

NATIONAL PRESS CLUB, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 102653. March 05, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

In the three (3) consolidated Petitions before us, the common question raised by petitioners is the constitutionality of Section 11 (b) of Republic Act No. 6646.

Petitioners in these cases consist of representatives of the mass media which are prevented from selling or donating space and time for political advertisements; two (2) individuals who are candidates for office (one for national and the other for provincial office) in the coming May 1992 elections; and taxpayers and voters who claim that their right to be informed of election issues and of credentials of the candidates is being curtailed.

It is principally argued by petitioners that Section 11 (b) of Republic Act No. 6646 invades and violates the constitutional guarantees comprising freedom of expression. Petitioners maintain that the prohibition imposed by Section 11 (b) amounts to censorship, because it selects and singles out for suppression and repression with criminal sanctions, only publications of a particular content, namely, media-based election or political propaganda during the election period of 1992. It is asserted that the prohibition is in derogation of media's role, function and duty to provide adequate channels of public information and public opinion relevant to election issues. Further, petitioners contend that Section 11 (b) abridges the freedom of speech of candidates, and that the suppression of media-based campaign or political propaganda except those appearing in the Comelec space of the newspapers and on Comelec time of radio and television broadcasts, would bring about a substantial reduction in the quantity or volume of information concerning candidates and issues in the election thereby curtailing and limiting the right of voters to information and opinion.

The statutory text that petitioners ask us to strike down as unconstitutional is that of Section 11 (b) of Republic Act No. 6646, known as the Electoral Reforms Law of 1987:

"Sec. 11. Prohibited Forms of Election Propaganda. - In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

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b) for any newspapers, radio broadcasting or television station, other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period." (Underscoring supplied)

Section 11 (b) of Republic Act No. 6646 should be taken together with Sections 90 and 92 of B.P. Blg. 881, known as the Omnibus Election Code of the Philippines, which provide respectively as follows:

"Sec. 90. Comelec space. ? The Commission shall procure space in at least one newspaper of general circulation in every province or city: Provided, however. That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as 'Comelec Space' wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally, and impartially by the Commission among all candidates within the area in which the newspaper is circulated.

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Sec. 92. Comelec time. ? The Commission shall procure radio and television time to be known as 'Comelec Time' which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchises of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign." (Underscoring supplied)

The objective which animates Section 11 (b) is the equalizing, as far as practicable, the situations of rich and poor candidates by preventing the former from enjoying the undue advantage offered by huge campaign "war chests." Section 11 (b) prohibits the sale or donation of print space and air time "for campaign or other political purposes" except to the Commission on Elections ("Comelec"). Upon the other hand, Sections 90 and 92 of the Omnibus Election Code require the Comelec to procure "Comelec space" in newspapers of general circulation in every province or city and "Comelec time" on radio and television stations. Further, the Comelec is statutorily commanded to allocate "Comelec space" and "Comelec time" on a free of charge equal and impartial basis among all candidates within the area served by the newspaper or radio and television station involved.

No one seriously disputes the legitimacy or the importance of the objective sought to be secured by Section 11 (b) (of Republic Act No. 6646) in relation to Sections 90 and 92 (of the Omnibus Election Code). That objective is of special importance and urgency in a country which, like ours, is characterized by extreme disparity in income distribution between the economic elite and the rest of society, and by the prevalence of poverty, with the bulk of our population falling below the "poverty line." It is supremely important, however, to note that that objective is not only a concededly legitimate one; it has also been given constitutional status by the terms of Article IX(C)(4) of the 1987 Constitution which provides as follows:

"Sec. 4. The Commission (on Elections) may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections." (Underscoring supplied)

The Comelec has thus been expressly authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media of communication and information. The fundamental purpose of such "supervision or regulation" has been spelled out in the Constitution as the ensuring of "equal opportunity, time, and space, and the right to reply," as well as uniform and reasonable rates of charges for the use of such media facilities, in connection with "public information campaigns and forums among candidates." [1]

It seems a modest proposition that the provision of the Bill of Rights which enshrines freedom of speech, freedom of expression and freedom of the press (Article III [4], Constitution) has to be taken in conjunction with Article IX(C)(4) which may be seen to be a special provision applicable during a specific limited period -- i.e., "during

the election period." It is difficult to overemphasize the special importance of the rights of freedom of speech and freedom of the press in a democratic polity, in particular when they relate to the purity and integrity of the electoral process itself, the process by which the people identify those who shall have governance over them. Thus, it is frequently said that these rights are accorded a preferred status in our constitutional hierarchy. Withal, the rights of free speech and free press are not unlimited rights for they are not the only important and relevant values even in the most democratic of polities. In our own society, equality of opportunity to proffer oneself for public office, without regard to the level of financial resources that one may have at one's disposal, is clearly an important value. One of the basic state policies given constitutional rank by Article II, Section 26 of the Constitution is the egalitarian demand that "the State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law." [2]

The technical effect of Article IX(C) (4) of the Constitution may be seen to be that no presumption of invalidity arises in respect of exercises of supervisory or regulatory authority on the part of the Comelec for the purpose of securing equal opportunity among candidates for political office, although such supervision or regulation may result in some limitation of the rights of free speech and free press. For supervision or regulation of the operations of media enterprises is scarcely conceivable without such accompanying limitation. Thus, the applicable rule is the general, time-honored one ? that a statute is presumed to be constitutional and that the party asserting its unconstitutionality must discharge the burden of clearly and convincingly proving that assertion. [3]

Put in slightly different terms, there appears no present necessity to fall back upon basic principles relating to the police power of the State and the requisites for constitutionally valid exercise of that power. The essential question is whether or not the assailed legislative or administrative provisions constitute a permissible exercise of the power of supervision or regulation of the operations of communication and information enterprises during an election period, or whether such act has gone beyond permissible supervision or regulation of media operations so as to constitute unconstitutional repression of freedom of speech and freedom of the press. The Court considers that Section 11 (b) has not gone outside the permissible bounds of supervision or regulation of media operations during election periods.

In the constitutional assaying of legislative provisions like Section 11 (b), the character and extent of the limitations resulting from the particular measure being assayed upon freedom of speech and freedom of the press are essential considerations. It is important to note that the restrictive impact upon freedom of speech and freedom of the Press of Section 11 (b) is circumscribed by certain important limitations.

Firstly, Section 11 (b) is limited in the duration of its applicability and enforceability. By virtue of the operation of Article IX(C)(4) of the Constitution, Section 11 (b) is limited in its applicability in time to election periods. By its Resolution No. 2328 dated 2 January 1992, the Comelec, acting under another specific grant of authority by the Constitution (Article IX(C)(9)), has defined the period from 12 January 1992 until 10 June 1992 as the relevant election period.

Secondly, and more importantly, Section 11 (b) is limited in its scope of application. Analysis of Section 11 (b) shows that it purports to apply only to the purchase and sale, including purchase and sale disguised as a donation, [4] of print space and air time for "campaign or other political purposes." Section 11 (b) does not purport in any way to restrict the reporting by newspapers or radio or television stations of news or news-worthy events relating to candidates, their qualifications, political parties and programs of government. Moreover, Section 11 (b) does not reach commentaries and expressions of belief or opinion by reporters or broadcasters or editors or commentators or columnists in respect of candidates, their qualifications, and programs and so forth, so long at least as such comments, opinions and beliefs are not in fact advertisements for particular candidates covertly paid for. In sum, Section 11 (b) is not to be read as reaching any report or commentary or other coverage that, in

responsible media, is not paid for by candidates for political office. We read Section 11 (b) as designed to cover only paid political advertisements of particular candidates.

The above limitation in scope of application of Section 11 (b) -- that it does not restrict either the reporting of or the expression of belief or opinion or comment upon the qualifications and programs and activities of any and all candidates for office -- constitutes the critical distinction which must be made between the instant case and that of *Sanidad v. Commission on Elections*.^[5] In *Sanidad*, the Court declared unconstitutional Section 19 of Comelec Resolution No. 2167 which provided as follows:

"Sec. 19. Prohibition on Columnists, Commentators or Announcers -- During the plebiscite campaign period, on the day before and on plebiscite day, no mass media columnist, commentator, announcer or personality shall use his column or radio or television time to campaign for or against the plebiscite issues."

Resolution No. 2167 had been promulgated by the Comelec in connection with the plebiscite mandated by R.A. No. 6766 on the ratification or adoption of the Organic Act for the Cordillera Autonomous Region. The Court held that Resolution No. 2167 constituted a restriction of the freedom of expression of petitioner *Sanidad*, a newspaper columnist of the *Baguio Midland Courier*, "for no justifiable reason." The Court, through *Medialdea, J.*, said:

"x x x [N]either Article IX-C of the Constitution nor Section 11(b), 2nd par. of R.A. 6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the exercise by media practitioners themselves of their right to expression during plebiscite periods. Media practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders nor the candidates. In fact, there are no candidates involved in the plebiscite. Therefore Section 19 of Comelec Resolution No. 2167 has no statutory basis."^[6] (Underscoring partly in the original and partly supplied)

There is a third limitation upon the scope of application of Section 11 (b). Section 11 (b) exempts from its prohibition the purchase by or donation to the Comelec of print space or air time, which space and time Comelec is then affirmatively required to allocate on a fair and equal basis, free of charge, among the individual candidates for elective public offices in the province or city served by the newspaper or radio or television station. Some of the petitioners are apparently apprehensive that Comelec might not allocate "Comelec time" or "Comelec space" on a fair and equal basis among the several candidates. Should such apprehensions materialize, candidates who are in fact prejudiced by unequal or unfair allocations effected by Comelec will have appropriate judicial remedies available, so long at least as this Court sits. Until such time, however, the Comelec is entitled to the benefit of the presumption that official duty will be or is being regularly carried out. It seems appropriate here to recall what Justice Laurel taught in *Angara v. Electoral Commission*^[7] that the possibility of abuse is no argument against the concession of the power or authority involved, for there is no power or authority in human society that is not susceptible of being abused. Should it be objected that the Comelec might refrain from procuring "Comelec time" and "Comelec space," much the same considerations should be borne in mind. As earlier noted, the Comelec is commanded by statute to buy or "procure" "Comelec time" and "Comelec space" in mass media, and it must be presumed that Comelec will carry out that statutory command. There is no indication, so far as the record here would show, that Comelec would not in fact carry out its statutory duty in this connection, and if it does fail to do so, once again, the candidate or candidates who feel aggrieved have judicial remedies at their disposal.

The points that may appropriately be underscored are that Section 11 (b) does not cut off the flow of media reporting, opinion or commentary about candidates, their qualifications and platforms and promises. Newspaper, radio broadcasting and television stations remain quite free to carry out their regular and normal information and communication operations. Section 11 (b) does not authorize any intervention and much less control on the part of Comelec in respect of the content of the normal operations of media, nor in respect of the content of political

advertisements which the individual candidates are quite free to present within their respective allocated Comelec time and Comelec space: There is here no "officious functionary of (a) repressive government" dictating what events or ideas reporters, broadcasters, editors or commentators may talk or write about or display on TV screens. There is here no censorship, whether disguised or otherwise. What Section 11 (b), viewed in context, in fact does is to limit paid partisan political advertisements to fora other than modern mass media, and to "Comelec time" and "Comelec space" in such mass media.

Section 11 (b) does, of course, limit the right of free speech and of access to mass media of the candidates themselves. The limitation, however, bears a clear and reasonable connection with the constitutional objective set out in Article IX(C)(4) and Article II (26) of the Constitution. For it is precisely in the unlimited purchase of print space and radio and television time that the resources of the financially affluent candidates are likely to make a crucial difference. Here lies the core problem of equalization of the situations of the candidates⁰ with deep pockets and the candidates with shallow or empty pockets that Article IX(C)(4) of the Constitution and Section 11 (b) seek to address. That the statutory mechanism which Section 11 (b) brings into operation is designed and may be expected to bring about or promote equal opportunity, and equal time and space, for political candidates to inform all and sundry about themselves, cannot be gainsaid.

My learned brother in the Court Cruz, J. remonstrates, however, that "(t)he financial disparity among the candidates is a fact of life that cannot be corrected by legislation except only by the limitation of their respective expenses to a common maximum. The flaw in the prohibition under challenge is that while the rich candidate is barred from buying mass media coverage, it nevertheless allows him to spend of his funds on other campaign activities also inaccessible to his straitened rival." True enough Section 11 (b) does not, by itself or in conjunction with Sections 90 and 92 of the Omnibus Election Code, place political candidates on complete and perfect equality inter se without regard to their financial affluence or lack thereof. But a regulatory measure that is less than perfectly comprehensive or which does not completely obliterate the evil sought to be remedied, is not for that reason alone constitutionally infirm. The Constitution does not, as it cannot, exact perfection in governmental regulation. All it requires, in accepted doctrine, is that the regulatory measure under challenge bear a reasonable nexus with the constitutionally sanctioned objective. That the supervision or regulation of communication and information media is not, in itself, a forbidden modality is made clear by the Constitution itself in Article IX(C)(4).

It is believed that, when so viewed, the limiting impact of Section 11 (b) upon the right to free speech of the candidates themselves may be seen to be not unduly repressive or unreasonable. For, once again, there is nothing in Section 11 (b) to prevent media reporting of and commentary on pronouncements, activities, written statements of the candidates themselves. All other fora remain accessible to candidates, even for political advertisements. The requisites of fairness and equal opportunity are, after all, designed to benefit the candidates themselves.

Finally, the nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded. Realistically, the only limitation upon the free speech of candidates imposed is on the right of candidates to bombard the helpless electorate with paid advertisements commonly repeated in the mass media ad nauseam. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. It might be supposed that it is easy enough for a person at home simply to flick off his radio or television set. But it is rarely that simple. For the candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels. Or they may directly or indirectly own or control the stations or channels themselves. The contemporary reality in the Philippines is that, in a very real sense, listeners and viewers constitute a "captive audience."^[8]

The paid political advertisements introjected into the electronic media and repeated with mind-deadening

frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.

WHEREFORE, the Petitions should be, as they are hereby, DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Bidin, Griño-Aquino, Medialdea, Regalado, Romero, and Nocon, JJ., concur.

Gutierrez, Jr., Cruz, and Paras, JJ., see dissent.

Padilla, J., concurring opinion.

Davide, Jr., J., separate concurring opinion.

Belosillo, J., did not take part in the deliberation.

[1] See the discussion on Article IX(C)(4) in the Constitutional Commission in Records of the Constitutional Commission, Vol. 1, pp. 624, 631-2, 662-3.

[2] The goal of equalizing access to opportunities for public office (both elective and appointive) for greater numbers people, was stressed in the discussions in the Constitutional Commissions; Records of the Constitutional Commission, Vol. 4, pp. 945, 955-6.

[3] E.g., *Abbas v. Commission on Elections*, 179 SCRA 287 (1989); *People v. Dacuycuy*, 173 SCRA 90 (1989); *Heirs of Ordon v. Reyes*, 125 SCRA 320 (1983); *Peralta v. Commission on Elections*, 82 SCRA 30 (1978); *Salas v. Jarencio*, 46 SCRA 734 (1970).

[4] Because of the financial implications involved, true donations by media enterprises of print space and air time for political advertisements are not likely to be substantial in number or in peso volume. The principal effect of the phrase "or to give free of charge" is thus to catch purchases and sales disguised as donations either given directly by media enterprises, or indirectly through an intervening purchaser-donor.

[5] 181 SCRA 529 (1990).

[6] 181 SCRA at 534.

[7] 63 Phil. 139, 177 (1936).

[8] In noting the phenomenon of the captive audience, the Supreme Court of the United States in *Columbia Broadcasting System v. Democratic National Committee* (412 US 94, 36 L Ed 2d 772 (1973)), said:

"x x x. The 'captive' nature of the broadcast audience was recognized as early as 1924, when Commerce Secretary Hoover remarked at the Fourth National Radio Conference that 'the radio listener does not have the same option that the reader of publications has -- to ignore advertising in which he is not interested -- and he may resent its invasion of his set.' As the broadcast media became more pervasive in our society, the problem has become more acute. In a recent decision upholding the Commission's power to promulgate rules regarding cigarette advertising, Judge Bazelon, writing for a unanimous Court of Appeals, noted some of the effects of the ubiquitous commercial:

"Written messages are not communicated unless they are read, and reading requires an affirmative act. Broadcast messages, in contrast, are "in the air." In an age of omnipresent radio, there scarcely breathes a citizen who does not know some part of a leading cigarette" jingle by heart. Similarly, an ordinary habitual television watcher can avoid these commercials only by frequently leaving the room, changing the channel, or doing some other such affirmative act. It is difficult to calculate the subliminal impact of this pervasive propaganda, which may be heard even if not listened to, but it may reasonably be thought greater than the impact of the written word.' *Banzhaf v FCC*, 132 US App DC 11, 32-33, 405 F2d 1082, 1100-1101 (1968), cert denied 396 US 842, 24 L Ed 2d 93, 90 S Ct 50 (1969).

It is no answer to say that because we tolerate pervasive commercial advertisements we can also live with its political counterparts." (36 L. ed 2d at 798; underscoring supplied)

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dissenting OPINION

CRUZ, J.:

It has become increasingly clear that the grandiose description of this Court as the bulwark of individual liberty is nothing more than an ironic euphemism. In the decision it makes today, the majority has exalted authority over liberty in another obeisance to the police state, which we so despised during the days of martial law. I cannot share in the excuses of the Court because I firmly believe that the highest function of authority is to insure liberty.

In sustaining the challenged law, the majority invokes the legislative goal, about which there can be no cavil. My quarrel is with the way the objective is being pursued for I find the method a most indefensible repression. It does little good, I should think, to invoke the regulatory authority of the Commission on Elections, for that power is not a license to violate the Bill of Rights. The respondent, no less than the legislature that enacted Section 11(b), is subject to the requirements of the police power which the ponencia seems to disdain.

It is true that a declaration of constitutionality must be reached only after the most careful deliberation as the challenged act is presumed to be valid in deference to the political departments. But not - and this represents a singular exception - where the act is claimed to violate individual liberty, most importantly the freedom of expression. In such a vital and exceptional case, as in the case now before us, I respectfully submit that the presumption must be reversed in favor of the challenge.

Milton defined freedom of speech as "the liberty to know, to utter, and to argue freely according to conscience, above all liberties." In this context, the definition is understood to embrace all the other cognate rights involved in the communication of ideas and falling under the more comprehensive concept of freedom of expression. These rights include the equally important freedom of the press, the right of assembly and petition, the right to information on matters of public concern, the freedom of religion insofar as it affects the right to proselytize and profess one's faith or lack of it, and the right to form associations as an instrument for the ventilation of views bearing on the public welfare.

Wendell Philips offered his own reverence for freedom of expression when he called it "at once the instrument and the guaranty and the bright consummate flower of all liberty." Like Milton, he was according it an honored place in the hierarchy of fundamental liberties recognized in the Bill of Rights. And well they might, for this is truly the most cherished and vital of all individual liberties in the democratic milieu. It is no happenstance that it is this freedom that is first curtailed when the free society falls under a repressive regime, as demonstrated by the government take-over of the press, radio and television when martial law was declared in this country on that

tragic day of September 21, 1972. The reason for this precaution is that freedom of expression is the sharpest and handiest weapon to blunt the edge of oppression. No less significantly, it may be wielded by every citizen in the land, be he peasant or poet – and, regrettably, including the demagogue and the dolt - who has the will and the heart to use it.

As an individual particle of sovereignty, to use Justice Laurel's words, every citizen has a right to offer his opinion and suggestions in the discussion of the problems confronting the community or the nation. This is not only a right but a duty. From the mass of various and disparate ideas proposed, the people can, in their collective wisdom and after full deliberation, choose what they may consider the best remedies to the difficulties they face. These may not turn out to be the best solutions, as we have learned often enough from past bitter experience. But the scope alone of the options, let alone the latitude with which they are considered, can insure a far better choice than that made by the heedless dictator in the narrow confines of his mind and the loneliness of his pinnacle of power.

The citizen can articulate his views, for whatever they may be worth, through the many methods by which ideas are communicated from mind to mind. Thus, he may speak or write or sing or dance, for all these are forms of expression protected by the Constitution. So is silence, which "persuades when speaking fails." Symbolism can also signify meanings without words, like the open hand of friendship or the clenched fist of defiance or the red flag of belligerence. The individual can convey his message in a poem or a novel or a tract or in a public speech or through a moving picture or a stage play. In such diverse ways may he be heard. There is of course no guaranty that he will be heeded, for acceptability will depend on the quality of his thoughts and of his persona, as well as the mood and motivation of his audience. But whatever form he employs, he is entitled to the protection of the Constitution against any attempt to muzzle his thoughts.

There is one especially significant way by which the citizen can express his views, and that is through the ballot. By the votes he casts, he is able to participate in the selection of the persons who shall serve as his representatives in the various elective offices in the government, from the highest position of President of the Philippines to that of the lowly member of the Sangguniang Barangay. In the exercise of this right, he is free to choose whoever appeals to his intelligence (or lack of it), whether it be a professional comedian or a pretentious moron or an unrepentant thief or any other candidate with no known distinction except the presumptuousness to seek elective office. Fortunately, there are also other candidates deserving of the support of the circumspect and thinking citizens who will use their suffrages conscientiously with only the public interest as their criterion and guide.

It is for the purpose of properly informing the electorate of the credentials and platforms of the candidates that they are allowed to campaign during the election period. Such campaign includes their personally visiting the voters in house-to-house sorties, calling on the telephone for their support, sending them letters of appeal, distributing self-serving leaflets extolling their virtues, giving away buttons and stickers and sample ballots and other campaign materials, and holding caucuses, rallies, parades, public meetings and similar gatherings. All these they are allowed to do in the specified places and at the proper time provided only that they do not exceed the maximum limit of election expenses prescribed by the Election Code at the rate of P1.50 for every voter currently registered in the constituency where they filed their certificate of candidacy.[1]

It is curious, however, that such allowable campaign activities do not include the use of the mass media because of the prohibition in Section 11(b) of Rep. Act. No. 6646. The candidate may employ letters or leaflets or billboards or placards or posters or meetings to reach the electorate, incurring for this purpose a not inconsiderable amount of his or his supporters' money. But he may not utilize for the same purpose periodicals, radio, television or other forms of mass communication, even for free. Employment of these facilities is allowed only through the respondent Commission on Elections, which is directed by the Election Code to procure newspaper space and radio and television time to be distributed among the thousands of candidates vying throughout the land for the

thousands of public offices to be filled in the coming elections.

There are some students of the Constitution who believe that unlike the other liberties guaranteed in the Bill of Rights, the freedom of speech and of the press is absolute and not subject to any kind of regulation whatsoever. Their reason is the language of Article III, Section 4, of the Constitution, which provides without qualification:

No law shall be passed abridging the freedom of speech, of expression or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

This Court does not accept this extreme theory for the liberty we recognize is not liberty untamed but liberty regulated by law. The concept of absolute rights must be approached with utmost caution if not rejected outright. The better policy is to assume that every right, including even the freedom of expression, must be exercised in accordance with law and with due regard for the rights of others.

In fact, laws punishing crimes like slander and libel and inciting to sedition have never been seriously or successfully questioned. Contemptuous language is not allowed in judicial proceedings. Obscenity is proscribed, as so are acts that wound religious sensibilities. This Court has regulated the exercise of the right to hold rallies and meetings, limiting them to certain places and hours and under specified conditions, in the interest of peace and security, public convenience, and in one case, even to prevent disturbance of the rites in a nearby church.[2] Under the Public Assembly Act, a permit from the mayor shall be necessary for the holding of a public meeting except where the gathering is to be held in a private place or the campus of a government-owned or controlled educational institution or a freedom park.

All this is not meant to suggest that every government regulation is a valid regulation. On the contrary, any attempt to restrict the exercise of a right must be tested by the strict requisites of the valid exercise of the police power as established by this Court in a long line of decisions. These requisites are: 1) the interests of the public generally as distinguished from those of a particular class require the exercise of the police power; and 2) the means employed are reasonably necessary to the accomplishment of the purpose sought to be achieved and not unduly oppressive upon individuals.[3] In simpler terms, the police measure, to be valid, must have a lawful objective and a lawful method of achieving it.

The lawful objective of Section 11(b) may be readily conceded. The announced purpose of the law is to prevent disparity between the rich and the poor candidates by denying both of them access to the mass media and thus preventing the former from enjoying an undue advantage over the latter. There is no question that this is a laudable goal. Equality among the candidates in this regard should be assiduously pursued by the government if the aspirant with limited resources is to have any chance at all against an opulent opponent who will not hesitate to use his wealth to make up for his lack of competence.

But in constitutional law, the end does not justify the means. To pursue a lawful objective, only a lawful method may be employed even if it may not be the best among the suggested options. In my own view, the method here applied falls far short of the constitutional criterion. I believe that the necessary reasonable link between the means employed and the purpose sought to be achieved has not been proved and that the method employed is unduly oppressive.

The financial disparity among the candidates is a fact of life that cannot be corrected by legislation except only by the limitation of their respective expenses to a common maximum. The flaw in the prohibition under challenge is that while the rich candidate is barred from buying mass media coverage, it nevertheless allows him to spend his funds on other campaign activities also inaccessible to his straitened rival. Thus, the rich candidate may hold as many rallies and meetings as he may desire or can afford, using for the purpose the funds he would have spent for the prohibited mass media time and space. The number of these rallies and meetings, which also require

tremendous expense, cannot be matched by the poor candidate, but the advantage of the rich candidate in this case is not similarly prohibited. By the same token, the rich candidate may visit more houses, send more letters, make more telephone appeals, distribute more campaign materials, incurring for all these more expenses than the poor candidate can afford. But these advantages are allowed by the law because they do not involve the use of mass media space and time.

And what if the rich candidate pays P25,000 from his own funds to buy media advertising and the same amount is raised for the same purpose by 250 supporters of the poor candidate contributing P100 each? Both transactions would be prohibited under the law although the rich candidate clearly has in this case no advantage over his adversary.

And what if a candidate is endorsed not in a paid advertisement or commercial but by a columnist or a radio commentator who is apparently expressing his own opinion without financial consideration or inducement? This is not prohibited by Section 11(b) simply because the endorsement does not appear to have been purchased by the candidate or given to him for free.

The proposed distribution of COMELEC time and space is hardly workable, considering the tremendous number of candidates running all over the country for the offices of President of the Philippines, Vice-President, senators, representatives, provincial governors, vice-governors, provincial board members, city mayors, vice-mayors and councilors, and municipal mayors, vice-mayors and councilors. Allocation of equal time and space among the candidates would involve administrative work of unmanageable proportions, and the possibility as well of unequal distribution, whether deliberate or unintentional, that might create more serious problems than the problem at hand.

It is indeed the settled rule that questions regarding the necessity or wisdom of the law are for the legislature to resolve and its resolution may not be reviewed by the courts of justice. In the case of the police power, however, it is required that there be a plausible nexus between the method employed and the purpose sought to be achieved, and determination of this link involves a judicial inquiry into the reasonableness of the challenged measure. It is true, as remarked by Justice Holmes, that a law has done all it can if it has done all it should, but this is on the assumption that what the law has done was valid to begin with. The trouble with the challenged law is that it has exceeded what it should have done, thereby becoming both inefficacious and arbitrary. As such, it must be slain.

But the most important objection to Section 11(b) is that it constitutes prior restraint on the dissemination of ideas. In a word, it is censorship. It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey. In his "Appeal for the Liberty of Unlicensed Printing," Milton deplored the impossibility of finding a man base enough to accept the office of censor and at the same time good enough to perform its duties. Yet a pretender to that meddler is in our midst today, smugly brandishing the threat of this miserable law.

One could perhaps concede some permissible instances of censorship, as where private mail is screened during wartime to prevent deliberate or unwitting disclosure of sensitive or classified matters that might prejudice the national security or where, to take a famous example, a person is prohibited from shouting "Fire!" in a crowded theater. But these exceptions merely make and bolster the rule that there should be no prior restraint upon a person's right to express his ideas on any subject of public interest. The rule applies whether the censorship be in the form of outright prohibition, as in the cases before us, or in more subtle forms like the imposition of a tax upon periodicals exceeding a prescribed maximum number of copies per issue^[4] or allowing the circulation of books only if they are judged to be fit for minors, thus reducing the reading tastes of adults to the level of juvenile

morality.[5]

I remind the Court of the doctrine announced in *Bantam Books v. Sullivan*[6] that "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its validity." That presumption has not been refuted in the cases sub judice. On the contrary, the challenged provision appears quite clearly to be invalid on its face because of its undisguised attempt at censorship. The feeble effort to justify it in the name of social justice and clean elections cannot prevail over the self-evident fact that what we have here is an illegal intent to suppress free speech by denying access to the mass media as the most convenient instruments for the molding of public opinion. And it does not matter that the use of these facilities may involve financial transactions, for the element of the commercial does not remove them from the protection of the Constitution.[7]

The law is no less oppressive on the candidates themselves who want and have the right to address the greatest number of voters through the modern facilities of the press, radio and television. Equally injured are the ordinary citizens, who are also entitled to be informed, through these mass media, of the qualifications and platforms of the various candidates aspiring for public office, that they may be guided in the choice they must make when they cast their ballots.[8]

I am as deeply concerned as the rest of the nation over the unabated if not aggravated influence of material persuasions on the choice of our elective officials. It is truly alarming that elections in a growing number of cases have become no more than auction sales, where the public office is awarded to the highest bidder as if it were an article of commerce. The offer of cash in exchange for his vote would be virtually irresistible to a person mired in poverty and in the throes of the elemental struggle for survival. That there are millions of such persons can only compound this terrible situation. But what makes it especially revolting is the way these helpless persons are manipulated and imposed upon and tantalized to surrender their birthright for a mess of pottage. The unscrupulous candidates who do not hesitate to use their wealth to buy themselves into elective office - these are the real saboteurs of democracy. These are the scoundrels who would stain the pristine ballot in their cynical scheme to usurp public office by falsifying the will of the people. Section 11(b) aims to minimize this malignancy, it is true, but unfortunately by a method not allowed by the Constitution.

In the Comment it submitted after the Solicitor General expressed support for the petitioners, the Commission on Elections relies heavily on *Badoy v. Commission on Elections*[9] to sustain the exercise of its authority to regulate and supervise the mass media during the election period as conferred upon it by what is now Section 4 of Article IX in the present Constitution. However, that case is not in point for what was upheld there was Section 12(f) of Rep. Act No. 6132 providing as follows:

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

The Court, through Justice Makasiar (but over strong dissents from Justices Fernando, Teehankee and Barredo), declared:

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

What is challenged in the case at bar is not that law but Section 11(b), which does not merely require mention of the candidate's rivals in the paid advertisement or commercial, an innocuous enough requirement, to be sure. What Section 11(b) does is prohibit the advertisement or commercial itself in what is unmistakably an act of censorship that finds no justification in the circumstances here presented. Surely, that blanket and absolute prohibition to use the mass media as a vehicle for the articulation of ideas cannot, by the standards of *Badoy*, be considered "too insignificant to create any appreciable dent on the individual's liberty of expression."

What is in point is *Sanidad v. Commission on Elections*,^[10] where this Court, through Mr. Justice Medialdea, unanimously declared unconstitutional a regulation of the Commission on Elections providing as follows:

Section 19. Prohibition on columnists, commentators or announcers. - During the plebiscite campaign period, on the day before and on plebiscite day, no mass media columnist, commentator, announcer or personality shall use his column or radio or television time to campaign for or against the plebiscite issues.

On the argument that the said persons could still express their views through the air time and newspaper space to be allocated by the respondent, the Court declared:

Anent respondent Comelec's argument that Section 19 of Comelec resolution 2167 does not absolutely bar petitioner-columnist from expressing his views and/or from campaigning for or against the organic act because he may do so through the Comelec space and/or Comelec radio/television time, the same is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still a restriction on his choice of the forum where he may express his view. No reason was advanced by respondent to justify such abridgment. We hold that this form of regulation is tantamount to a restriction of petitioner's freedom of expression for no justifiable reason. (Emphasis supplied).

This decision was promulgated without a single dissent, even from the incumbent members then who are now sustaining Section 11(b) of Rep. Act No. 6646. Contrary to Justice Davide's contention, there is not a single word in this decision upholding the prohibition in question.

The respondent also paints a distressing picture of the current political scene and expresses its despair over the plight of the poor candidate thus:

Respondent Commission invites appreciation of the realities of present-day political campaigns. In today's election competitions the success of one's candidacy rests to a great extent on the candidate's ability to match the financial and material resources of the other. Where a candidate is given limitless opportunity to take his campaign to areas of persuasion through the media, what is left of a winning chance for a poor, if deserving, candidate? But for the regulatory power of Sec. 11(b) of Republic Act No. 6646, a wealthy candidate could block off an opponent of lesser means from the public view by buying all print space in newspapers and air time in radio and television.

I am certain the Court shares the apprehensions of the sober elements of our society over the acute disadvantage of the poor candidate vis-a-vis a wealthy opponent determined to win at all costs (which he can afford). However, for all its anxiety to solve this disturbingly widespread difficulty, it is inhibited, as all of us must be, by the mandate of the Constitution to give untrammelled rein to the dissemination and exchange of ideas concerning the elections.

The problem is not really as bad as the respondent would imagine it, for it is unlikely that the rich candidate would or could buy "all print space in newspapers and air time in radio and television" to "block off" his opponents. Let us not be carried away by hyperbolic speculations. After all, as the respondent itself points out, it is empowered by the Constitution to supervise or regulate the operations of the mass media in connection with election matters, and we may expect that it will use this power to prevent the monopoly it fears, which

conceivably will consume all the funds the candidate is allowed to spend for his campaign. It should be pointed out that the rich candidate violates no law as long as he does not exceed the maximum amount prescribed by the Election Code for campaign expenses. The mere fact that the poor candidate can spend only a small fraction of that amount does not prevent the rich candidate from spending all of it if he is so minded. This may be a heartless way of putting it, but that is in fact how the law should be interpreted. The Election Code fixes a maximum limit for all candidates, rich or poor alike; it does not say that the rich candidate shall spend only the same amount as the poor candidate can afford.

I realize only too well that the ideas that may be conveyed by the prohibited media advertisements will mostly be exaggerations or distortions or plain poppycock and may intrude upon our leisure hours if not also offend our intelligence and exhaust our patience. We may indeed be opening a Pandora's box. But these are unavoidable in the free society. As part of the larger picture, these impositions are only minor irritations that, placed in proper perspective, should not justify the withdrawal of the great and inalienable liberty that is the bedrock of this Republic. It is best to remember in this regard that freedom of expression exists not only for the thought that agrees with us, to paraphrase Justice Holmes, but also for the thought that we abhor.

I submit that all the channels of communication should be kept open to insure the widest dissemination of information bearing on the forthcoming elections. An uninformed electorate is not likely to be circumspect in the choice of the officials who will represent them in the councils of government. That they may exercise their suffrages wisely, it is important that they be apprised of the election issues, including the credentials, if any, of the various aspirants for public office. This is especially necessary now in view of the dismaying number of mediocrities who, by an incredible aberration of ego, are relying on their money, or their tinsel popularity, or their private armies, to give them the plume of victory.

For violating the "liberty to know, to utter and to argue freely according to conscience, above all liberties," the challenged law must be struck down. For blandly sustaining it instead, the majority has inflicted a deep cut on the Constitution that will ruthlessly bleed it white, and with it this most cherished of our freedoms.

[1] Sec. 100, Omnibus Election Code.

[2] Navarro v. Villegas, 31 SCRA 731; Reyes v. Bagatsing, 125 SCRA 533; Tañada v. Bagatsing, G.R. No. 68273, August 18, 1984; Aquino v. Bagatsing, G.R. No. 68318, August 18, 1984; De la Cruz v. Ela, 99 Phil. 346.

[3] U.S. v. Toribio, 15 Phil. 85; Fabie v. City of Manila, 21 Phil. 486; Case v. Board of Health, 24 Phil. 250; Taxicab Operators of Metro Manila v. Board of Transportation, 119 SCRA 596; Bautista v. Juinio, 127 SCRA 329; Lozano v. Martinez, 146 SCRA 323; Lorenzo v. Director of Health, 50 Phil. 595; People v. Chan, 65 Phil. 611; Department of Education v. San Diego, 180 SCRA 533; Ynot v. IAC, 148 SCRA 659.

[4] Grosjean v. American Press Co., 297 U.S. 233.

[5] Butler v. Michigan, 352 U.S. 380.

[6] 372 U.S. 58.

[7] Valentine v. Chrestensen, 316 U.S. 52; New York Times Co. v. Sullivan, 376 U.S. 254; Bigelow v. Virginia, 421 U.S. 809; Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council Inc., 425 U.S. 748.

[8] Coleman v. MacLennon, 78 Kan. 11, cited in New York Times Co. v. Sullivan, 376 U.S. 254.

[9] 35 SCRA 285.

[10] 181 SCRA 529.

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CONCURRING OPINION

DAVIDE, JR., J.:

I fully concur with the majority opinion. I wish, however, to express my thoughts on some material points.

The constitutional issue raised in these cases must be decided in the light of the provisions of our own Constitution and not on orthodox principles or classical definitions of certain rights which have, in the course of time and as a result of the interplay of societal forces requiring the balancing of interests and values, been unchained from their absolutist moorings.

It is now settled that the freedom of speech and of the press, or of expression, which the Bill of Rights guarantees, is not an absolute right.

Indeed, even in American jurisprudence, the overwhelming weight of authority maintains that "the right or privilege of free speech and publication, guaranteed by the Constitutions of the United States and of the several states, has its limitations; the right is not absolute at all times and under all circumstances, although limitations are recognized only in exceptional cases. Freedom of speech does not comprehend the right to speak whenever, however, and wherever one pleases, and the manner, and place, or time of public discussion can be constitutionally controlled." [1]

The foregoing rule proceeds from the principle that every right or freedom carries with it the correlative duty to exercise it responsibly and with due regard for the rights and freedoms of others. In short, freedom is not freedom from responsibility, but with responsibility.

I respectfully submit that there can be no higher form of limitation to a right than what the Constitution itself authorizes. On this, both the lettered and the unlettered cannot quarrel. In respect to freedom of speech or expression and of the press vis-a-vis the electoral process, the present Constitution lays down certain principles authorizing allowable restraints thereon. I refer to the following provisions of the 1987 Constitution, to wit:

(1) Section 26 of Article II. (Declaration of Principles and other Policies) which reads:

"The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law" (underscoring supplied)

(2) Section 1 of Article XIII (Social Justice and Human rights) which reads:

"The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good." (underscoring supplied)

(3) Section 4 of Article IX-C which provides:

"The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or

information, all grants, special privileges, or concessions granted by the government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections." (underscoring supplied)

There can be no doubt that the first two (2) provisions contemplate measures that would bridge the gap between the rich and the poor in our society. In the past, the equilibrium sought to be achieved was only in the economic and social fields. Thus, before the advent of the 1987 Constitution, social justice was defined as:

"Social justice is 'neither communism, nor despotism, nor atomism, nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*."

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about 'the greatest good to the greatest number.' "[2]

Aware of the lamentable fact that in the Philippines, no gap between these two unavoidable extremes of society is more pronounced than that in the field of politics, and ever mindful of the dire consequences thereof, the framers of the present Constitution saw it fit to diffuse political power in the social justice provisions. Ours has been a politics of the elite, the rich, the powerful and the pedigreed. The victory of a poor candidate in an election is almost always an exception. Arrayed against the vast resources of a wealthy opponent, the former, even if he is the most qualified and competent, does not stand a fighting chance. Of course, there have been isolated instances -- but yet so few and far between -- when poor candidates made it.

Forgetting first the evil use of gold, guns and goons which only the rich have access to, and focussing strictly on the legitimate aspect of the electoral struggle, propaganda, through the various forms of media, provides the most sophisticated and effective means of reaching the electorate and convincing voters to vote for a particular candidate. It is in this area, particularly in the use of television, radio and newspaper, that a poor candidate will not be able to compete with his opulent opponents who have all the resources to buy prime television and radio time and full pages of leading newspapers. With radio and television propaganda, the wealthy candidates, even as they leisurely relax in their homes, offices or hotel suites, can reach every nook and cranny of their municipality, city, province, district or even the entire Philippines and be seen or heard at any time of the day and night. During the contracted hours, their paid hacks can concentrate on dishonoring the poor and hapless opponent by hurling innuendoes of defects or vice. With newspaper advertisements, the wealthy candidates can reach thousands of readers daily. A worse scenario obtains where the rich candidates themselves fully or substantially own or operate a television or radio station, or publish newspapers. On the other hand, to a poor candidate, the campaign period would sadly prove to be insufficient for him to campaign in every barangay, even if he is running for a municipal position. Thus, not only would he already be at a disadvantage insofar as visibility and presentation of his issues or program of government are concerned, he would have no opportunity to rebut whatever lies his opponents may

spread nor the chance to clear himself of false accusations.

Accordingly, in response to the urgent mandate of Section 1 of Article XIII aforequoted, Congress passed a measure, R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987,[3] introducing additional reforms to the electoral system which, inter alia, not only seeks to enhance the purity of the electoral process, but also aspires to ensure even just an approximation of equality among all candidates in their use of media for propaganda purposes. The latter is best evidenced by the provision challenged in this case, Section 11(b), which reads:

"Section 11. Prohibited forms of election propaganda. - In addition to the forms of propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

x x x

(b) for any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period."

This provision, understood in the light of Section 4, Article IX-C of the Constitution, is a reasonable regulation enacted to accomplish the desired objectives and purposes earlier mentioned. It neither constitutes proscribed abridgment of the freedom of expression nor prohibits free speech; it merely provides the rules as to the manner, time and place for its exercise during a very limited period. It makes reference to Sections 90 and 92 of Batas Pambansa Blg. 881 on "COMELEC time" and "COMELEC space." Said sections read in full as follows:

"SEC. 90. Comelec space. - The Commission shall procure space in at least one newspaper of general circulation in every province or city: Provided, however, That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as 'Comelec Space' wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated. (Sec. 45, 1978 EC)

x x x

SEC. 92. Comelec time. - The Commission shall procure radio and television time to be known as 'Comelec Time' which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign. (Sec. 46, 1978 EC)"

Obviously then, the airing and printing of a candidate's political advertisement can be done -- and, is even encouraged to be done -- during the "COMELEC time" and within the "COMELEC space." This authority of the COMELEC is no longer purely statutory. It is now constitutional pursuant to the clear mandate of Section 4 of Article IX-C, which is quoted above. This constitutional grant removes whatever doubt one may have on the split verdict of this Court in *Badoy vs. Ferrer, et al.*[4] Interpreting a related provision, Section 12(f) of R.A. No. 6132, reading:

"The Commission on Elections shall endeavor to obtain free space from newspapers, magazines and periodicals which shall be known as Comelec space, and shall allocate this space equally and impartially among all candidates within the areas in which the newspapers are circulated. Outside of said Comelec space, it shall be unlawful to print or publish, or cause to be printed or published, any advertisement, paid comment or paid article

in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all other candidates in the district in which the candidate is running are also mentioned with equal prominence."

this Court ruled:

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

x x x

Hence, consistent with our opinion expressed in the cases of *Imbong vs. Comelec* and *Gonzales vs. Comelec* [35 SCRA 28], this slight limitation of the freedom of expression of the individual, whether candidate or not, as expressed in par. F of Sec. 12, is only one of the many devices employed by the law to prevent a clear and present danger of the perversion or prostitution of the electoral apparatus and of the denial of the equal protection of the laws.

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

In the fairly recent case of *Sanidad vs. Commission on Elections*,^[5] this Court sustained, in effect, the validity of Section 11(b) of R.A. No. 6646. Thus:

"However, it is clear from Art. IX-C of the 1987 Constitution that what was granted to the Comelec was the power to supervise and regulate the use and enjoyment of franchises, permits or other grants issued for the operation of transportation or other public utilities, media of communication or information to the end that equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates are ensured. The evil sought to be prevented by this provision is the possibility that a franchise holder may favor or give any undue advantage to a candidate in terms of advertising space or radio or television time. This is also the reason why a 'columnist, commentator, announcer or personality, who is a candidate for any elective office is required to take a leave of absence from his work during the campaign period (2nd par. Section 11(b) R.A. 6646).' It cannot be gainsaid that a columnist or commentator who is also a candidate would be more exposed to the voters to the prejudice of other candidates unless required to take a leave of absence.

However, neither Article IX-C of the Constitution nor Section 11(b), 2nd par. of R.A. 6646 can be construed to mean that the Comelec has also been granted the right to supervise and regulate the exercise by media practitioners themselves of their right to expression during plebiscite periods. Media practitioners exercising their freedom of expression during plebiscite periods are neither the franchise holders nor the candidates. In fact, there are no candidates involved in a plebiscite. Therefore, Section 19 of Comelec Resolution No. 2167 has no statutory basis.

In the case of *Badoy, Jr. v. Comelec*, L-32546, Oct. 16, 1970, where the constitutionality of the prohibition of certain forms of election propaganda was assailed, We ruled therein that the prohibition is a valid exercise of the police power of the state 'to prevent the perversion and prostitution of the electoral apparatus and of the denial of

equal protection of the laws.' The evil sought to be prevented in an election which led to Our ruling in that case does not obtain in a plebiscite. In a plebiscite, votes are taken in an area on some special political matter unlike in an election where votes are cast in favor of specific persons for some office. In other words, the electorate is asked to vote for or against issues, not candidates in a plebiscite."

Even granting for the sake of argument that a doubt exists as to the constitutionality of the challenged provision, the doubt must be resolved in favor of its validity. As this Court stated in *Paredes, et al. vs. Executive Secretary, et al.*:^[6]

"x x x it is in accordance with the settled doctrine that between two possible constructions, one avoiding a finding of unconstitutionality and the other yielding such a result, the former is to be preferred. That which will save, not that which will destroy, commends itself for acceptance. After all, the basic presumption all these years is one of validity. The onerous task of proving otherwise is on the party seeking to nullify a statute. It must be proved by clear and convincing evidence that there is an infringement of a constitutional provision, save in those cases where the challenged act is void on its face. Absent such a showing, there can be no finding of unconstitutionality. A doubt, even if well founded, does not suffice. Justice Malcolm's aphorism is apropos: 'To doubt is to sustain.'"^[7]

The reason for this is that an act of the legislature approved by the executive is presumed to be within constitutional bounds. The responsibility of upholding the Constitution rests not only on the courts, but also on the legislature and the executive as well.

For the Court to strike out their acts as unconstitutional, nothing less than clear and convincing evidence of such breach of the Constitution must be shown.

Petitioners have not acquitted themselves of that duty. The petitions then must be dismissed for lack of merit.

[1] 16A Am. Jur. 2d, 341-342.

[2] *Calalang vs. Williams, et al.*, 70 Phil. 726.

[3] Approved on 5 January 1988.

[4] 35 SCRA 285.

[5] 181 SCRA 529 (29 January 1990).

[6] 128 SCRA 6.

[7] In *Yu Cong Eng vs. Trinidad*, 47 Phil. 385.

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DISSENTING OPINION

GUTIERREZ, JR., J.:

I am saddened by the readiness with which Congress, Comelec, and the members of this Court are willing to sacrifice not only that most precious clause of the Bill of Rights -- freedom of speech and of the press -- but also the right of every citizen to be informed in every way possible about the qualifications and programs of those

running for public office.

Section 11(b) of R. A. No. 6646 will certainly achieve one result - keep the voters ignorant of who the candidates are and what they stand for.

With elections fast approaching, the surveys show that almost half of the nation's voters are undecided as to the Presidency. Certainly, they do not know who are running for the Senate.

The implementation of Section 11(b) will result in gross inequality. A cabinet member, an incumbent official, a movie star, a basketball player, or a conspicuous clown enjoys an unfair advantage over a candidate many times better qualified but lesser known.

I am shocked to find out that even the most knowledgeable people do not know that Antonio Carpio, former NBI Director; Estelito P. Mendoza, former Solicitor General and Governor; and Florangel Rosario Braid, member of the Constitutional Commission and distinguished mass communication personality (to name only three) are also running for the Senate. We owe it to the masses to open all forms of communication to them during this limited campaign period. A candidate to whom columnists and radio-television commentators owe past favors or who share their personal biases and convictions will get an undue amount of publicity. Those who incur the ire of opinion makers cannot counteract negative reporting by buying his own newspaper space or airtime for the airing of his refutations.

Comelec is already overburdened with the conduct of elections. Only recently it proved unequal to the task of keeping registration lists clean and had to repeat the exercise in critical areas. It should now husband its resources for its real function - insuring the integrity of the voting process and safeguarding the true results of the elections.

Why Comelec should also supervise the publicity campaigns of almost 100,000 candidates running for 17,000 national and local positions is beyond my poor power to comprehend.

I reject the idea that canned publicity in a so-called Comelec hour or Comelec corner can replace the fresh, imaginative, and personal appeal of advertisements espousing a cause or reaching a particular audience.

Section 11(b) of R. A. No. 6646 is censorship pure and simple. It is particularly reprehensible because it is imposed during the limited period of the election campaign when information is most needed. Moreover, the mere thought that published materials are supervised by a government office is enough to turn the reader off. Only faithful followers who already know for whom they are voting will bother to read the statements of their chosen candidates in the Comelec corner of the newspapers.

The existing restrictions are more than sufficient. Political campaigns are allowed only within a limited period. The amount which a political party or candidate may spend is restricted. Added to the confines of the limited period and restricted expenses, the law now imposes a violation of the candidates' freedom of speech and the voters' freedom to know.

I concur fully in the views expressed by Mr. Justice Isagani A. Cruz in his usual eloquently brilliant style. We should not allow the basic freedom of expression to be sacrificed at the altar of infinitely lesser fears and concerns. Under the clear and present danger rule not only must the danger be patently clear and pressingly present but the evil sought to be avoided must be so substantive as to justify a clamp over one's mouth or, a writing instrument to be stilled.

In the precedent setting case of *Gonzales v. Comelec* (27 SCRA 835 [1969]), seven (7) Justices (one short of the 2/3 majority needed to invalidate the law) deemed a less restrictive statute as unconstitutional. The four (4) Justices who allowed the law to remain did so only because there were various safeguards and provisos. Section

11(b) of R. A. No. 6646 now removes one of those safeguards.

The then Justice Fred Ruiz Castro stated:

"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 that 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." (at Page 904; Emphasis supplied)

I, therefore, vote for the right to have the widest possible expression of ideas preparatory to the choice of the nation's leaders. I vote to declare the challenged legislation unconstitutional.

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CONCURRING OPINION

PADILLA, J.:

I will state in language as simple as I can muster why I believe the challenged law is constitutional.

Sec. 11 of Republic Act No. 6646, otherwise known as the "Electoral Reforms Law of 1987", challenged in these petitions, states that:

"SEC. 11. Prohibited Forms of Election Propaganda - In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

x x x

"(b) For any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcement (sic) or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period."

Petitioners contend that the provision is void because it is violative of the freedoms of the press, speech and expression as guaranteed by Article III, Section 4 of the Constitution.

But it is fundamental that these freedoms are not immune to regulation by the State in the legitimate exercise of its police power.

"The concept of police power is well-established in this jurisdiction. It has been defined as the 'state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare.' As defined, it consists of (1) an imposition of restraint upon liberty or property, (2) in order to foster the common good.

x x x

"It constitutes an implied limitation on the Bill of Rights. According to Fernando, it is 'rooted in the conception

that men in organizing the state and imposing upon its government limitations to safeguard constitutional rights did not intend thereby to enable an individual citizen or a group of citizens to obstruct unreasonably the enactment of such salutary measures calculated to ensure communal peace, safety, good order, and welfare.' Significantly, the Bill of rights itself does not purport to be an absolute guaranty of individual rights and liberties. 'Even liberty itself, the greatest of all rights, is not unres-tricted license to act according to one's will.' It is subject to the far more overriding demands and requirements of the greater number." [1]

Police power rests upon public necessity and upon the right of the State of the public to self-protection. For this reason, it is co-extensive with the necessities of the case and the safeguards of public interest. [2]

In Section 11 of R.A. No. 6646, the legislature aims to uphold the State's policy of guaranteeing equal access to opportunities for public service. [3] Opportunity to hold a public office for public service, particularly elective public offices must be equally accessible to qualified and deserving citizens. Corollary to this, the legislature also recognizes the power of the Commission on Elections (COMELEC) to supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of media of communication or information granted by the government or any subdivision, agency or instrumentality thereof. "Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefore, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful and credible elections." [4]

In *Pablito V. Sanidad vs. The Commission on Elections*, [5] we held that the evil sought to be prevented by Art. IX-C, Section 4 of the Constitution is the possibility that a franchise holder may favor or give any undue advantage to a candidate in terms of advertising space or radio or television time.

In line with the objective of providing equal oppor-tunity to all candidates, the questioned provision is intended to act as an equalizer between the rich and poor candidates. As it is, the moneyed candidate has the funds to engage in a myriad of campaign activities. To allow the rich candidates to have free reign over the use of media for their campaign would result in an unfair advantage over the poor candidates who have no funds or have meager funds to secure print space and air time, and yet, they may be equally qualified and deserving candidates. In *Anacleto D. Badoy, Jr. vs. Jaime N. Ferrer, et al.*, G.R. NO. L-32546, October 17, 1970, 35 SCRA, 285, this Court declared Section 12(F) of R.A. No. 6132 valid and constitutional, recognizing that the purpose of the limitation, on the freedom of the candidate or his sympathizer to spend his own money for his candidacy alone and not for the furtherance of the candidacy of his opponents, is to give the poor candidates a fighting chance in the election. In the same manner, Sec. 11 of R.A. No. 6646 aims to maximize, if not approximate, equality of chances among the various candidates for elective public office.

Petitioners aver that by restoring to the print and broadcast media industry the right to sell print space or air time for campaign or other political purposes, access to print space and air time would be given equally to all candidates. Nevertheless, as opined by the COMELEC, the means to gain access to said time and space would be unequal among all candidates. Hence, there would be in the final analysis, inequality.

Furthermore, to tolerate even indirectly over-spending in print space or air time for campaign purposes will open the floodgates to corruption in public office because a winning candidate who overspends during the election period must necessarily recover his campaign expenses by "hook or crook". Section 11 of R.A. No. 6646 would indirectly constitute a positive and effective measure against corruption in public office.

Petitioners also contend that the challenged provision is "violative of the people's right to information particularly about the conduct of public officials including the character and qualifications of candidates seeking public office."

I do not adhere to the proposition that "the electorate will not have the opportunity for quality decision in expressing its mandate - no sufficient fora to detect and decide for themselves who, among the candidates truly deserve their votes." [6]

Aside from Sec. 11(b) of R.A. No. 6646 providing for Comelec space and Comelec time, Sections 9 and 10 of the same law afford a candidate several venues by which he can fully exercise his freedom of expression, including freedom of assembly. The electorate, in turn, are given opportunities to know the candidates and be informed of their qualifications and platforms.

As provided in Section 9 of R.A. No. 6646, the COMELEC shall encourage non-political, non-partisan private or civic organizations to initiate and hold in every city and municipality, public for a at which all registered candidates for the same office may simultaneously and personally participate to present, explain, and/or debate on their campaign platforms and programs and other like issues. Section 10, on the other hand, allows the candidates the use of the designated common poster areas to post, display and exhibit election propaganda to announce or further their candidacy; not to mention the right to hold political caucuses, conferences, meetings, rallies, parades, or other assemblies for the purpose of soliciting votes and/or undertaking any campaign or propaganda for a candidate; publishing or distributing campaign literature or materials designed to support the election of any candidate; and directly or indirectly solicit votes, pledges or support for a candidate. [7]

In short, the law in question (Sec. 11, Rep. Act No. 6646) has been enacted for a legitimate public purpose and the means it employs to achieve such purpose are reasonable and even timely.

Based on all the foregoing considerations, I vote to sustain the validity and constitutionality of Section II of R.A. No. 6646.

[1] Philippine Association of Service Exporters Inc. vs. Hon. Franklin M. Drilon, et al., G.R. No. 81958, June 30, 1988, 163 SCRA 386

[2] PCGG vs. Peña, G.R. NO. 77663, April 12, 1988, 159 SCRA 556

[3]

[4] Art. IX-C, Section 4, 1987 Constitution.

[5] G.R. NO. 90878, January 29, 1990, 181 SCRA 529.

[6] Comment of the Solicitor General, p. 11.

[7] Article X, Section 79, Batas Pambansa Blg. 881.

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DISSENTING OPINION

PARAS, J.:

In a ghastly blow against our cherished liberties, the Supreme Court, with insensate, guillotine-like efficiency, rendered a decision which in the interest of accuracy and candidness, I would like to turn – the serious attack on our freedom of expression. It is sad but I have no choice except to say that I dissent.

The freedom to advertise one's political candidacy in the various forms of media is clearly a significant part of our

freedom of expression and of our right of access to information. Freedom of expression in turn includes among other things, freedom of speech and freedom of the press. Restrict these freedoms without rhyme or reason, and you violate the most valuable feature of the democratic way of life.

The majority says that the purpose of the political advertisement provision is to prevent those who have much money from completely overwhelming those who have little. This is gross error because should the campaign for votes be carried out in other for a (for example, rallies and meetings) the rich candidate can always be at a great advantage over his less fortunate opponent. And so the disparity feared will likewise appear in campaigns other than through media. It is alleged also that the candidate with money can purchase for himself several full page advertisements, making his poor opponents really poor in more ways than one. This is not realistic for the poor opponents may, far certain reasons be given or favored with advertisements free of charge, and money will not be needed in this case. And yet under the statute in question, even free or gratuitous advertisements in print, in radio or in television are included in the prohibition. And then again, it is contended by the majority that a poor candidate can still make use of media by consenting to interviews and news reports about his campaign, which interviews and reports are, according to the majority still allowable. But then these interviews and news reports are still subtle advertisements and they can be had if a candidate deliberately looks for media practitioners to interview him or to write about him. If the majority is to be consistent, these interviews and news reports should also be disallowed. A case in point is the senatorial candidate who was interviewed on television last Tuesday (March 3, 1992). Portions of the interview follow:

"Q. In 19____, were you not the Secretary of_____?

A. Yes, I was.

"Q. When you were Secretary, did you not accomplish the following?

(Interviewer then enumerated various accomplishments.)

A. Yes, I did."

There can be no doubt that this interview is disguised propaganda, and yet, if we follow the Majority opinion, this is allowable. Is this not illogical - that is, if the ban stays?

And then again, if we were to consider the ban as constitutional, the "unknown" or "lesser known" candidates would be at a distinct disadvantage. They will have to hold numerous rallies (spending oodles and oodles of money). And only those who had previously received public exposure by dint of government service or by prominence in the movies, in music, in sports, etc. will be the ones "recalled" by the voters. This will indeed be unfortunate for our country.

It is true that freedom of speech and freedom of the press are not absolute, and that they have their own limitations. But I do not see how these limitations can make the disputed prohibition valid and constitutional.

I therefore reiterate my opinion that this political ads prohibition is grossly unfair, politically inept and eminently unconstitutional.

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