

FRANCISCO I. CHAVEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, REPRESENTED BY ITS CHAIRMAN, BENJAMIN S. ABALOS, ESMERALDA AMORA-LADRA, IN HER CAPACITY AS ACTING DIRECTOR IV, NATI...

G.R. No. 162777. August 31, 2004

Ponente: AZCUNA, J.

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AZCUNA, J.:

In this petition for prohibition with prayer for the issuance of a writ of preliminary injunction, Francisco I. Chavez stands as a taxpayer and a citizen asking this Court to enjoin the Commission on Elections (COMELEC) from enforcing Section 32 of its Resolution No. 6520, dated January 6, 2004. The assailed provision is, as follows:

Section 32. All propaganda materials such as posters, streamers, stickers or paintings on walls and other materials showing the picture, image, or name of a person, and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate for public office shall be immediately removed by said candidate and radio station, print media or television station within 3 days after the effectivity of these implementing rules; otherwise, he and said radio station, print media or television station shall be presumed to have conducted premature campaigning in violation of Section 80 of the Omnibus Election Code.

Petitioner Chavez, on various dates, entered into formal agreements with certain establishments to endorse their products. On August 18, 2003, he authorized a certain Andrew So to use his name and image for 96° North, a clothing company. Petitioner also signed Endorsement Agreements with Konka International Plastics Manufacturing Corporation and another corporation involved in the amusement and video games business, G-Box. These last two agreements were entered into on October 14, 2003 and November 10, 2003, respectively. Pursuant to these agreements, three billboards were set up along the Balintawak Interchange of the North Expressway. One billboard showed petitioner promoting the plastic products of Konka International Plastics Manufacturing Corporation, and the other two showed petitioner endorsing the clothes of 96° North. One more billboard was set up along Roxas Boulevard showing petitioner promoting the game and amusement parlors of G-Box.

On December 30, 2003, however, petitioner filed his certificate of candidacy for the position of Senator under Alyansa ng Pag-asa, a tripartite alliance of three political parties: PROMDI, REPORMA, and Aksyon Demokratiko.

On January 6, 2004, respondent COMELEC issued Resolution No. 6520, which contained Section 32, the provision assailed herein. On January 21, 2004, petitioner was directed to comply with the said provision by the COMELEC's Law Department. He replied, on January 29, 2004, by requesting the COMELEC that he be informed as to how he may have violated the assailed provision. He sent another letter dated February 23, 2004, this time asking the COMELEC that he be exempted from the application of Section 32, considering that the

billboards adverted to are mere product endorsements and cannot be construed as paraphernalia for premature campaigning under the rules.

The COMELEC answered petitioner's request by issuing another letter, dated February 27, 2004, wherein it ordered him to remove or cause the removal of the billboards, or to cover them from public view pending the approval of his request.

Feeling aggrieved, petitioner Chavez asks this Court that the COMELEC be enjoined from enforcing the assailed provision. He urges this Court to declare the assailed provision unconstitutional as the same is allegedly (1) a gross violation of the non-impairment clause; (2) an invalid exercise of police power; (3) in the nature of an ex-post facto law; (4) contrary to the Fair Elections Act; and (5) invalid due to overbreadth.

Is Section 32 of COMELEC Resolution No. 6520 an invalid exercise of police power? Petitioner argues that the billboards, while they exhibit his name and image, do not at all announce his candidacy for any public office nor solicit support for such candidacy from the electorate. They are, he claims, mere product endorsements and not election propaganda. Prohibiting, therefore, their exhibition to the public is not within the scope of the powers of the COMELEC, he concludes.

This Court takes a contrary view. Police power, as an inherent attribute of sovereignty, is the power to prescribe regulations to promote the health, morals, peace, education, good order, or safety, and the general welfare of the people.[1] To determine the validity of a police measure, two questions must be asked: (1) Does the interest of the public in general, as distinguished from those of a particular class, require the exercise of police power? and (2) Are the means employed reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals?

A close examination of the assailed provision reveals that its primary objectives are to prohibit premature campaigning and to level the playing field for candidates of public office, to equalize the situation between popular or rich candidates, on one hand, and lesser-known or poorer candidates, on the other, by preventing the former from enjoying undue advantage in exposure and publicity on account of their resources and popularity. The latter is a valid reason for the exercise of police power as held in *National Press Club v. COMELEC*,[2] wherein the petitioners questioned the constitutionality of Section 11(b) of Republic Act No. 6646, which prohibited the sale or donation of print space and air time "for campaigning or other political purposes," except to the COMELEC. The obvious intention of this provision is to equalize, 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." This Court ruled therein that this 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 so many of our population falling below the poverty line.

Moreover, petitioner cannot claim that the subject billboards are purely product endorsements and do not announce nor solicit any support for his candidacy. Under the Omnibus Election Code, "election campaign" or "partisan political activity" is defined as an act designed to promote the election or defeat of a particular candidate or candidates to a public office. Activities included under this definition are:

- (1) Forming organizations, associations, clubs, committees, or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate
- (2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;
- (3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any

candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.[3] (underscoring ours)

It is true that when petitioner entered into the contracts or agreements to endorse certain products, he acted as a private individual and had all the right to lend his name and image to these products. However, when he filed his certificate of candidacy for Senator, the billboards featuring his name and image assumed partisan political character because the same indirectly promoted his candidacy. Therefore, the COMELEC was acting well within its scope of powers when it required petitioner to discontinue the display of the subject billboards. If the subject billboards were to be allowed, candidates for public office whose name and image are used to advertise commercial products would have more opportunity to make themselves known to the electorate, to the disadvantage of other candidates who do not have the same chance of lending their faces and names to endorse popular commercial products as image models. Similarly, an individual intending to run for public office within the next few months, could pay private corporations to use him as their image model with the intention of familiarizing the public with his name and image even before the start of the campaign period. This, without a doubt, would be a circumvention of the rule against premature campaigning:

Sec. 80. Election campaign or partisan political activity outside campaign period. – It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period. x x x [4]

Article IX (C) (4) of the Constitution provides:

Sec. 4. 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.

Under the abovementioned Constitutional provision, the COMELEC is expressly authorized to supervise or regulate the enjoyment or utilization of all media communication or information to ensure equal opportunity, time, and space. All these are aimed at the holding of free, orderly, honest, peaceful, and credible elections.

Neither is Section 32 of Resolution No. 6520 a gross violation of the non-impairment clause. The non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government.[5] Equal opportunity to proffer oneself for public office, without regard to the level of financial resources one may have at his disposal, is indeed of vital interest to the public. The State has the duty to enact and implement rules to safeguard this interest. Time and again, this Court has said that contracts affecting public interest contain an implied reservation of the police power as a postulate of the existing legal order. This power can be activated at anytime to change the provisions of the contract, or even abrogate it entirely, for the promotion or protection of the general welfare. Such an act will not militate against the impairment clause, which is subject to and limited by the paramount police power.[6]

Furthermore, this Court notes that the very contracts entered into by petitioner provide that the endorser's photograph and image shall be utilized in whatever form, mode and manner "in keeping with norms of decency, reasonableness, morals and law;"[7] and in whatever form, mode and manner not contrary to law and norms of

decency,”[8] and “in whatever form, mode and manner in keeping with norms of decency, reasonableness, morals and law.”[9]

Petitioner also claims that Section 32 of Resolution No. 6520 is in the nature of an ex post facto law. He urges this Court to believe that the assailed provision makes an individual criminally liable for an election offense for not removing such advertisement, even if at the time the said advertisement was exhibited, the same was clearly legal. Hence, it makes a person, whose name or image is featured in any such advertisement, liable for premature campaigning under the Omnibus Election Code.[10] A close scrutiny of this rationale, however, demonstrates its lack of persuasiveness. Section 32, although not penal in nature, defines an offense and prescribes a penalty for said offense. Laws of this nature must operate prospectively, except when they are favorable to the accused. It should be noted, however, that the offense defined in the assailed provision is not the putting up of “propaganda materials such as posters, streamers, stickers or paintings on walls and other materials showing the picture, image or name of a person, and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate for public office.” Nor does it prohibit or consider an offense the entering of contracts for such propaganda materials by an individual who subsequently becomes a candidate for public office. One definitely does not commit an offense by entering into a contract with private parties to use his name and image to endorse certain products prior to his becoming a candidate for public office. The offense, as expressly prescribed in the assailed provision, is the non-removal of the described propaganda materials three (3) days after the effectivity of COMELEC Resolution No. 6520. If the candidate for public office fails to remove such propaganda materials after the given period, he shall be liable under Section 80 of the Omnibus Election Code for premature campaigning. Indeed, nowhere is it indicated in the assailed provision that it shall operate retroactively. There is, therefore, no ex post facto law in this case.

Next, petitioner urges that Section 32 is a violation of the Fair Elections Act. According to him, under this law, billboards are already permitted as lawful election propaganda. He claims, therefore, that the COMELEC, in effectively prohibiting the use of billboards as a form of election propaganda through the assailed provision, violated the Fair Elections Act. Petitioner’s argument is not tenable. The Solicitor General rightly points out that the assailed provision does not prohibit billboards as lawful election propaganda. It only regulates their use to prevent premature campaigning and to equalize, as much as practicable, the situation of all candidates by preventing popular and rich candidates from gaining undue advantage in exposure and publicity on account of their resources and popularity.[11] Moreover, by regulating the use of such election propaganda materials, the COMELEC is merely doing its duty under the law. Under Sections 3 and 13 of the Fair Elections Act, all election propaganda are subject to the supervision and regulation by the COMELEC:

SECTION 3. Lawful Election Propaganda. -- Election propaganda, whether on television, cable television radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

For the purpose of this Act, lawful election propaganda shall include:

3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;

3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;

3.3. Cloth, paper or cardboard posters whether framed or posted, with an area not exceeding two(2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

3.4. Paid advertisements in print or broadcast media: Provided, That the advertisements shall follow the requirements set forth in Section 4 of this Act; and

3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.

x x x

SECTION 13. Authority of the COMELEC to Promulgate Rules; Election Offenses. — The COMELEC shall promulgate and furnish all political parties and candidates and the mass media entities the rules and regulations for the implementation of this Act, consistent with the criteria established in Article IX-C, Section 4 of the Constitution and Section 86 of the Omnibus Election Code (Batas Pambansa Blg. 881).

Rules and regulations promulgated by the COMELEC under and by authority of this Section shall take effect on the seventh day after their publication in at least two (2) daily newspapers of general circulation. Prior to effectivity of said rules and regulations, no political advertisement or propaganda for or against any candidate or political party shall be published or broadcast through mass media.

Violation of this Act and the rules and regulations of the COMELEC issued to implement this Act shall be an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code (Batas Pambansa Blg. 881).

Finally, petitioner contends that Section 32 of COMELEC Resolution No. 6520 is invalid because of overbreadth.

A statute or regulation is considered void for overbreadth when it offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to State regulations may not be achieved by means that sweep unnecessarily broadly and thereby invade the area of protected freedoms.[12]

The provision in question is limited in its operation both as to time and scope. It only disallows the continued display of a person's propaganda materials and advertisements after he has filed a certificate of candidacy and before the start of the campaign period. Said materials and advertisements must also show his name and image.

There is no blanket prohibition of the use of propaganda materials and advertisements. During the campaign period, these may be used subject only to reasonable limitations necessary and incidental to achieving the purpose of preventing premature campaigning and promoting equality of opportunities among all candidates.

The provision, therefore, is not invalid on the ground of overbreadth.

WHEREFORE, the petition is DISMISSED and Section 32 of COMELEC Resolution No. 6520 is declared valid and constitutional. The prayer for a Temporary Restraining Order and/or a Writ of Preliminary Injunction is hereby DENIED. No costs.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

Puno, Panganiban, Sandoval-Gutierrez, and Carpio, JJ., on official leave.

[1] Acebedo Optical v. CA, 329 SCRA 314 (2000).

[2] 207 SCRA 1 (1992).

[3] Article X, Section 79 (b) of the Omnibus Election Code.

[4] Article X, Section 80 of the Omnibus Election Code.

[5] Philippine Association of Service Exporters v. Drilon, 163 SCRA 386 (1988).

[6] Caleon v. Agus Development Corporation, 207 SCRA 748 (1992), citing Villanueva v. Castañeda, 154 SCRA 142 (1987).

[7] Petition, Annex B-2, rollo, pp. 60-62.

[8] Petition, Annex B-1, rollo, pp. 57-59.

[9] Petition, Annex B, rollo, p. 56.

[10] Petition, p. 14; rollo, p. 16.

[11] Solicitor General's Comment, p. 28; rollo, p. 107.

[12] Adiong v. Comelec, 207 SCRA 712 (1992).

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