

**REV. ELLY CHAVEZ PAMATONG, ESQUIRE, PETITIONER, VS.
COMMISSION ON ELECTIONS, RESPONDENT.***G.R. No. 161872. April 13, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-161872/>**TINGA, J.:**

Petitioner Rev. Elly Velez Pamatong filed his Certificate of Candidacy for President on December 17, 2003. Respondent Commission on Elections (COMELEC) refused to give due course to petitioner's Certificate of Candidacy in its Resolution No. 6558 dated January 17, 2004. The decision, however, was not unanimous since Commissioners Luzviminda G. Tancangco and Mehol K. Sadain voted to include petitioner as they believed he had parties or movements to back up his candidacy.

On January 15, 2004, petitioner moved for reconsideration of Resolution No. 6558. Petitioner's Motion for Reconsideration was docketed as SPP (MP) No. 04-001. The COMELEC, acting on petitioner's Motion for Reconsideration and on similar motions filed by other aspirants for national elective positions, denied the same under the aegis of Omnibus Resolution No. 6604 dated February 11, 2004. The COMELEC declared petitioner and thirty-five (35) others nuisance candidates who could not wage a nationwide campaign and/or are not nominated by a political party or are not supported by a registered political party with a national constituency. Commissioner Sadain maintained his vote for petitioner. By then, Commissioner Tancangco had retired.

In this Petition For Writ of Certiorari, petitioner seeks to reverse the resolutions which were allegedly rendered in violation of his right to "equal access to opportunities for public service" under Section 26, Article II of the 1987 Constitution,[1] by limiting the number of qualified candidates only to those who can afford to wage a nationwide campaign and/or are nominated by political parties. In so doing, petitioner argues that the COMELEC indirectly amended the constitutional provisions on the electoral process and limited the power of the sovereign people to choose their leaders. The COMELEC supposedly erred in disqualifying him since he is the most qualified among all the presidential candidates, i.e., he possesses all the constitutional and legal qualifications for the office of the president, he is capable of waging a national campaign since he has numerous national organizations under his leadership, he also has the capacity to wage an international campaign since he has practiced law in other countries, and he has a platform of government. Petitioner likewise attacks the validity of the form for the Certificate of Candidacy prepared by the COMELEC. Petitioner claims that the form does not provide clear and reasonable guidelines for determining the qualifications of candidates since it does not ask for the candidate's bio-data and his program of government.

First, the constitutional and legal dimensions involved.

Implicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort.

The “equal access” provision is a subsumed part of Article II of the Constitution, entitled “Declaration of Principles and State Policies.” The provisions under the Article are generally considered not self-executing,[2] and there is no plausible reason for according a different treatment to the “equal access” provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action.[3] The disregard of the provision does not give rise to any cause of action before the courts.[4]

An inquiry into the intent of the framers[5] produces the same determination that the provision is not self-executory. The original wording of the present Section 26, Article II had read, “The State shall broaden opportunities to public office and prohibit public dynasties.”[6] Commissioner (now Chief Justice) Hilario Davide, Jr. successfully brought forth an amendment that changed the word “broaden” to the phrase “ensure equal access,” and the substitution of the word “office” to “service.” He explained his proposal in this wise:

I changed the word “broaden” to “ENSURE EQUAL ACCESS TO” because what is important would be equal access to the opportunity. If you broaden, it would necessarily mean that the government would be mandated to create as many offices as are possible to accommodate as many people as are also possible. That is the meaning of broadening opportunities to public service. So, in order that we should not mandate the State to make the government the number one employer and to limit offices only to what may be necessary and expedient yet offering equal opportunities to access to it, I change the word “broaden.” [7] (emphasis supplied)

Obviously, the provision is not intended to compel the State to enact positive measures that would accommodate as many people as possible into public office. The approval of the “Davide amendment” indicates the design of the framers to cast the provision as simply enunciatory of a desired policy objective and not reflective of the imposition of a clear State burden.

Moreover, the provision as written leaves much to be desired if it is to be regarded as the source of positive rights. It is difficult to interpret the clause as operative in the absence of legislation since its effective means and reach are not properly defined. Broadly written, the myriad of claims that can be subsumed under this rubric appear to be entirely open-ended.[8] Words and phrases such as “equal access,” “opportunities,” and “public service” are susceptible to countless interpretations owing to their inherent impreciseness. Certainly, it was not the intention of the framers to inflict on the people an operative but amorphous foundation from which innately unenforceable rights may be sourced.

As earlier noted, the privilege of equal access to opportunities to public office may be subjected to limitations. Some valid limitations specifically on the privilege to seek elective office are found in the provisions[9] of the Omnibus Election Code on “Nuisance Candidates” and COMELEC Resolution No. 6452[10] dated December 10, 2002 outlining the instances wherein the COMELEC may *motu proprio* refuse to give due course to or cancel a Certificate of Candidacy.

As long as the limitations apply to everybody equally without discrimination, however, the equal access clause is not violated. Equality is not sacrificed as long as the burdens engendered by the limitations are meant to be borne by any one who is minded to file a certificate of candidacy. In the case at bar, there is no showing that any person is exempt from the limitations or the burdens which they create.

Significantly, petitioner does not challenge the constitutionality or validity of Section 69 of the Omnibus Election Code and COMELEC Resolution No. 6452 dated 10 December 2003. Thus, their presumed validity stands and has to be accorded due weight.

Clearly, therefore, petitioner’s reliance on the equal access clause in Section 26, Article II of the Constitution is misplaced.

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a bona fide intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. As the United States Supreme Court held:

[T]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot – the interest, if no other, in avoiding confusion, deception and even frustration of the democratic [process].[11]

The COMELEC itself recognized these practical considerations when it promulgated Resolution No. 6558 on 17 January 2004, adopting the study Memorandum of its Law Department dated 11 January 2004. As observed in the COMELEC's Comment:

There is a need to limit the number of candidates especially in the case of candidates for national positions because the election process becomes a mockery even if those who cannot clearly wage a national campaign are allowed to run. Their names would have to be printed in the Certified List of Candidates, Voters Information Sheet and the Official Ballots. These would entail additional costs to the government. For the official ballots in automated counting and canvassing of votes, an additional page would amount to more or less FOUR HUNDRED FIFTY MILLION PESOS (P450,000,000.00).

xxx[I]t serves no practical purpose to allow those candidates to continue if they cannot wage a decent campaign enough to project the prospect of winning, no matter how slim.[12]

The preparation of ballots is but one aspect that would be affected by allowance of “nuisance candidates” to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place,[13] watchers in the board of canvassers,[14] or even the receipt of electoral contributions.[15] Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with bona fide candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.

Owing to the superior interest in ensuring a credible and orderly election, the State could exclude nuisance candidates and need not indulge in, as the song goes, “their trips to the moon on gossamer wings.”

The Omnibus Election Code and COMELEC Resolution No. 6452 are cognizant of the compelling State interest to ensure orderly and credible elections by excising impediments thereto, such as nuisance candidacies that distract and detract from the larger purpose. The COMELEC is mandated by the Constitution with the administration of elections[16] and endowed with considerable latitude in adopting means and methods that will ensure the promotion of free, orderly and honest elections.[17] Moreover, the Constitution guarantees that only bona fide candidates for public office shall be free from any form of harassment and discrimination.[18] The

determination of bona fide candidates is governed by the statutes, and the concept, to our mind is, satisfactorily defined in the Omnibus Election Code.

Now, the needed factual premises.

However valid the law and the COMELEC issuance involved are, their proper application in the case of the petitioner cannot be tested and reviewed by this Court on the basis of what is now before it. The assailed resolutions of the COMELEC do not direct the Court to the evidence which it considered in determining that petitioner was a nuisance candidate. This precludes the Court from reviewing at this instance whether the COMELEC committed grave abuse of discretion in disqualifying petitioner, since such a review would necessarily take into account the matters which the COMELEC considered in arriving at its decisions.

Petitioner has submitted to this Court mere photocopies of various documents purportedly evincing his credentials as an eligible candidate for the presidency. Yet this Court, not being a trier of facts, can not properly pass upon the reproductions as evidence at this level. Neither the COMELEC nor the Solicitor General appended any document to their respective Comments.

The question of whether a candidate is a nuisance candidate or not is both legal and factual. The basis of the factual determination is not before this Court. Thus, the remand of this case for the reception of further evidence is in order.

A word of caution is in order. What is at stake is petitioner's aspiration and offer to serve in the government. It deserves not a cursory treatment but a hearing which conforms to the requirements of due process.

As to petitioner's attacks on the validity of the form for the certificate of candidacy, suffice it to say that the form strictly complies with Section 74 of the Omnibus Election Code. This provision specifically enumerates what a certificate of candidacy should contain, with the required information tending to show that the candidate possesses the minimum qualifications for the position aspired for as established by the Constitution and other election laws.

IN VIEW OF THE FOREGOING, COMELEC Case No. SPP (MP) No. 04-001 is hereby remanded to the COMELEC for the reception of further evidence, to determine the question on whether petitioner Elly Velez Lao Pamatong is a nuisance candidate as contemplated in Section 69 of the Omnibus Election Code.

The COMELEC is directed to hold and complete the reception of evidence and report its findings to this Court with deliberate dispatch.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.
Vitug, J., on official leave.

[1] Sec. 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

[2] See *Basco v. PAGCOR*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, 68; *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, 246 SCRA 540, 564. "A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing." *Manila Prince Hotel v. GSIS*, G.R. No. 122156, 3 February 1997, 267 SCRA 408, 431. "Accordingly, [the Court has] held that the provisions in Article II of our Constitution entitled "Declaration of Principles and State Policies" should generally be construed as mere

statements of principles of the State.” Justice Puno, dissenting, *Manila Prince Hotel v. GSIS*, Id. at 474.

[3] See *Kilosbayan Inc. v. Morato*, G.R. No. 118910, 16 November 1995, 250 SCRA 130, 138. *Manila Prince Hotel v. GSIS*, *supra* note 2 at 436.

[4] *Kilosbayan, Inc. v. Morato*, *supra* note 2.

[5] “A searching inquiry should be made to find out if the provision is intended as a present enactment, complete in itself as a definitive law, or if it needs future legislation for completion and enforcement. The inquiry demands a micro-analysis and the context of the provision in question.” J. Puno, dissenting, *Manila Prince Hotel v. GSIS*, *supra* note 2.

[6] J. Bernas, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* (1995), p. 148.

[7] IV RECORDS OF PROCEEDINGS AND DEBATES, 1986 CONSTITUTIONAL COMMISSION 945.

[8] See J. Feliciano, concurring, *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792, 815.

[9] Section 69. Nuisance Candidates.—The Commission may, *motu proprio* or upon a verified petition of an interested party, refuse to give due course or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

[10] SEC. 6. *Motu Proprio* Cases. — The Commission may, at any time before the election, *motu proprio* refuse to give due course to or cancel a certificate of candidacy of any candidate for the positions of President, Vice-President, Senator and Party-list:

- The grounds:

- Candidates who, on the face of their certificate of candidacy, do not possess the constitutional and legal qualifications of the office to which they aspire to be elected;

- Candidate who, on the face of said certificate, filed their certificate of candidacy to put the election process in mockery or disrepute;

- Candidates whose certificate of candidacy could cause confusion among the voters by the similarity of names and surnames with other candidates; and

- Candidates who have no bona fide intention to run for the office for which the certificate of candidacy had been filed or acts that clearly demonstrate the lack of such bona fide intention, such as:

d.1 Candidates who do not belong to or are not nominated by any registered political party of national constituency;

d.2 Presidential, Vice-Presidential [candi-dates] who do not present running mates for vice-president, respectively, nor senatorial candidates;

d.3 Candidates who do not have a platform of government and are not capable of waging a nationwide campaign.

[11] *Jenness v. Fortson*, 403 U.S. 431 (1971).

[12] *Rollo*, pp. 469.

[13] See Section 178, Omnibus Election Code, as amended.

[14] See Section 239, Omnibus Election Code, as amended.

[15] See Article XI, Omnibus Election Code, as amended.

[16] See Section 2(1), Article IX, Constitution.

[17] *Sanchez v. COMELEC*, 199 Phil. 617 (1987), citing *Cauton v. COMELEC*, L-25467, 27 April 1967, 19 SCRA 911.

[18] See Section 9, Article IX, Constitution.

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