34]

That remedies less destructive of the basic rights enshrined in the Constitution are not available, has not been shown. The applicable principle here has been formulated in the following terms:

"... even though the governmental purposes be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same purpose." [35]

Section 50-B, as it would casually lump together the activities of citizens exercising their constitutional rights and those of politicians seeking the privilege of an elective office, is too broadly drawn to satisfy the constitutional test. The more pernicious aspects of our national preoccupation with "politics" do not arise from the exercise, even the abuse, by the electorate of the freedoms of speech and of the press; I find it difficult to suppose that these can be met by curtailing expression, assembly and association. The great majority of our people are too preoccupied with demands upon their time imposed by our generally marginal or submarginal standards of living. "Politics," as I see the contemporary scene, is a dominant preoccupation of only a handful of persons—the politicians, the professional partymen. If the people at large become involved in the heat and clamor of an election campaign, it is ordinarily because they are unduly provoked or frenetically induced to such involvement by the politicians themselves. As it is, the great masses of our people do not speak loud enough—and, when they do, only infrequently—about our government. The effect of the ban on speech would serve only to further chill constitutionally protected conduct on their part which, instead of being suppressed, should on the contrary be encouraged.

It is not amiss to observe here that the making of politically oriented speeches and the dissemination of similar literature, while they may divert the energies of those who make or write them and their audiences, would appear to me to be among the less pernicious aspects of our national preoccupation with "politics." The more dangerous aspects of our national preoccupation probably occur in privacy or secrecy and may be beyond the reach of

measures like Section 50-B.

It is argued in defense of the statute, nonetheless, that under the two provisos of Section 50-B, "simple expressions of opinion and thoughts concerning the election" and expression of "views on current political problems or issues," including mentioning the names of candidates for public offices whom one supports, are not prohibited; hence, freedom of expression is not unconstitutionally abridged by Section 50-B.

This argument is gravely flawed by the assumption that "simple expressions of opinion" and "views on current political problems" cover the whole reach of the relevant constitutional guarantees. What about the rights of assembly and lawful association? As to freedom of expression, that cannot be confined to the realm of abstract political discussions. It comprehends expression which advocates action, no less than that which merely presents an academic viewpoint. Indeed, the value of speech in a democratic society lies, in large measure, in its role as an instrument of persuasion, of consensual action, and for this reason it must seek to move to action by advocacy, no less than by mere exposition of views. It is not mere coincidence that the framers of our Constitution, in protecting freedom of speech and of the press against legislative abridgment, coupled that freedom with a guarantee of the right of the people to peaceably assemble and petition the government for the redress of grievances. The right of peaceful assembly for the redress of grievances would be meaningless and hollow if it authorized merely the public expression of political views, but not the advocacy of political reforms—even changes in the composition of the elective officialdom of the administration.

There is another, equally basic, difficulty that vitiates the avowed constitutional utility of the provisos appended to Section 50-B. Under the first proviso, "simple expressions of opinion and thoughts concerning the election shall not be considered as part of an election campaign." From the precise use of the word "simple" may be rationally drawn an inference that "non-simple" expressions fall within the proscription of election campaigns. But the law conspicuously fails to lay down a standard by which permissible "simple expression" might be distinguished from non-permissible electioneering. How simple is "simple?" In the absence of such a standard, every speaker or writer wishing to make publicly known his views concerning the election and his preferences among the candidates, must speak at his own peril. He could carefully choose his words with the intention of remaining within the area of speech left permissible by Section 50-B. But, in the very nature of things, what and who can provide him assurance that his words, "simple expressions of opinion and thoughts concerning the election" as they may be, will not be understood by his audience or at least by some of them, or by the prosecuting officers of the Government, or by the courts even, as a "speech" or "commentary" "for or against the election of . . . a candidate for public office," or at least an indirect solicitation of votes?

It is pertinent to advert to the Texas statute involved in *Thomas v. Collins*, supra, as illustrative of the vice of vagueness that we find in Section 50-B. The Texas statute required all labor union organizers to first obtain organizer's cards from the Secretary of State "before soliciting any members for his organization," and authorized the courts to compel compliance by the issuance of court processes. Thomas, the president of a nationwide labor union, came to Houston to address a mass meeting of employees of an oil plant which was undergoing unionization; but six hours before he was scheduled to speak, he was served with a court order restraining him from soliciting members for the local union which was affiliated with his organization, without first obtaining an organizer's card. For disobeying the restraining order, he was found in contempt of court. The U.S. Supreme Court, reversing his conviction, found the registration requirement an invalid restraint upon free speech and free assembly, thus:

"That there was restriction upon Thomas' right to speak and the rights of the workers to hear what he had to say, there can be no doubt. The threat of the restraining order, backed by the power of contempt, and of arrest for crime, hung over every word. A speaker in such circumstances could avoid the words 'solicit,' 'invite,' 'join.'

It would be impossible to avoid the idea. The statute requires no specific formula. It is not contended that only the use of the word 'solicit' would violate the prohibition. Without such a limitation, the statute forbids any language which conveys, or reasonably could be found to convey, the meaning of invitation. That Thomas chose to meet the issue squarely, not to hide in ambiguous phrasing, does not counteract this fact. General words create different and often particular impressions on different minds. No speaker, however careful, can convey exactly his meaning, or the same meaning, to the different members of an audience. How one might 'laud unionism,' as the State and the State Supreme Court concede Thomas was free to do, yet in these circumstances not imply an invitation, is hard to conceive. This is the nub of the case, which the State fails to meet because it cannot do so. Workingmen do not lack capacity for making rational connections. They would understand, or some would, that the president of U.A.W. and vice president of C.I.O., addressing an organization meeting, was not urging merely a philosophic attachment to abstract principles of unionism, disconnected from the business immediately at hand. The feat would be incredible for a national leader, addressing such a meeting, lauding unions and their principles, urging adherence to union philosophy, not also and thereby to suggest attachment to the union by becoming a member.

"Furthermore, whether words intended and designed to fall short of invitation would miss that mark is a question of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

"Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause or trade unionism in Texas, without having first procured the card. Thomas knew this and faced the alternatives it presented, When served with the order he had three choices: (1) to stand on his right and speak freely; (2) to quit, refusing entirely to speak; (3) to trim, and even thus to risk the penalty. He chose the first alternative. We think he was within his rights in doing so." [36]

The realism of the approach and reasoning employed in *Thomas v. Collins* commends itself; I think this kind of realism should be applied to the task of appraising Section 50-B. Section 50-B forbids "directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party," including any language "for or against the election of any party or candidate for public office," except within the specified periods preceding the election.

If a minority political party were to hold a mass rally at Plaza Miranda within the prohibited period of an election year, for the purpose of publicly expressing their criticism of the party in power, it is unthinkable that the public speeches delivered during the occasion will not be understood, by many if not by all, as a direct or an indirect campaign or propaganda against a political party, as well as a direct or an indirect solicitation of votes. The audience will certainly understand the occasion, not as a forum for indulging in criticism for criticism's sake, nor as a "simple" discussion of political philosophy, but as an invitation to unseat the party in power at the next election.

If, upon the other hand, the minority party should control one or both Houses of Congress and, for selfish partisan

motives, oppose all or a major portion of the significant measures sponsored by the Administration, regardless of their merits, for the purpose of obtaining political partisan advantage, the Chief Executive would, during the restricted period, find himself hampered in vigorously placing blame squarely on such minority party. The Administration (and this includes the Chief Executive himself) would be hard put to appeal to public opinion to exert pressure on the legislature to gain support for what it may honestly believe to be constructive measures sorely needed to promote the country's progress. The right of any party or politician to appeal to public opinion cannot be assailed; yet, when would such an appeal, in which the opposition may have to be severely criticized, not constitute a violation of Section 50-B? Actual pre-war and postwar experience has shown that in a number of instances, the Chief Executive and leaders of his administration had to mobilize public opinion (largely expressed through the press) to frustrate what they regarded as a calculated scheme of the opposition party of unreasonably interposing obstacles to a major part of essential legislation. It would indeed be most difficult to determine with exactitude what utterances of the Administration leaders, including the Chief Executive himself, would or would not constitute propaganda "for or against a political party."

Under these circumstances, I find the contraposition in Section 50-B between "expressions of opinion," on the one hand, and "solicitation" and "campaign or propaganda," on the other, as too uncertain and shifting a line of distinction to be of any practical utility either to the citizen or official who must speak at his own peril or to the prosecutors and the courts who must enforce and apply the distinction.

Paragraph (f) of Section 50-B is tautological and question-begging. It defines "election campaign" as "giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly." Insofar, therefore, as the phrase "election campaign purposes" in paragraph (f) depends for its meaning on the preceding paragraphs (a), (b), (c), (d) and (e), paragraph (f) likewise suffers from constitutional infirmity. Upon the other hand, if the meaning of paragraph (f) be that the act of soliciting, giving or receiving contributions for the purpose of advancing the candidacy of a person or party is "campaigning," then it is just as much a curtailment of the freedom of thought that the Constitution vouchsafes to every citizen.

The foregoing disquisition could be compressed into the compelling perspective of this simple admonition: that "speech concerning public affairs is more than self-expression; it is the essence of self-government." [37]

In sum and substance, it is my considered view that Section 50-B of the Revised Election Code constitutes an unconstitutional abridgment of the freedoms of speech, of the press, of peaceful assembly, and of lawful association.

I vote for its total excision from the statute books.

Capistrano, Zaldivar, Dizon, JJ., concur.

[1] "An Act to Amend Republic Act Numbered One Hundred and Eighty, Otherwise Known as 'The Revised Election Code,' by Limiting the Period of Election Campaign, Inserting for this Purpose New Sections Therein to be Known as Sections 50-A and 50-B and Amending Section One Hundred Eighty-Three of the Same Code." Approved June 17, 1967.

[2] Sec. 185, Revised Election Code.

[3] Sec. 48, Rev. Election Code; see *State of Wisconsin v. Kohler*, 228 N.W. 895, 69 A.L.R. 348.

[4] Sec. 49, *Id.*; see 26 Am. Jur. 2d. 189.

[5] Sec. 49, *Id.*

[6] 308 U.S. 147, 84 L. Ed. 155, 165.

[7] 323 U.S. 516, 89 L. Ed. 430, 440.

[8] Sec. 1, Art. II, Constitution.

[9] *Murdock v. Pennsylvania*, 319 US 105, 87 L ed 1292; *Prince v. Massachusetts*, 321 US 158, 88 L ed. 645, 651; *Follett v. McCormick*, 321 US 573, 88 L ed. 938, 940; *Marsh v. Alabama*, 326 US 501, 90 L ed. 430, 440.

[10] *People v. Nabong*, 57 Phil. 455, 460-61. See also *People v. Feleo*, 57 Phil. 451, 454; *People v. Feleo*, 58 Phil. 573, 575.

[11] *Primicias v. Fugoso*, 80 Phil. 71, 75-76; *Gallego v. People*, L-18247, Aug. 31, 1963.

[12] *Gitlow v. New York*, 268 U.S. 652, 69 L. Ed. 1138.

[13] See, e.g., *People v. Evangelista*, 57 Phil. 354; *People v. Nabong*, *supra*; *People v. Feleo*, *supra*; *Espuelas v. People*, L-2990, Dec. 17, 1951; *Cabansag v. Fernandez*, 102 Phil. 152.

[14] *Schenck v. United States*, 249 U.S. 47, 63 L. Ed. 470, 473-74.

[15] 314 U.S. 252, 86 L. Ed. 192, 203.

[16] See *Primicias v. Fugoso*, *supra*; *Cabansag v. Fernandez*, *supra*. The latter decision contains an extensive discussion of the constitutional development of both the "dangerous tendency" and "clear and present danger" doctrines.

[17] 339 U.S. 383, 94 L. Ed. 925, 943.

[18] At 94 L. Ed. 944.

[19] See, e.g., *NAACP v. Alabama*, 357 U.S. 449; *Barenblatt v. U.S.*, 360 U.S. 169, 3 L. Ed. 2d 116; *Konigsberg v. State Bar*, 366 U.S. 36.

[20] Kauper, *Civil Liberties and the Constitution*, p. 113 (Ann Arbor, 1966) provides a useful summary statement: "The theory of balance of interests represents a wholly pragmatic approach to the problem of First Amendment freedoms, indeed, to the whole problem of constitutional interpretation. It rests on the theory that it is the Court's function in the case before it when it finds public interests served by legislation on the one hand, and First Amendment freedoms affected by it on the other, to balance the one against the other and to arrive at a judgment where the greater weight shall be placed. If on balance it appears that the public interest served by restrictive legislation is of such a character that it outweighs the abridgment of freedom, then the Court will find the legislation valid. In short, the balance-of-interests theory rests on the basis that constitutional freedoms are not absolute, not even those stated in the First amendment, and that they may be abridged to some extent to serve appropriate and important public interests."

[21] *Barenblatt v. U.S.*, *supra*, at L. Ed. 2d. 1121.

[22] For a very thoughtful and searching study on the subject, marked by a heavy preference for freedom of expression and the social values it imports, see Emerson, *Towards a General Theory of the First Amendment*, 72 *YALE LAW JOURNAL* 877 (1963).

[23] *Winston v. Moore*, 244 Pa. 447, 91 A. 520.

[24] See *Field v. Hall*, 201 Ark. 77, 143 S. W. 2d 567; *People v. Kramer*, 328 Ill. 512, 160 N.E. 60; *Dupre v. St. Jacques*, 51 R.I. 189, 153 A. 240.

[25] American Communications Ass'n. v. Donds, *supra*, at L. Ed. 947.

[26] A passage from Judge Cooley ably expresses the historic value of free political discussion, where he states that the purpose of the First Amendment of the U.S. Constitution is rooted in the need—" . . . to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them." 2 Cooley, *Constitutional Limitations* (8th ed. 1927) 885. Similar statements are found in *Roth v. United States*, 354 U.S. 476, 1 L. Ed. 2d 1498; *Stromberg v. California*, 283 U.S. 359, 75 L. Ed. 1117.

The opinion of Mr. Justice Black, speaking for the U.S. Supreme Court in *Mills v. Alabama*, 384 U.S. 214, 16 L. ed. 2d. 484 at 488, is apropos: "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of the Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, magazines, but also humble leaflets and circulars, see *Lovell v. Griffin*, 303 US 444, 82 L ed 949, 58 S. Ct. 666, to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change, which is all that this editorial did, muzzles one of the very agencies of the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free. The Alabama Corrupt Practices Act by providing criminal penalties for publishing editorials such as the one here silences the press at a time when it can be most effective. It is difficult to conceive of a more obvious and flagrant abridgment of the constitutionally guaranteed freedom of the press."

[27] Par (a), Section 50-B.

[28] *Shelton v. Tucker*, 364 U.S. 479, 5 L. Ed. 2d 231, 236.

[29] *Italics supplied*; Kauper, *Civil Liberties and the Constitution* (Ann Arbor 1966) 99.

[30] See, e.g., *U.S. v. Contreras*, 23 Phil. 513.

[31] *Hawley v. Wallace*, 137 Minn. 183, 163 N.W. 127.

[32] *Ex Parte Hawthorne*, 156 So. 619.

[33] Anno: 96 A.L.R. 582-84.

[34] *De Jonge v. Oregon*, 299 U.S. 353, 812 Ed. 278, 284.

[35] *Shelton v. Tucker*, *supra*, at L. Ed 2d 239 (*italics supplied*).

[36] At L. Ed. 442-43 (*italics supplied*).

[37] *Garrison v. Louisiana*, 379 U.S. 64 (1964).

CONCURRING AND DISSENTING

BARREDO, J.:

I concur in the resulting dismissal of this case, but I cannot give my assent to so much of the opinion, brilliantly written for the Court by Mr. Justice Fernando, as would give the imprimatur of constitutionality to any portion of Section 50-B of the statute before Us. Hereunder are my humble but sincere observations.

I am of the firm conviction that this case should be dismissed. In fact, it is not clear to me why the petition herein was ever given due course at all. No matter how I scan its allegations, I cannot find anything in them more than a petition for relief which is definitely outside the original jurisdiction of this Court. Petitioners themselves have expressly brought it as a petition for relief; it is the majority that has decided to pull the chestnuts out of the fire by holding that it should be "treated by this Court as one of prohibition in view of the seriousness and the urgency of the constitutional issue raised." Frankly, I consider this relaxation rather uncalled for; it could border on overeagerness on the part of the Supreme Court, which is not only taboo in constitutional cases but also certainly not befitting the role of this Tribunal in the tripartite scheme of government We have in this Republic of ours. I am afraid the majority is unnecessarily opening wide the gate for a flood of cases hardly worthy of our attention, because the parties concerned in many cases that will come to Us may not see as clearly as We do the real reasons of public interest which will move Us when We choose in the future to either entertain or refuse to take cognizance of cases of constitutionality. Withal, We cannot entirely escape the suspicion that We discriminate.

Since after all, the majority admits that "when We act in these matters, We do not do so on the assumption that to Us is granted the requisite knowledge to set matters right, but by virtue of the responsibility We cannot escape under the Constitution, one that history authenticates, to pass upon every assertion of an alleged infringement of liberty, when our competence is appropriately invoked," (underscoring mine) and, further, no one can deny that it is now firmly established that among the indispensable requirements before this Court can take up a constitutional question is that We can do it only when it involves a real and genuine situation causing direct substantial injury to specific persons, as contradistinguished from mere speculative fears of possible general hardship or mere inconvenience, I feel it would be much safer for Us, and our position would be more in accord with the rule of law, if We adhered strictly to the above requirement and threw out cases of the nature of the present one, if only out of the traditional respect this Tribunal owes the two other coordinate and co-equal departments of our government. In the petition at bar, there are no allegations of specific acts of the respondent Commission on Elections or even only threatened to be committed by it, pursuant to the challenged legislation, which they claim impairs, impedes, or negates any rights of theirs considered to be constitutionally protected against such impairment, impeding or negation. It is very clear to me that in this case, our jurisdiction has not been properly invoked. Considering how multifaceted the law in question is, one is completely at a loss as to how petitioners' request for a blanket prohibition and injunction can be considered, in the light of existing principles that strictly limit our power to take cognizance of constitutional cases only to those that can pass the test I have mentioned above.

What is more, I regret to have to say that what the majority is doing by taking further cognizance of and deciding this case is to brush aside the stark reality that the interest in this case of petitioners Cabigao and Gonzales, the first, as candidate, and the second, as his leader, related only to the elections of 1967 wherein, in fact, Cabigao was elected Vice-Mayor of Manila. Accordingly, this case has already become entirely academic even as a prohibition, because neither Cabigao nor his leader, Gonzales, can conceivably have any further imaginable interest in these proceedings. How can we proceed then, when petitioners' interest no longer exists and whatever decision We may make will no longer affect any situation involving said petitioners. Clearly to me, what the majority has done is to *motu proprio* convert the action of petitioners into a taxpayer's suit, which may not be

proper because there is no specific expenditure of public funds involved here. Besides, if petitioners have not come with a supplemental petition still complaining, why are We going to assume that they are still complaining or, for that matter, that there are other persons who are minded to complain, such that We have to give or deny to them here and now the reason to do so?

Again, I say, the Court seems to be trying to bite more than it can chew, since cases of this nature^[1] will surely come in great numbers and We will have to accommodate them all, otherwise the exercise of Our discretion in rejecting any of them can be questioned and may at times be really questionable. My basic principle is that the rule of law avoids creating areas of discretionary powers, and the fact that it is the Supreme Court that exercises the discretion does not make it tolerable in any degree, for such an eventuality can be worse because no other authority can check Us and the people would be helpless, since We cannot be changed, unlike the President and the Members of Congress who can, in effect, be recalled in the elections. Of course, I have faith in the individual and collective wisdom and integrity of each and every one of my fellow members of this Court, but I still prefer that We exercise discretion only when it is clearly granted to Us, rather than for Us to create by Our own fiat the basis for its exercise.

The other question assailing my mind now, is this: Is there any precedent, whether here or in any other jurisdiction where the Supreme Court has the power to declare legislative or executive acts unconstitutional, wherein any supreme court had insisted on deciding grave constitutional questions after the case had become completely moot and academic because the interest of the actors alleged in their pleading had ceased to exist? I don't believe there has been any, which is as it should be, because if this Court and even inferior court dismiss ordinary cases which have become moot and academic, with much more reason should such action be taken, in cases wherein the unconstitutionality of a law or executive order is raised, precisely, for the reasons of principle already stated and fully discussed in other constitutional cases so well known that they need not be cited here anymore.

It is for these considerations that I join the majority in dismissing this case. And I want to acknowledge that I am heartened in my stand by the fact that in the deliberations, at least, Mr. Justice Makalintal expressed similar views as mine, so much so that, in his particular case, he did not even care to discuss the constitutional questions herein involved precisely because they are not appropriately before this Court.^[2] On the other hand, if the majority's position is correct that this Court may properly consider this case as one of prohibition and that it should be decided despite its having become clearly academic, I would definitely cast my vote with Mr. Justice Castro to declare unconstitutional Section 50-B of the legislative enactment in question, Republic Act 4880, more popularly known as the Tañada-Singson Law. Unlike him, however, I shall not indulge in a complete discussion of my stand on the constitutional questions herein involved, since the opportunity to voice fully my views will come anyway when the proper case is filed with Us. It is only because some members of the Court feel that we should make known what are, more or less, our personal opinions, so that the parties concerned may somehow be guided in what they propose to do or are doing in relation to the coming election, that I shall state somehow my fundamental observations, without prejudice to their needed enlargement if and when the appropriate opportunity comes. Indeed, in my humble view, what the Court is rendering here is in the nature of an advisory opinion and I am sure all the members of the Court will agree with me that in doing this we are departing from the invariable posture this Court has always taken heretofore. In other words, we are just advancing now, individually and collectively, what our votes and judgment will be should an appropriate case come, unless, of course, as some of our colleagues have wisely observed in other cases where I have made similar observations, We change our mind after hearing the real parties in interest.

Coming now to the constitutional problems posed by the pleadings, I have these to say, for the time being:

1. The first specific act defined by the statute in question as "election campaign" or "partisan political activity" proscribed by it within the stipulated limited period of one hundred twenty days prior to an election at large and ninety days in the case of any other election is to "form(ing) organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate." No law more effective, if less disguised, could have been conceived to render practically impossible the organization of new political parties in this country. If for this reason alone, I consider this provision to be deserving of the severest condemnation as an unparalleled assault on the most sacred and fundamental political rights of our citizenry. In the light of the recent political experience of the strong of heart and idealists amongst us, this measure appears to me as a perfect or, at least, a near-perfect scheme for the perpetuation of the status quo and the entrenchment of the presently existing political parties, particularly, the two major ones, whether or not we share the cynical reference to them by the discerning as nothing but twin peas in the same pod. This is not to say that such was what motivated its authors, particularly Senator Tañada, for whom I have always had the highest regard for his never-questioned sincerity of purpose, integrity, patriotism and libertarian principles, which opinion of mine is undoubtedly shared by all the members of this Court. I must insist, however, that such is what appears to me to be unmistakably the evident effect of the prohibition under discussion. It is most probable that in its passion to remedy as early as possible the evils it feels exist, Congress has overlooked unwittingly some of the possible implications of this particular measure.

It is one thing to prohibit a political party from actively campaigning outside a certain period of time and it is entirely another thing to prohibit citizens who are not contended with the existing political parties to organize, outside the same period, any new political party which they feel will better serve the public weal.[3] Before it is contended that this provision does allow the organization of new political parties within the above-mentioned periods of one hundred twenty and ninety days preceding each respective election referred to, I hasten to add that the said periods are so obviously insufficient that to some it would appear as if the reference to such brief periods of free organization in the provision was just inserted into it to camouflage its real but unmentionable intentions and/or to blunt any challenge of unconstitutionality.

All our people have been witnesses to events of contemporary history which have clearly demonstrated the futility of organizing a new political party or even just a front or alliance within such a short time. To name the gallant national figures who have met frustration in such endeavor even with much more time at their disposal is to prove that the task is simply next to impossible, no matter if it were undertaken by men of the best reputation in integrity and nobility of ideals. It is surely of common knowledge that the work of organization alone of a party, not to speak of the actual participation and influence such party is intended to effectuate in the ensuing election, can hardly be accomplished, within the four months provided by the statute, with sufficient success to be of any consequence, specially, on a national level, which is what is needed most, because while local issues seem to arouse more interest among the electors, national issues have a profound effect on the lives and liberties of all the people. It must be borne in mind, in this connection, that our country is made up of more than 7,000 islands scattered throughout the length and breadth of the archipelago. Those who have taken part in one way or another in an electoral campaign of national dimension know only too well that one can hardly cover a majority of these islands, not to speak of all of them, within such an abbreviated period.

Moreover, in the light of contemporary trends of political thinking and action, very much more than the present condition of things about which there is, to be sure, so much hypocritical hue and cry, particularly, among those whom the present-day Robin Hoods, in and out of the government, have not attended to, to engender a general feeling of dissatisfaction and need for change in such widespread proportions as to readily galvanize enough elements to rise in peaceful revolution against the existing political parties and bring about the formation within the short span of four months of a new political party of adequate or at least appreciable strength and effectiveness

in the national arena. Even the obviously sincere efforts of the undaunted who keep on trying their luck, pitted against the marked complacency and indifference of the present and passing generations, if not their incomprehensible inability to overcome the inertia that seems to be holding them from pushing the scattered protests here and there, more or less valid and urgent, to their logical conclusion, generate but very little hope that the expected reaction can materialize during our time.

Needless to say, no matter if one looks at the current scenes thru the most rosy spectacles, a ban against the formation of new political parties is definitely out of the question. A total expressed ban is, of course, repugnant to any decent sense of freedom. Indeed, a disguised ban, even if only partial, is even more intolerable in this country that does not pretend to have but does truly have democratic bearings deeply rooted in the history of centuries of heroic uprising which logically culminated in the first successful revolution of a small nation against despotism and colonialism in this part of the world.

It is to be conceded that the adequacy or inadequacy of the means adopted by Congress in the pursuit of a legislatively recognized objective is generally irrelevant to the courts in the determination of the constitutionality of a congressional action. I must be quick to add, however, that this rule can be salutary only if the adequacy is controversial, but when the inadequacy of the means adopted is palpable and can reasonably be assumed to be known or ought to be known generally by the people, such that it is a foregone conclusion that what is left licit by the law can only be nothing more than futile gestures of empty uselessness, I have no doubt that the judiciary can rightfully expose the legislative act for what it is—an odious infraction of the charter of our liberties. Otherwise, the principle of respect for coordinate and co-equal authority can be a tyranny forbidding the courts from striking down what is not constitutionally permissible. I am ready to agree that the judiciary should give allowances for errors of appreciation and evaluation of the circumstances causing the passage of a law, but if it is true, as it is indeed true, that the Supreme Court is the guardian next only to the people themselves of the integrity of the Constitution and the rights and liberties it embodies and sanctifies, I would consider it an unpardonable abdication of our peculiar constitutionally-destined role, if We closed Our eyes and folded Our arms when a more or less complete ban against the organization of new political parties in this country is being attempted to be passed before Us as a legitimate exercise of police power.

At this point, it is best to make it clear that the particular constitutional precept with which the statutory provision in question is inconsistent and to which, therefore, it must yield is Paragraph 6, Section 1, Article III of the Bill of Rights of the Constitution which ordains:

"The right to form associations or societies for purposes not contrary to law shall not be abridged."

Incidentally, the indigenous cast of this provision is seemingly emphasized by Mr. Justice Fernando by his reference to its origin in the Malolos Constitution of 1896.[4] Indeed, there it was provided:

"Article 19

"No Filipino in the full enjoyment of his civil and political rights shall be hindered in the free exercise thereof.

"Article 20

Neither shall any Filipino be deprived of:

1.

2. The right of joining any associations for all objects of human life which may not be contrary to public morals; . . ."

It is to be observed that in the light of its text and origin, the statutory provision under scrutiny forbids the

abridgement of the right of inhabitants of this country to form associations and societies of all kinds, including and most of all, for the citizens, political parties, the sole exception being when the association or society is formed for purposes contrary to law. It is unquestionable that the formation of an ordinary political party cannot be for purposes contrary to law. On the contrary, the organization of political parties not dedicated to the violent overthrow of the government is an indispensable concomitant of any truly democratic government. Partyless governments are travesties of the genuine concept of democracy. The immediate repulsion that fated straws in the wind thrown in favor of such an anachronistic proposal here in the Philippines is still fresh in the memory of many of our countrymen. Our people are firmly set on the inseparability of political parties from a democratic way of life. To ban political parties here is to kill democracy itself.

And now comes this legislation banning the formation of political parties except within certain limited periods of time, so short, as I have already demonstrated, that, in effect, the ban is a total one. Can there be a more flagrant violation of the constitutional guarantee of freedom of association? Besides, since it is undeniable that the evils Congress seeks to remedy cannot be said to have all been brought about by the formation of new political parties, but rather by the anomalous, irregular, corrupt and illegal practices of the existing political parties, why does the legislature have to direct its wrath against new political parties, which, for all we know, can yet be the ones that will produce the much needed innovations in the political thinking and actions of our electorate which will precisely do away with the defects of the present political system? As I see it, therefore, the remedy embodied in the disputed provision is so clearly misdirected that it cannot, under any concept of constitutional law, be tolerated and considered constitutionally flawless, on the theory that it is just a case of error in the choice of means, on the part of Congress, to attain the objective it has in mind, hence beyond the pale of judicial review.

To be sure, the phrase "for purposes not contrary to law" in the constitutional provision above quoted did not pass unnoticed during the debates in the constitutional convention. To some delegates, it appeared that said phrase renders nugatory the freedom it guarantees, for the simple reason that with said phrase the lawmakers are practically given the attribute to determine what specific associations may be allowed or not allowed, by the simple expedient of outlawing their purposes—prophetic vision, indeed! No less than Delegate Jose P. Laurel, who later became an honored member of this Court, had to explain that "the phrase was inserted just to show that the right of association guaranteed in the Constitution was subject to the dominating police power of the state." (Aruego, id.)

To my mind, this explanation of Delegate Laurel renders the prohibition in the law in question more vulnerable to the charge of unconstitutionality. It is to me simply inconceivable that the state can ever forbid the formation of political parties in the assertion of its "dominating police power." I reiterate that political parties are an absolute necessity in a democracy like ours. As a matter of fact, I dare say that police power would be inexistent unless the political parties that give life to the government which exercises police power are allowed to exist. That is not to say that political parties are above the state. All that I mean is that without political parties, a democratic state cannot exist; what we will have instead is a police state.

No more than momentary reflection is needed to realize that much as our Constitution projects, it would appear, the desirability of the two-party system of government, there is nothing in it that even remotely suggests that the present political parties are the ones precisely that should be perpetuated to the prejudice of any other. Less reflection is needed for one to be thoroughly convinced that to prohibit the organization of any new political party is but a short step away from implanting here the totalitarian practice of a one-ticket election which we all abhor. Absolute freedom of choice of the parties and men by whom we shall be governed, even if only among varying evils, is of the very essence in the concept of democracy consecrated in the fundamental law of our land.

So much, for the time being, for the prohibition against new political parties. Let us go now to the other freedoms

unconstitutionally impinged by the legislation at bar.

2. If I vehemently decry the attempt in this law to curtail our freedom to organize political parties whenever it may please us to do so for being not only violative of the letter of the constitution but contrary also to the democratic traditions of our people and likewise a patent disregard of the very essence of a democratic form of government, I cannot have less repugnance and abhorrence for the further attempt in this law to do away with the freedoms of speech and the press and peaceful assembly. Lest I be misunderstood, however, as being an ultra-activist, it should be clear at the outset that in holding that the above prohibitions contained in the statute in question are violative of the Constitution, my stand is limited to my fundamental conviction that the freedoms of speech, of the press and of peaceful assembly and redress of grievances are absolute when they are being exercised in relation to our right to choose the men and women by whom we shall be governed. I hold neither candle nor brief for licentious speech and press, but I recognize no power that can pre-censor, much less forbid, any speech or writing and any peaceful assembly and petition for the redress of grievances, the purpose of which is no more than to express one's belief regarding the qualifications or lack of them, the merits and the demerits of persons who are candidates for public office or of political parties vying for power, as well as the principles and programs of government and public service they advocate, to the end that when voting time comes the right of suffrage may be intelligently and knowingly, even if not always wisely, exercised. If, in the process, there should be in any manner any baseless attacks on the character and private life of any candidate or party or some form of inciting to public disorder or sedition, the offender can be rightfully haled to court for libel or the violation of the penal provisions on public order and national security, as the facts may warrant, but never can anyone, much less the state, have the power to priorly forbid him to say his piece.

Paragraphs (b), (c), (d) and (e) of Section 1 of the challenged legislation cover practically a common subject matter. They all define as "election campaign" or "partisan political activity" forbidden to be exercised within the aforementioned periods the following liberties:

"The term 'Election Campaign' or 'Partisan Political Activity' refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:

(a)

(b) Holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party;

(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

(d) Publishing or distributing campaign literature or materials;

(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party";

Naturally, it is my uncompromising view, that by these provisions, the act directly violates the plain injunction of the Constitution to the effect that:

"No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." (Par. (8), Sec. 1, Art. III of the Constitution)

My colleagues are impressed by the objectives of the legislative measure before Us. Mr. Justice Fernando voices the feeling of some of them in the opening paragraph of the Court's opinion thus: "A statute designed to maintain

the purity and integrity of the electoral process by Congress calling a halt to the undesirable practice of prolonged political campaigns, bringing in their wake serious evils not the least of which is the ever-increasing cost of seeking public office, is challenged on constitutional grounds." Mr. Justice Castro proclaims said objectives as practically self-evident and heartily endorses, by quoting in toto, the purposes avowed in the explanatory note of Senate Bill 209 which finally became the subject statute. Mr. Justice Sanchez is a little more factual as he opines:

"State authority here manifests itself in legislation intended as an answer to the strong public sentiment that politics is growing into a way of life, that political campaigns are becoming longer and more bitter. It is a result of a legislative appraisal that protected election campaign is the root of undesirable conditions. Bitter rivalries precipitate violence and deaths. Huge expenditures of funds give deserving but poor candidates slim chances of winning. They constitute an inducement to graft to winning candidates already in office in order to recoup campaign expenses. Handouts doled out by and expected from candidates corrupt the electorate. Official duties and affairs of state are neglected by incumbent officials desiring to run for reelection. The life and health of candidates and their followers are endangered. People's energies are dissipated in political bickerings and long drawn-out campaigns." (2nd par., p. 4, concurring & dissenting opinion of Mr. Justice Sanchez)

I hope I will be forgiven for having to view things differently. Indeed, I would like to ask the optimists in and out of Congress to silence the trumpets they have sounded to herald the approval of this law. I agree that generally no court and no member of this Tribunal has the rights to quarrel with Congress in its choice of means to combat the evils in a legislatively recognized situation, but are We, as the Supreme Court, to seal our lips even when we can plainly see that a congressional measure purported allegedly to do away with certain evils does, on the contrary, promote those very same evils it is supposed to remedy, on top of impinging on our sacred constitutional freedoms, and at that, with the aggravating element of giving undue advantage to the incumbents in office and to the existing political parties?

A closer look at the way the prohibitions contained in the section of the law in dispute will work will reveal how detrimental they are to the basic public interest, nay, to the right of suffrage itself. I like to reiterate over and over, for it seems this is the fundamental point others miss, that genuine democracy thrives only where the power and right of the people to elect the men to whom they would entrust the privilege to run the affairs of the state exist. In the language of the declaration of principles of our Constitution, "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them" (Section 1, Article II). Translating this declaration into actuality, the Philippines is a republic because and solely because the people in it can be governed only by officials whom they themselves have placed in office by their votes. And in it is on this cornerstone that I hold it to be self-evident that when the freedoms of speech, press and peaceful assembly and redress of grievances are being exercised in relation to suffrage or as a means to enjoy the inalienable right of the qualified citizen to vote, they are absolute and timeless. If our democracy and republicanism are to be worthwhile, the conduct of public affairs by our officials must be allowed to suffer incessant and unabating scrutiny, favorable or unfavorable, everyday and at all times. Every holder of power in our government must be ready to undergo exposure any moment of the day or night, from January to December every year, as it is only in this way that he can rightfully gain the confidence of the people. I have no patience for those who would regard public dissection of the establishment as an attribute to be indulged by the people only at certain periods of time. I consider the freedoms of speech, press and peaceful assembly and redress of grievances, when exercised in the name of suffrage, as the very means by which the right itself to vote can only be properly enjoyed. It stands to reason, therefore, that suffrage itself would be next to useless if these liberties cannot be untrammelled whether as to degree or time.

It must be noted that the proscription contained in this law is against the use altogether of the freedom of speech, press and peaceful assembly in relation to the candidacy of a person for public office, not against the use of such

freedoms in order to damage the character of any particular person or to endanger the security of the state. No matter how I view it, I cannot see how using said freedoms in the interest of someone's candidacy beyond the prescribed abbreviated period can do any harm to the common weal. I regret I came too late to this Court to be able to hear what I have been made to understand was Senator Tañada's very informative arguments. With all due respect to what might have been shown by the distinguished Senator, I personally feel the present measure premature and misdirected. The incidence and reincidence of bloody occurrences directly or indirectly caused by electoral rivalries cannot be denied, but unless shown convincing and reliable statistical data. I have a strong feeling that those who entertain these apprehensions are influenced by unwarranted generalizations of isolated cases. Not even the residents of such allegedly troublous areas as Ilocos Sur, the Lanao provinces, Cavite, Cebu and Nueva Vizcaya will admit that the situation in those places is so beyond control as to necessitate, at any time, the complete suppression of expression of views, oral and in writing, for or against persons handling public affairs or aspiring to do so.

As the above-quoted provisions stand, every imaginable form of political activity, whether done individually or singly, by a person, or collectively, by a number of persons, is covered by their prohibitions. Under the said provisions, during twenty months in every two years, there are only three things Filipinos can do in relation to the conduct of public affairs by those they have voted into power and the relative capacity or incapacity of others to take their places, namely: (1) simple expressions of opinion and thought concerning the election; (2) expression of views on current political problems and issues; and (3) mention the candidates whom one supports.

If these exceptions in the statute are not absurd, little comfort can be found beneath their umbrage. As to the first exception, Mr. Justice Castro very aptly asks, how simple is simple? I would like to add to the impeccable strictures of my esteemed colleague, if I may be permitted, the humble observation that the phrase "concerning the election" is to me too equivocal, if it is not incomprehensible, to be part of a penal statute such as this law is, with the heavy penalty of imprisonment from one year to five years, disqualification to hold public office for not less than one year nor more than nine years and deprivation of the right to vote for a like period that it imposes. To express an opinion as regards elections in general is something that is indubitably outside the area of any possible legislative proscription and to do so in relation to a forthcoming specific election without any discernible hue of an appeal for support for one protagonist or another is to say nothing worthwhile, that is, if it is possible to conceive of anyone referring to an actual impending election with complete impartiality. On the other hand, to express one's views regarding an actual election with mention of the qualifications or disqualifications of the candidates and the political parties involved, cannot escape the coverage of the prohibition in question.

As to the second exception, what views on current political problems and issues can be expressed without necessarily carrying with them undercurrents of conformity or non-conformity with the present state of things and, directly or indirectly, with the ways of the incumbents in office? And as to the last exception, who can be these candidates whose names would possibly be mentioned by any sympathizer, when candidates are not allowed by this law to be nominated earlier than practically the same period as the prohibitions against campaigns?

I can well understand the predicament of Congress. It has attempted to define the indefinable. Any intent to circumscribe the areas of basic liberties cannot end but in absurdity. To insist on drawing artificial boundaries for their enjoyment must necessarily result in confusion and consequent protracted controversy and debate which can only give occasion for the inordinate exercise of power for power's sake. A definition that comprehends substantially what should not be included is no definition at all. The right of our people to speak and write freely at all times about our government and those who govern us, only because we have elected them, cannot be subjected to any degree of limitation without virtual loss of the right itself. The moment it becomes impossible for the inhabitants of this country to express approval or disapproval of the acts of the government and its officials

without imperilling their personal liberty, their right to hold office and to vote, and such appears to be the natural consequence of the injunctions of this law, we cannot be far away from the day when our Constitution will be hardly worth the paper on which it is written.

I find it difficult to dissociate the prohibition in this law from the obvious advantages they give to those presently holding office by election and to the existing political parties.

Under the definition of the terms "candidate" and "election campaigns" or "partisan political activity" contained in the section we are assaying, it is clear that what the statute contemplates are candidates for public offices. Accordingly, candidates for nomination by their respective political parties do not appear to be comprehended within the prohibition; so, as long as a person campaigns, even publicly, only for nomination by his party, he is free to expose himself in any way and to correspondingly criticize and denounce all his rivals. The fact that the law permits in Section 50-A the holding of political conventions and the nominations of official candidates one month before the start of the period of the prohibitions in Section 50-B, lends strength to this conclusion.[5]

Such being the case, the undue advantage of the aspirants for nomination within the existing political parties over independent candidates becomes evident. The legal period fixed by the law will start in July, and yet, we have long been witnesses already to all sorts of campaigns, complete to the last detail -- what with the newspaper and radio and television campaign matters being published and broadcast as widely as possible, the campaigners armed or endowed with either experience, money or pulchritude, or what may pass for it, welcoming wave after wave of party delegates arriving at the airports and the piers, the billeting of these delegates in luxurious and costly hotels, at the cost of the candidates and with pocket money to boot, the sumptuous banquets and parties, etc., etc. And to top it all, a well publicized marathon "consensus" which has reportedly cost the candidates millions of pesos. In other words, in the actual operation of this law, it is only the independent candidate, the candidate who does not belong to the existing political parties and who is prohibited to organize a new one, who must keep his ambitions and aspirations all to himself and say nary a word, lest he jeopardise his liberty and his rights to hold office and to vote, while those who belong to the said parties merrily go about freely gaining as much exposure as possible before the public. I need not refer to the tremendous advantages that accrue to the party in power and to all incumbents, irrespective of political party color, from the operation of this law. They should be obvious to any observer of current events.

Under these circumstances, can it be successfully maintained that such disparity of opportunities for those who legitimately want to offer their services to the people by getting elected to public office, resulting from a congressional act approved by those who would benefit from it, is constitutionally flawless? When it is considered that this law impinges on the freedoms of speech, press, assembly and redress of grievances and that its only justification is that it is intended to remedy existing evil practices and undesirable conditions and occurrences related to the frequency of elections and the extended campaigns in connection therewith, and it is further considered that, as demonstrated above, this law, in its actual operation impairs and defeats its avowed purposes because, in effect, it deprives the independent candidates or those who do not belong to the established political parties of equal opportunity to expose themselves to the public and make their personal qualifications, principles and programs of public service known to the electorate, to the decided advantage of the incumbents or, at least, those who are members of the existing political parties, it can be easily seen that the curtailment of freedom involved in this measure cannot be permitted in the name of police power. I am certain none can agree that resort to police power may be sanctioned when under the guise of regulating allegedly existing evils, as law is passed that will result in graver evil than that purported to be avoided. As far as I can understand the commitment of our people to the principles of democracy and republicanism, we would rather have the bloodshed, corruption and other alleged irregularities that come with protracted electoral campaigns and partisan political activity, than

suffer the continued mockery of their right to vote by limiting, as this legislation does, their right of choice only to those whom the existing political parties might care to present as official candidates before them. If this would be all that the right of suffrage would amount to, the death of Hitler and Mussolini might just as well be considered as the most lamentable tragedies in the history of freemen and we should welcome with open arms the importation into this country of the kind of elections held in Russia and Red China.

A few considerations more should make those who believe in the efficacy and constitutionality of this law take a second hard look at it. Then, they will realize how mistaken they must be. I have said earlier that this act defeats its own avowed purposes. Well, all that have to be considered for anyone to see my point is that in the matter of reducing the cost of elections by limiting the period of campaigns, current events have clearly proven that instead of lessening their expenditures, candidates have spent more than they would have done without such limitation. Because of the shortness of the period provided for the calling of conventions for the nomination of official candidates by political parties and the more abbreviated period that the candidate who would be ultimately nominated and the parties themselves will have to campaign to win in the election, these parties have resorted to other means of having, at least, even a semi-official candidate, without calling him so. And this, as everybody knows means money, money and money.

The truth known to all who have political experience is that no candidate for a position voted at large nationally can entertain any hopes of winning after a campaign of only four months. It took at least a year for Presidents Magsaysay, Macapagal and Marcos to win the presidency. None of the senators we have and have had can boast of having campaigned only for four months. In view of the abbreviated period of campaign fixed in this law, necessarily, the candidates have to redouble their efforts, try to cover more area in less time, see more people every moment, distribute more propaganda, etc., etc., and all these mean money, more money and more money. In this set up, so neatly produced by this law, it is regrettably evident that the poor candidates have no chance. How can a poor candidate cover the more than 7,000 islands of our archipelago in four months? If it was impossible to do so when there was no limitation of the period for campaigns, what chance can such a poor candidate have now? Thus, it can be seen that this law has not only made candidates spend more than they used to do before, it has effectively reduced the chances and practically killed the hopes of poor candidates. Under this law, it may truthfully be said that the right to be elected to a public office is denied by reason of poverty.

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

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

in the selection of their elective officials, it is because the information needed to serve as basis for intelligent voting have not fully reached all segments of the population. Inadequacy of reliable information among the voters, regarding the qualification of the candidates and the relevant circumstances of the election they are taking part in can be the greatest bane of popular suffrage.

Modesty aside, it is quite well known that it has been my lot to have handled, alone or with others, some of the most important political cases in this country since the end of the second world war. To be able to do so, I had to study our election laws assiduously perhaps as any other Filipino has. From what I have thus learned, I can safely say that the present laws are reasonably adequate to prevent lavish and excessive expenditures for electoral purposes. The real cause for regret is the lack of proper implementation of these laws. I dare say that even the courts, not excluding this Supreme Court, and specially the Electoral Tribunals of the Senate and the House of Representatives have been rather liberal in interpreting them, so much so, that the unscrupulous have succeeded in practically openly violating them with a cynical sense of impunity. The recent case of the ouster of Senators Manglapus, Kalaw and Antonino was a singular one, wherein the spirit of the law triumphed, even as it brought to the fore the necessity of making more realistic the ceilings of allowable expenditures at the time when the cost of everything has multiplied several times compared to that when the existing limitations were established. Indeed, these unrealistic limitations, as to the amounts of expenditures candidates may make, has somehow compelled the corresponding authorities to overlook or even condone violations of these laws, and somehow also, this attitude has given courage to practically everybody to pay little heed to the statutory limitations, thus giving cause to the excessive overspending the authors of the law now in question are seeking to stop or, at least, minimize. I say again, Congress does not have to sacrifice or even just risk the loss or diminution only of any of our sacred liberties to accomplish such a laudable objective. All that has to be done, in my considered opinion, is to have more sincerity, mental honesty and firm determination in the implementation of the limitations fixed in the Election Law, after they have been made more realistic, and real devotion and integrity in the officials charged with said implementation. If few may agree with me, I still entertain the trustful feeling that it is not entirely hoping against hope to expect our national leaders to regain their moral bearings and, in a bold effort to sweep away the darkening clouds of despair that envelope a great many of our countrymen, with well recognized intellectuals and non-politicians among them, to take active measures to exert their moral leadership, to the end that our nation may regenerate by revising our people's sense of political values and thus, as much as possible, put exactly where they belong the vote-buyers, the political terrorists, the opportunists and the unprincipled who have sprung in this era of moral decadence that seem to have come naturally in the wake of the havoc and devastation resulting from the extension of the area of the last world war to our shores. If even this hope cannot linger in our hearts, I dread to imagine how the Filipinos who will come after us will enjoy their lives, when in the exercise of their right of suffrage they would be able to use their freedoms of speech, press, peaceful assembly and redress of grievances only in measured doses to be administered to them by those in power in the legislature.

Frankly, I am not aware of any similar legislation in other democracies of the world. The defenders of the law in question have not cited any. If perhaps the cases of some countries I hear may be mentioned, I loathe to follow their example because I hold it is illogical for us to legislate for our people, who have been reared in the principles of democracy, in the light of what is being done by people who from time immemorial have been disciplined under more or less dictatorial and totalitarian governments.

Before I close, I like to add, in the interest of truth, that even stripped of the ornaments of foreign wisdom expressed in embellished language that adorn the opinions of our learned colleagues, Justices Sanchez, Castro and Fernando, their own views so exquisitely articulated by them in their respective singular styles which have been the object of admiration and respect by all, are in themselves not only gems of forensic literatures but are also indubitable evidence of judicial sagacity and learning. I am making it a point to separate their own personal views

from their quotations of alien authorities, because as a matter of national pride and dignity, I would like it known that when it comes to constitutional matters particularly, civil liberties and the other individual freedoms, the members of this Tribunal are not without their own native geniuses and individual modes of expression that can stand on their own worth without any reenforcement from imported wisdom and language.

May I say in closing that, if my above analysis and perspectives, if these views and conclusions of mine regarding the constitutional questions herein involved are not exactly factual and valid, I would still reiterate them, if only to serve as a feeble voice of alarm that somehow our basic liberties may be in jeopardy and it is best that we resolve early to man the outposts and steady our guard, lest we awaken one dawn with nothing left to us but repentance, for having failed to act when we could, amidst the ashes of the freedoms we did not know how to defend and protect. That eternal, incessant and unyielding vigilance is the price of liberty is still and will ever be true at all times and in all lands.

[1] Cases in the nature of petitions for declaratory relief or advisory opinion.

[2] Chief Justice Concepcion and Justices Reyes and Teehankee also support our view.

[3] I disagree with the view that the organization of political parties is not included in the prohibition. Can there be an organization more intended to "solicit notes" and to "undertake campaigns or propaganda for or against a party or candidate" than a political party?

[4] According to Dr. Jose Aruego, the semi-official chronicler of the constitutional Convention of 1934, the provision was taken not only from the Malolos Constitution but also from the Constitution of the Republic of Spain. (The Framing of the Philippines Constitution by Aruego, Vol. I, p. 163.)

[5] Incidentally, the political conventions referred to in Par. (b) of Section 50-B must be campaign conventions and not conventions for the nominations of official candidates.

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