

ELEAZAR P. QUINTO AND GERINO A. TOLENTINO, JR., PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 189698. February 22, 2010

Ponente: PUNO, C.J.

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PUNO, C.J.:

Upon a careful review of the case at bar, this Court resolves to grant the respondent Commission on Elections' (COMELEC) motion for reconsideration, and the movants-intervenors' motions for reconsideration-in-intervention, of this Court's December 1, 2009 Decision (Decision).[1]

The assailed Decision granted the Petition for Certiorari and Prohibition filed by Eleazar P. Quinto and Gerino A. Tolentino, Jr. and declared as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act No. 9369,[2] Section 66 of the Omnibus Election Code[3] and Section 4(a) of COMELEC Resolution No. 8678,[4] mainly on the ground that they violate the equal protection clause of the Constitution and suffer from overbreadth. The assailed Decision thus paved the way for public appointive officials to continue discharging the powers, prerogatives and functions of their office notwithstanding their entry into the political arena.

In support of their respective motions for reconsideration, respondent COMELEC and movants-intervenors submit the following arguments:

- (1) The assailed Decision is contrary to, and/or violative of, the constitutional proscription against the participation of public appointive officials and members of the military in partisan political activity;
- (2) The assailed provisions do not violate the equal protection clause when they accord differential treatment to elective and appointive officials, because such differential treatment rests on material and substantial distinctions and is germane to the purposes of the law;
- (3) The assailed provisions do not suffer from the infirmity of overbreadth; and
- (4) There is a compelling need to reverse the assailed Decision, as public safety and interest demand such reversal.

We find the foregoing arguments meritorious.

I.

Procedural Issues

First, we shall resolve the procedural issues on the timeliness of the COMELEC's motion for reconsideration which was filed on December 15, 2009, as well as the propriety of the motions for reconsideration-in-intervention which were filed after the Court had rendered its December 1, 2009 Decision.

i. Timeliness of COMELEC's Motion for Reconsideration

Pursuant to Section 2, Rule 56-A of the 1997 Rules of Court,[5] in relation to Section 1, Rule 52 of the same

rules,[6] COMELEC had a period of fifteen days from receipt of notice of the assailed Decision within which to move for its reconsideration. COMELEC received notice of the assailed Decision on December 2, 2009, hence, had until December 17, 2009 to file a Motion for Reconsideration.

The Motion for Reconsideration of COMELEC was timely filed. It was filed on December 14, 2009. The corresponding Affidavit of Service (in substitution of the one originally submitted on December 14, 2009) was subsequently filed on December 17, 2009 - still within the reglementary period.

ii. Propriety of the Motions for Reconsideration-in-Intervention

Section 1, Rule 19 of the Rules of Court provides:

A person who has legal interest in the matter in litigation or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Pursuant to the foregoing rule, this Court has held that a motion for intervention shall be entertained when the following requisites are satisfied: (1) the would-be intervenor shows that he has a substantial right or interest in the case; and (2) such right or interest cannot be adequately pursued and protected in another proceeding.[7]

Upon the other hand, Section 2, Rule 19 of the Rules of Court provides the time within which a motion for intervention may be filed, viz.:

SECTION 2. Time to intervene.- The motion for intervention may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties. (italics supplied)

This rule, however, is not inflexible. Interventions have been allowed even beyond the period prescribed in the Rule, when demanded by the higher interest of justice. Interventions have also been granted to afford indispensable parties, who have not been impleaded, the right to be heard even after a decision has been rendered by the trial court,[8] when the petition for review of the judgment has already been submitted for decision before the Supreme Court,[9] and even where the assailed order has already become final and executory.[10] In *Lim v. Pacquing*,[11] the motion for intervention filed by the Republic of the Philippines was allowed by this Court to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties.

In fine, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court[12] after consideration of the appropriate circumstances.[13] We stress again that Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice.[14] Its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.[15]

We rule that, with the exception of the IBP - Cebu City Chapter, all the movants-intervenors may properly intervene in the case at bar.

First, the movants-intervenors have each sufficiently established a substantial right or interest in the case.

As a Senator of the Republic, Senator Manuel A. Roxas has a right to challenge the December 1, 2009 Decision, which nullifies a long established law; as a voter, he has a right to intervene in a matter that involves the electoral process; and as a public officer, he has a personal interest in maintaining the trust and confidence of the public in its system of government.

On the other hand, former Senator Franklin M. Drilon and Tom V. Apacible are candidates in the May 2010 elections running against appointive officials who, in view of the December 1, 2009 Decision, have not yet resigned from their posts and are not likely to resign from their posts. They stand to be directly injured by the assailed Decision, unless it is reversed.

Moreover, the rights or interests of said movants-intervenors cannot be adequately pursued and protected in another proceeding. Clearly, their rights will be foreclosed if this Court's Decision attains finality and forms part of the laws of the land.

With regard to the IBP - Cebu City Chapter, it anchors its standing on the assertion that "this case involves the constitutionality of elections laws for this coming 2010 National Elections," and that "there is a need for it to be allowed to intervene xxx so that the voice of its members in the legal profession would also be heard before this Highest Tribunal as it resolves issues of transcendental importance." [16]

Prescinding from our rule and ruling case law, we find that the IBP-Cebu City Chapter has failed to present a specific and substantial interest sufficient to clothe it with standing to intervene in the case at bar. Its invoked interest is, in character, too indistinguishable to justify its intervention.

We now turn to the substantive issues.

II.

Substantive Issues

The assailed Decision struck down Section 4(a) of Resolution 8678, the second proviso in the third paragraph of Section 13 of Republic Act (RA) 9369, and Section 66 of the Omnibus Election Code, on the following grounds:

- (1) They violate the equal protection clause of the Constitution because of the differential treatment of persons holding appointive offices and those holding elective positions;
- (2) They are overbroad insofar as they prohibit the candidacy of all civil servants holding appointive posts: (a) without distinction as to whether or not they occupy high/influential positions in the government, and (b) they limit these civil servants' activity regardless of whether they be partisan or nonpartisan in character, or whether they be in the national, municipal or barangay level; and
- (3) Congress has not shown a compelling state interest to restrict the fundamental right of these public appointive officials.

We grant the motions for reconsideration. We now rule that Section 4(a) of Resolution 8678, Section 66 of the Omnibus Election Code, and the second proviso in the third paragraph of Section 13 of RA 9369 are not unconstitutional, and accordingly reverse our December 1, 2009 Decision.

III.

Section 4(a) of COMELEC Resolution 8678 Compliant with Law

Section 4(a) of COMELEC Resolution 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter, viz.:

Incumbent Appointive Official. - Under Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or -controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

Incumbent Elected Official. - Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election

Act,[17] which repealed Section 67 of the Omnibus Election Code[18] and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running,[19] an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In fine, an elected official may run for another position without forfeiting his seat.

These laws and regulations implement Section 2(4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign.

The intention to impose a strict limitation on the participation of civil service officers and employees in partisan political campaigns is unmistakable. The exchange between Commissioner Quesada and Commissioner Foz during the deliberations of the Constitutional Commission is instructive:

MS. QUESADA.

x x x x

Secondly, I would like to address the issue here as provided in Section 1 (4), line 12, and I quote: "No officer or employee in the civil service shall engage, directly or indirectly, in any partisan political activity." This is almost the same provision as in the 1973 Constitution. However, we in the government service have actually experienced how this provision has been violated by the direct or indirect partisan political activities of many government officials.

So, is the Committee willing to include certain clauses that would make this provision more strict, and which would deter its violation?

MR. FOZ. Madam President, the existing Civil Service Law and the implementing rules on the matter are more than exhaustive enough to really prevent officers and employees in the public service from engaging in any form of partisan political activity. But the problem really lies in implementation because, if the head of a ministry, and even the superior officers of offices and agencies of government will themselves violate the constitutional injunction against partisan political activity, then no string of words that we may add to what is now here in this draft will really implement the constitutional intent against partisan political activity. x x x[20] (italics supplied)

To emphasize its importance, this constitutional ban on civil service officers and employees is presently reflected and implemented by a number of statutes. Section 46(b)(26), Chapter 7 and Section 55, Chapter 8 - both of Subtitle A, Title I, Book V of the Administrative Code of 1987 - respectively provide in relevant part:

Section 44. Discipline: General Provisions:

x x x x

(b) The following shall be grounds for disciplinary action:

x x x x

(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office.

x x x x

Section 55. Political Activity. -- No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of his candidates for public office

whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

Section 261(i) of Batas Pambansa Blg. 881 (the Omnibus Election Code) further makes intervention by civil service officers and employees in partisan political activities an election offense, viz.:

SECTION 261. Prohibited Acts. -- The following shall be guilty of an election offense:

x x x x

(i) Intervention of public officers and employees. -- Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, barangay self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.

The intent of both Congress and the framers of our Constitution to limit the participation of civil service officers and employees in partisan political activities is too plain to be mistaken.

But Section 2(4), Article IX-B of the 1987 Constitution and the implementing statutes apply only to civil servants holding apolitical offices. Stated differently, the constitutional ban does not cover elected officials, notwithstanding the fact that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." [21] This is because elected public officials, by the very nature of their office, engage in partisan political activities almost all year round, even outside of the campaign period. [22] Political partisanship is the inevitable essence of a political office, elective positions included. [23]

The prohibition notwithstanding, civil service officers and employees are allowed to vote, as well as express their views on political issues, or mention the names of certain candidates for public office whom they support. This is crystal clear from the deliberations of the Constitutional Commission, viz.:

MS. AQUINO: Mr. Presiding Officer, my proposed amendment is on page 2, Section 1, subparagraph 4, lines 13 and 14. On line 13, between the words "any" and "partisan," add the phrase ELECTIONEERING AND OTHER; and on line 14, delete the word "activity" and in lieu thereof substitute the word CAMPAIGN.

May I be allowed to explain my proposed amendment?

THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino may proceed.

MS. AQUINO: The draft as presented by the Committee deleted the phrase "except to vote" which was adopted in both the 1935 and 1973 Constitutions. The phrase "except to vote" was not intended as a guarantee to the right to vote but as a qualification of the general prohibition against taking part in elections.

Voting is a partisan political activity. Unless it is explicitly provided for as an exception to this prohibition, it will amount to disenfranchisement. We know that suffrage, although plenary, is not an unconditional right. In other words, the Legislature can always pass a statute which can withhold from any class the right to vote in an election, if public interest so required. I would only like to reinstate the qualification by specifying the prohibited acts so that those who may want to vote but who are likewise prohibited from participating in partisan political campaigns or electioneering may vote.

MR. FOZ: There is really no quarrel over this point, but please understand that there was no intention on the part of the Committee to disenfranchise any government official or employee. The elimination of the last

clause of this provision was precisely intended to protect the members of the civil service in the sense that they are not being deprived of the freedom of expression in a political contest. The last phrase or clause might have given the impression that a government employee or worker has no right whatsoever in an election campaign except to vote, which is not the case. They are still free to express their views although the intention is not really to allow them to take part actively in a political campaign.[24]

IV.

Section 4(a) of Resolution 8678, Section 13 of RA 9369, and
Section 66 of the Omnibus Election Code Do Not Violate the
Equal Protection Clause

We now hold that Section 4(a) of Resolution 8678, Section 66 of the Omnibus Election Code, and the second proviso in the third paragraph of Section 13 of RA 9369 are not violative of the equal protection clause of the Constitution.

i. *Fariñas, et al. v. Executive Secretary, et al.* is Controlling

In truth, this Court has already ruled squarely on whether these deemed-resigned provisions challenged in the case at bar violate the equal protection clause of the Constitution in *Fariñas, et al. v. Executive Secretary, et al.*[25]

In *Fariñas*, the constitutionality of Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, was assailed on the ground, among others, that it unduly discriminates against appointive officials. As Section 14 repealed Section 67 (i.e., the deemed-resigned provision in respect of elected officials) of the Omnibus Election Code, elected officials are no longer considered ipso facto resigned from their respective offices upon their filing of certificates of candidacy. In contrast, since Section 66 was not repealed, the limitation on appointive officials continues to be operative - they are deemed resigned when they file their certificates of candidacy.

The petitioners in *Fariñas* thus brought an equal protection challenge against Section 14, with the end in view of having the deemed-resigned provisions "apply equally" to both elected and appointive officials. We held, however, that the legal dichotomy created by the Legislature is a reasonable classification, as there are material and significant distinctions between the two classes of officials. Consequently, the contention that Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, infringed on the equal protection clause of the Constitution, failed muster. We ruled:

The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.

The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between

those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take (sic) part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, i.e., elected officials vis-à-vis appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[26]

The case at bar is a crass attempt to resurrect a dead issue. The miracle is that our assailed Decision gave it new life. We ought to be guided by the doctrine of *stare decisis et non quieta movere*. This doctrine, which is really "adherence to precedents," mandates that once a case has been decided one way, then another case involving exactly the same point at issue should be decided in the same manner.[27] This doctrine is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As the renowned jurist Benjamin Cardozo stated in his treatise *The Nature of the Judicial Process*:

It will not do to decide the same question one way between one set of litigants and the opposite way between another. "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principles. If a case was decided against me yesterday when I was a defendant, I shall look for the same judgment today if I am plaintiff. To decide differently would raise a feeling of resentment and wrong in my breast; it would be an infringement, material and moral, of my rights." Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts.[28]

Our Fariñas ruling on the equal protection implications of the deemed-resigned provisions cannot be minimized as mere *obiter dictum*. It is trite to state that an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*. [29] This rule applies to all pertinent questions that are presented and resolved in the regular course of the consideration of the case and lead up to the final conclusion, and to any statement as to the matter on which the decision is predicated. [30] For that reason, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground; or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. [31] As we held in *Villanueva, Jr. v. Court of Appeals, et al.*: [32]

... A decision which the case could have turned on is not regarded as obiter dictum merely because, owing to the disposal of the contention, it was necessary to consider another question, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as dicta. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered, nor does a decision on one proposition make statements of the court regarding other propositions dicta.[33] (*italics supplied*)

ii. Classification Germane to the Purposes of the Law

The Fariñas ruling on the equal protection challenge stands on solid ground even if reexamined.

To start with, the equal protection clause does not require the universal application of the laws to all persons or things without distinction.[34] What it simply requires is equality among equals as determined according to a valid classification.[35] The test developed by jurisprudence here and yonder is that of reasonableness,[36] which has four requisites:

- (1) The classification rests on substantial distinctions;
- (2) It is germane to the purposes of the law;
- (3) It is not limited to existing conditions only; and
- (4) It applies equally to all members of the same class.[37]

Our assailed Decision readily acknowledged that these deemed-resigned provisions satisfy the first, third and fourth requisites of reasonableness. It, however, proffers the dubious conclusion that the differential treatment of appointive officials vis-à-vis elected officials is not germane to the purpose of the law, because "whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain," viz.:

... For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their [Certificates of Candidacy] for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign.[38]

Sad to state, this conclusion conveniently ignores the long-standing rule that to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may proceed "one step at a time." [39] In addressing a societal concern, it must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded.[40] Nevertheless, as long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment.[41] We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class.[42] Stated differently, the fact that a legislative classification, by itself, is underinclusive will not render it unconstitutionally arbitrary or invidious.[43] There is no constitutional requirement that regulation must reach each and every class to which it might be applied;[44] that the Legislature must be held rigidly to the choice of regulating all or none.

Thus, any person who poses an equal protection challenge must convincingly show that the law creates a classification that is "palpably arbitrary or capricious." [45] He must refute all possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment,[46] such that

the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable." [47] In the case at bar, the petitioners failed - and in fact did not even attempt - to discharge this heavy burden. Our assailed Decision was likewise silent as a sphinx on this point even while we submitted the following thesis:

... [I]t is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment. [48]

In the instant case, is there a rational justification for excluding elected officials from the operation of the deemed resigned provisions? I submit that there is.

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. [49] It involves the choice or selection of candidates to public office by popular vote. [50] Considering that elected officials are put in office by their constituents for a definite term, it may justifiably be said that they were excluded from the ambit of the deemed resigned provisions in utmost respect for the mandate of the sovereign will. In other words, complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned.

The dichotomized treatment of appointive and elective officials is therefore germane to the purposes of the law. For the law was made not merely to preserve the integrity, efficiency, and discipline of the public service; the Legislature, whose wisdom is outside the rubric of judicial scrutiny, also thought it wise to balance this with the competing, yet equally compelling, interest of deferring to the sovereign will. [51] (emphasis in the original)

In fine, the assailed Decision would have us "equalize the playing field" by invalidating provisions of law that seek to restrain the evils from running riot. Under the pretext of equal protection, it would favor a situation in which the evils are unconfined and vagrant, existing at the behest of both appointive and elected officials, over another in which a significant portion thereof is contained. The absurdity of that position is self-evident, to say the least.

The concern, voiced by our esteemed colleague, Mr. Justice Nachura, in his dissent, that elected officials (vis-à-vis appointive officials) have greater political clout over the electorate, is indeed a matter worth exploring - but not by this Court. Suffice it to say that the remedy lies with the Legislature. It is the Legislature that is given the authority, under our constitutional system, to balance competing interests and thereafter make policy choices responsive to the exigencies of the times. It is certainly within the Legislature's power to make the deemed-resigned provisions applicable to elected officials, should it later decide that the evils sought to be prevented are of such frequency and magnitude as to tilt the balance in favor of expanding the class. This Court cannot and should not arrogate unto itself the power to ascertain and impose on the people the best state of affairs from a public policy standpoint.

iii. Mancuso v. Taft Has Been Overruled

Finding no Philippine jurisprudence to prop up its equal protection ruling, our assailed Decision adverted to, and extensively cited, *Mancuso v. Taft*. [52] This was a decision of the First Circuit of the United States Court of Appeals promulgated in March 1973, which struck down as unconstitutional a similar statutory provision. Pathetically, our assailed Decision, relying on *Mancuso*, claimed:

(1) The right to run for public office is "inextricably linked" with two fundamental freedoms - freedom of expression and association;

(2) Any legislative classification that significantly burdens this fundamental right must be subjected to strict equal protection review; and

(3) While the state has a compelling interest in maintaining the honesty and impartiality of its public work force, the deemed-resigned provisions pursue their objective in a far too heavy-handed manner as to render them unconstitutional.

It then concluded with the exhortation that since "the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,] it is high-time that we, too, should follow suit."

Our assailed Decision's reliance on Mancuso is completely misplaced. We cannot blink away the fact that the United States Supreme Court effectively overruled Mancuso three months after its promulgation by the United States Court of Appeals. In *United States Civil Service Commission, et al. v. National Association of Letter Carriers AFL-CIO, et al.*[53] and *Broadrick, et al. v. State of Oklahoma, et al.*,[54] the United States Supreme Court was faced with the issue of whether statutory provisions prohibiting federal[55] and state[56] employees from taking an active part in political management or in political campaigns were unconstitutional as to warrant facial invalidation. Violation of these provisions results in dismissal from employment and possible criminal sanctions.

The Court declared these provisions compliant with the equal protection clause. It held that (i) in regulating the speech of its employees, the state as employer has interests that differ significantly from those it possesses in regulating the speech of the citizenry in general; (ii) the courts must therefore balance the legitimate interest of employee free expression against the interests of the employer in promoting efficiency of public services; (iii) if the employees' expression interferes with the maintenance of efficient and regularly functioning services, the limitation on speech is not unconstitutional; and (iv) the Legislature is to be given some flexibility or latitude in ascertaining which positions are to be covered by any statutory restrictions.[57] Therefore, insofar as government employees are concerned, the correct standard of review is an interest-balancing approach, a means-end scrutiny that examines the closeness of fit between the governmental interests and the prohibitions in question.[58]

Letter Carriers elucidated on these principles, as follows:

Until now, the judgment of Congress, the Executive, and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences. The restrictions so far imposed on federal employees are not aimed at particular parties, groups, or points of view, but apply equally to all partisan activities of the type described. They discriminate against no racial, ethnic, or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls.

But, as the Court held in *Pickering v. Board of Education*,[59] the government has an interest in regulating the conduct and the speech of its employees that differ(s) significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the (employee), as a citizen, in commenting upon matters of public concern and the interest of the (government), as an employer, in promoting the efficiency of the public services it performs through its employees.' Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.

It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will of Congress, rather than

in accordance with their own or the will of a political party. They are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government-the impartial execution of the laws-it is essential that federal employees, for example, not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Another major concern of the restriction against partisan activities by federal employees was perhaps the immediate occasion for enactment of the Hatch Act in 1939. That was the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power-or the party out of power, for that matter-using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns.

A related concern, and this remains as important as any other, was to further serve the goal that employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pressure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs. It may be urged that prohibitions against coercion are sufficient protection; but for many years the joint judgment of the Executive and Congress has been that to protect the rights of federal employees with respect to their jobs and their political acts and beliefs it is not enough merely to forbid one employee to attempt to influence or coerce another. For example, at the hearings in 1972 on proposed legislation for liberalizing the prohibition against political activity, the Chairman of the Civil Service Commission stated that 'the prohibitions against active participation in partisan political management and partisan political campaigns constitute the most significant safeguards against coercion . . .'. Perhaps Congress at some time will come to a different view of the realities of political life and Government service; but that is its current view of the matter, and we are not now in any position to dispute it. Nor, in our view, does the Constitution forbid it.

Neither the right to associate nor the right to participate in political activities is absolute in any event.[60] x x x

x x x x

As we see it, our task is not to destroy the Act if we can, but to construe it, if consistent with the will of Congress, so as to comport with constitutional limitations. (italics supplied)

Broadrick likewise definitively stated that the assailed statutory provision is constitutionally permissible, viz.:

Appellants do not question Oklahoma's right to place even-handed restrictions on the partisan political conduct of state employees. Appellants freely concede that such restrictions serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion.' Rather, appellants maintain that however permissible, even commendable, the goals of s 818 may be, its language is unconstitutionally vague and its prohibitions too broad in their sweep, failing to distinguish between conduct that may be proscribed and conduct that must be permitted. For these and other reasons, appellants assert that the sixth and seventh paragraphs of s 818 are void in toto and cannot be enforced against them or anyone else.

We have held today that the Hatch Act is not impermissibly vague.[61] We have little doubt that s 818 is similarly not so vague that 'men of common intelligence must necessarily guess at its meaning.'[62] Whatever

other problems there are with s 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out 'explicit standards' for those who must apply it. In the plainest language, it prohibits any state classified employee from being 'an officer or member' of a 'partisan political club' or a candidate for 'any paid public office.' It forbids solicitation of contributions 'for any political organization, candidacy or other political purpose' and taking part 'in the management or affairs of any political party or in any political campaign.' Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in s 818 as 'partisan,' or 'take part in,' or 'affairs of' political parties. But what was said in *Letter Carriers*, is applicable here: 'there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.' x x x

x x x x

[Appellants] nevertheless maintain that the statute is overbroad and purports to reach protected, as well as unprotected conduct, and must therefore be struck down on its face and held to be incapable of any constitutional application. We do not believe that the overbreadth doctrine may appropriately be invoked in this manner here.

x x x x

The consequence of our departure from traditional rules of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort. x x x

x x x But the plain import of our cases is, at the very least, that facial over-breadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct and that conduct-even if expressive-falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect-at best a prediction-cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. It is our view that s 818 is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Unlike ordinary breach-of-the peace statutes or other broad regulatory acts, s 818 is directed, by its terms, at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments. But at the same time, s 818 is not a censorial statute, directed at particular groups or viewpoints. The statute, rather, seeks to regulate political activity in an even-handed and neutral manner. As indicted, such statutes have in the past been subject to a less exacting overbreadth scrutiny. Moreover, the fact remains that s 818 regulates a substantial spectrum of conduct that is as manifestly subject to state regulation as the public peace or criminal trespass. This much was established in *United Public Workers v. Mitchell*, and has been unhesitatingly reaffirmed today in *Letter Carriers*. Under the decision in *Letter Carriers*, there is no question that s 818 is valid at least insofar as it forbids classified employees from: soliciting contributions for partisan candidates, political parties, or other partisan political purposes; becoming members of national, state,

or local committees of political parties, or officers or committee members in partisan political clubs, or candidates for any paid public office; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate.

x x x It may be that such restrictions are impermissible and that s 818 may be susceptible of some other improper applications. But, as presently construed, we do not believe that s 818 must be discarded in toto because some persons' arguably protected conduct may or may not be caught or chilled by the statute. Section 818 is not substantially overbroad and it not, therefore, unconstitutional on its face. (italics supplied)

It bears stressing that, in his Dissenting Opinion, Mr. Justice Nachura does not deny the principles enunciated in Letter Carriers and Broadrick. He would hold, nonetheless, that these cases cannot be interpreted to mean a reversal of Mancuso, since they "pertain to different types of laws and were decided based on a different set of facts," viz.:

In Letter Carriers, the plaintiffs alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns." The plaintiffs desired to campaign for candidates for public office, to encourage and get federal employees to run for state and local offices, to participate as delegates in party conventions, and to hold office in a political club.

In Broadrick, the appellants sought the invalidation for being vague and overbroad a provision in the (sic) Oklahoma's Merit System of Personnel Administration Act restricting the political activities of the State's classified civil servants, in much the same manner as the Hatch Act proscribed partisan political activities of federal employees. Prior to the commencement of the action, the appellants actively participated in the 1970 reelection campaign of their superior, and were administratively charged for asking other Corporation Commission employees to do campaign work or to give referrals to persons who might help in the campaign, for soliciting money for the campaign, and for receiving and distributing campaign posters in bulk.

Mancuso, on the other hand, involves, as aforesaid, an automatic resignation provision. Kenneth Mancuso, a full time police officer and classified civil service employee of the City of Cranston, filed as a candidate for nomination as representative to the Rhode Island General Assembly. The Mayor of Cranston then began the process of enforcing the resign-to-run provision of the City Home Rule Charter.

Clearly, as the above-cited US cases pertain to different types of laws and were decided based on a different set of facts, Letter Carriers and Broadrick cannot be interpreted to mean a reversal of Mancuso. x x x (italics in the original)

We hold, however, that his position is belied by a plain reading of these cases. Contrary to his claim, Letter Carriers, Broadrick and Mancuso all concerned the constitutionality of resign-to-run laws, viz.:

(1) Mancuso involved a civil service employee who filed as a candidate for nomination as representative to the Rhode Island General Assembly. He assailed the constitutionality of §14.09(c) of the City Home Rule Charter, which prohibits "continuing in the classified service of the city after becoming a candidate for nomination or election to any public office."

(2) Letter Carriers involved plaintiffs who alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns"[63] with respect to certain defined activities in which they desired to engage. The plaintiffs

relevant to this discussion are:

- (a) The National Association of Letter Carriers, which alleged that its members were desirous of, among others, running in local elections for offices such as school board member, city council member or mayor;
- (b) Plaintiff Gee, who alleged that he desired to, but did not, file as a candidate for the office of Borough Councilman in his local community for fear that his participation in a partisan election would endanger his job; and
- (c) Plaintiff Myers, who alleged that he desired to run as a Republican candidate in the 1971 partisan election for the mayor of West Lafayette, Indiana, and that he would do so except for fear of losing his job by reason of violation of the Hatch Act.

The Hatch Act defines "active participation in political management or political campaigns" by cross-referring to the rules made by the Civil Service Commission. The rule pertinent to our inquiry states:

30. Candidacy for local office: Candidacy for a nomination or for election to any National, State, county, or municipal office is not permissible. The prohibition against political activity extends not merely to formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. The fact that candidacy, is merely passive is immaterial; if an employee acquiesces in the efforts of friends in furtherance of such candidacy such acquiescence constitutes an infraction of the prohibitions against political activity. (italics supplied)

Section 9(b) requires the immediate removal of violators and forbids the use of appropriated funds thereafter to pay compensation to these persons.[64]

(3) Broadrick was a class action brought by certain Oklahoma state employees seeking a declaration of unconstitutionality of two sub-paragraphs of Section 818 of Oklahoma's Merit System of Personnel Administration Act. Section 818 (7), the paragraph relevant to this discussion, states that "[n]o employee in the classified service shall be ... a candidate for nomination or election to any paid public office..." Violation of Section 818 results in dismissal from employment, possible criminal sanctions and limited state employment ineligibility.

Consequently, it cannot be denied that Letter Carriers and Broadrick effectively overruled Mancuso. By no stretch of the imagination could Mancuso still be held operative, as Letter Carriers and Broadrick (i) concerned virtually identical resign-to-run laws, and (ii) were decided by a superior court, the United States Supreme Court. It was thus not surprising for the First Circuit Court of Appeals - the same court that decided Mancuso - to hold categorically and emphatically in *Magill v. Lynch*[65] that Mancuso is no longer good law. As we priorly explained:

Magill involved Pawtucket, Rhode Island firemen who ran for city office in 1975. Pawtucket's "Little Hatch Act" prohibits city employees from engaging in a broad range of political activities. Becoming a candidate for any city office is specifically proscribed,[66] the violation being punished by removal from office or immediate dismissal. The firemen brought an action against the city officials on the ground that that the provision of the city charter was unconstitutional. However, the court, fully cognizant of Letter Carriers and Broadrick, took the position that Mancuso had since lost considerable vitality. It observed that the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end,

deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.[67]

It must be noted that the Court of Appeals ruled in this manner even though the election in Magill was characterized as nonpartisan, as it was reasonable for the city to fear, under the circumstances of that case, that politically active bureaucrats might use their official power to help political friends and hurt political foes. Ruled the court:

The question before us is whether Pawtucket's charter provision, which bars a city employee's candidacy in even a nonpartisan city election, is constitutional. The issue compels us to extrapolate two recent Supreme Court decisions, *Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers* and *Broadrick v. Oklahoma*. Both dealt with laws barring civil servants from partisan political activity. Letter Carriers reaffirmed *United Public Workers v. Mitchell*, upholding the constitutionality of the Hatch Act as to federal employees. Broadrick sustained Oklahoma's "Little Hatch Act" against constitutional attack, limiting its holding to Oklahoma's construction that the Act barred only activity in partisan politics. In *Mancuso v. Taft*, we assumed that proscriptions of candidacy in nonpartisan elections would not be constitutional. Letter Carriers and Broadrick compel new analysis.

x x x x

What we are obligated to do in this case, as the district court recognized, is to apply the Court's interest balancing approach to the kind of nonpartisan election revealed in this record. We believe that the district court found more residual vigor in our opinion in *Mancuso v. Taft* than remains after Letter Carriers. We have particular reference to our view that political candidacy was a fundamental interest which could be treasured upon only if less restrictive alternatives were not available. While this approach may still be viable for citizens who are not government employees, the Court in Letter Carriers recognized that the government's interest in regulating both the conduct and speech of its employees differs significantly from its interest in regulating those of the citizenry in general. Not only was *United Public Workers v. Mitchell* "unhesitatingly" reaffirmed, but the Court gave little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of the Congress. We cannot be more precise than the Third Circuit in characterizing the Court's approach as "some sort of 'balancing' process".[68] It appears that the government may place limits on campaigning by public employees if the limits substantially serve government interests that are "important" enough to outweigh the employees' First Amendment rights. x x x (italics supplied)

Upholding thus the constitutionality of the law in question, the Magill court detailed the major governmental interests discussed in Letter Carriers and applied them to the Pawtucket provision as follows:

In Letter Carriers[,] the first interest identified by the Court was that of an efficient government, faithful to the Congress rather than to party. The district court discounted this interest, reasoning that candidates in a local election would not likely be committed to a state or national platform. This observation undoubtedly has substance insofar as allegiance to broad policy positions is concerned. But a different kind of possible political intrusion into efficient administration could be thought to threaten municipal government: not into broad policy decisions, but into the particulars of administration favoritism in minute decisions affecting welfare, tax assessments, municipal contracts and purchasing, hiring, zoning, licensing, and inspections. Just as the Court in Letter Carriers identified a second governmental interest in the avoidance of the appearance of "political justice" as to policy, so there is an equivalent interest in avoiding the appearance of political preferment in privileges, concessions, and benefits. The appearance (or reality) of favoritism that the charter's authors evidently feared is not exorcised by the nonpartisan character of the formal election process. Where, as here, party support is a key to successful campaigning, and party rivalry is the norm, the city might reasonably fear that politically active bureaucrats would use their official power to help political friends and hurt political foes.

This is not to say that the city's interest in visibly fair and effective administration necessarily justifies a blanket prohibition of all employee campaigning; if parties are not heavily involved in a campaign, the danger of favoritism is less, for neither friend nor foe is as easily identified.

A second major governmental interest identified in *Letter Carriers* was avoiding the danger of a powerful political machine. The Court had in mind the large and growing federal bureaucracy and its partisan potential. The district court felt this was only a minor threat since parties had no control over nominations. But in fact candidates sought party endorsements, and party endorsements proved to be highly effective both in determining who would emerge from the primary election and who would be elected in the final election. Under the prevailing customs, known party affiliation and support were highly significant factors in Pawtucket elections. The charter's authors might reasonably have feared that a politically active public work force would give the incumbent party, and the incumbent workers, an unbreakable grasp on the reins of power. In municipal elections especially, the small size of the electorate and the limited powers of local government may inhibit the growth of interest groups powerful enough to outbalance the weight of a partisan work force. Even when nonpartisan issues and candidacies are at stake, isolated government employees may seek to influence voters or their co-workers improperly; but a more real danger is that a central party structure will mass the scattered powers of government workers behind a single party platform or slate. Occasional misuse of the public trust to pursue private political ends is tolerable, especially because the political views of individual employees may balance each other out. But party discipline eliminates this diversity and tends to make abuse systematic. Instead of a handful of employees pressured into advancing their immediate superior's political ambitions, the entire government work force may be expected to turn out for many candidates in every election. In Pawtucket, where parties are a continuing presence in political campaigns, a carefully orchestrated use of city employees in support of the incumbent party's candidates is possible. The danger is scarcely lessened by the openness of Pawtucket's nominating procedure or the lack of party labels on its ballots.

The third area of proper governmental interest in *Letter Carriers* was ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity. The district court did not address this factor, but looked only to the possibility of a civil servant using his position to influence voters, and held this to be no more of a threat than in the most nonpartisan of elections. But we think that the possibility of coercion of employees by superiors remains as strong a factor in municipal elections as it was in *Letter Carriers*. Once again, it is the systematic and coordinated exploitation of public servants for political ends that a legislature is most likely to see as the primary threat of employees' rights. Political oppression of public employees will be rare in an entirely nonpartisan system. Some superiors may be inclined to ride herd on the politics of their employees even in a nonpartisan context, but without party officials looking over their shoulders most supervisors will prefer to let employees go their own ways.

In short, the government may constitutionally restrict its employees' participation in nominally nonpartisan elections if political parties play a large role in the campaigns. In the absence of substantial party involvement, on the other hand, the interests identified by the *Letter Carriers* Court lose much of their force. While the employees' First Amendment rights would normally outbalance these diminished interests, we do not suggest that they would always do so. Even when parties are absent, many employee campaigns might be thought to endanger at least one strong public interest, an interest that looms larger in the context of municipal elections than it does in the national elections considered in *Letter Carriers*. The city could reasonably fear the prospect of a subordinate running directly against his superior or running for a position that confers great power over his superior. An employee of a federal agency who seeks a Congressional seat poses less of a direct challenge to the command and discipline of his agency than a fireman or policeman who runs for mayor or city council. The possibilities of internal discussion, cliques, and political bargaining, should an employee gather substantial political support, are considerable. (citations omitted)

The court, however, remanded the case to the district court for further proceedings in respect of the petitioners' overbreadth charge. Noting that invalidating a statute for being overbroad is "not to be taken lightly, much less to

be taken in the dark," the court held:

The governing case is *Broadrick*, which introduced the doctrine of "substantial" overbreadth in a closely analogous case. Under *Broadrick*, when one who challenges a law has engaged in constitutionally unprotected conduct (rather than unprotected speech) and when the challenged law is aimed at unprotected conduct, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Two major uncertainties attend the doctrine: how to distinguish speech from conduct, and how to define "substantial" overbreadth. We are spared the first inquiry by *Broadrick* itself. The plaintiffs in that case had solicited support for a candidate, and they were subject to discipline under a law proscribing a wide range of activities, including soliciting contributions for political candidates and becoming a candidate. The Court found that this combination required a substantial overbreadth approach. The facts of this case are so similar that we may reach the same result without worrying unduly about the sometimes opaque distinction between speech and conduct.

The second difficulty is not so easily disposed of. *Broadrick* found no substantial overbreadth in a statute restricting partisan campaigning. *Pawtucket* has gone further, banning participation in nonpartisan campaigns as well. Measuring the substantiality of a statute's overbreadth apparently requires, *inter alia*, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. Some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree; it will never be possible to say that a ratio of one invalid to nine valid applications makes a law substantially overbroad. Still, an overbreadth challenger has a duty to provide the court with some idea of the number of potentially invalid applications the statute permits. Often, simply reading the statute in the light of common experience or litigated cases will suggest a number of probable invalid applications. But this case is different. Whether the statute is overbroad depends in large part on the number of elections that are insulated from party rivalry yet closed to *Pawtucket* employees. For all the record shows, every one of the city, state, or federal elections in *Pawtucket* is actively contested by political parties. Certainly the record suggests that parties play a major role even in campaigns that often are entirely nonpartisan in other cities. School committee candidates, for example, are endorsed by the local Democratic committee.

The state of the record does not permit us to find overbreadth; indeed such a step is not to be taken lightly, much less to be taken in the dark. On the other hand, the entire focus below, in the short period before the election was held, was on the constitutionality of the statute as applied. Plaintiffs may very well feel that further efforts are not justified, but they should be afforded the opportunity to demonstrate that the charter forecloses access to a significant number of offices, the candidacy for which by municipal employees would not pose the possible threats to government efficiency and integrity which *Letter Carriers*, as we have interpreted it, deems significant. Accordingly, we remand for consideration of plaintiffs' overbreadth claim. (*italics supplied, citations omitted*)

Clearly, *Letter Carriers*, *Broadrick*, and *Magill* demonstrate beyond doubt that *Mancuso v. Taft*, heavily relied upon by the ponencia, has effectively been overruled.[69] As it is no longer good law, the ponencia's exhortation that "[since] the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,] it is high-time that we, too, should follow suit" is misplaced and unwarranted.[70]

Accordingly, our assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms - those of expression and association - lies on barren ground. American case law has in fact never recognized a fundamental right to express one's political views through candidacy,[71] as to invoke a rigorous standard of review.[72] *Bart v. Telford*[73] pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, by itself, is not entitled to constitutional protection.[74] Moreover, one

cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.[75]

Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (i.e., (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the non-fundamental right of appointive officials and employees to seek elective office.

En passant, we find it quite ironic that Mr. Justice Nachura cites *Clements v. Fashing*[76] and *Morial, et al. v. Judiciary Commission of the State of Louisiana, et al.*[77] to buttress his dissent. Maintaining that resign-to-run provisions are valid only when made applicable to specified officials, he explains:

...U.S. courts, in subsequent cases, sustained the constitutionality of resign-to-run provisions when applied to specified or particular officials, as distinguished from all others,[78] under a classification that is germane to the purposes of the law. These resign-to-run legislations were not expressed in a general and sweeping provision, and thus did not violate the test of being germane to the purpose of the law, the second requisite for a valid classification. Directed, as they were, to particular officials, they were not overly encompassing as to be overbroad. (emphasis in the original)

This reading is a regrettable misrepresentation of *Clements* and *Morial*. The resign-to-run provisions in these cases were upheld not because they referred to specified or particular officials (vis-à-vis a general class); the questioned provisions were found valid precisely because the Court deferred to legislative judgment and found that a regulation is not devoid of a rational predicate simply because it happens to be incomplete. In fact, the equal protection challenge in *Clements* revolved around the claim that the State of Texas failed to explain why some public officials are subject to the resign-to-run provisions, while others are not. Ruled the United States Supreme Court:

Article XVI, § 65, of the Texas Constitution provides that the holders of certain offices automatically resign their positions if they become candidates for any other elected office, unless the unexpired portion of the current term is one year or less. The burdens that § 65 imposes on candidacy are even less substantial than those imposed by § 19. The two provisions, of course, serve essentially the same state interests. The District Court found § 65 deficient, however, not because of the nature or extent of the provision's restriction on candidacy, but because of the manner in which the offices are classified. According to the District Court, the classification system cannot survive equal protection scrutiny, because Texas has failed to explain sufficiently why some elected public officials are subject to § 65 and why others are not. As with the case of § 19, we conclude that § 65 survives a challenge under the Equal Protection Clause unless appellees can show that there is no rational predicate to the classification scheme.

The history behind § 65 shows that it may be upheld consistent with the "one step at a time" approach that this Court has undertaken with regard to state regulation not subject to more vigorous scrutiny than that sanctioned by the traditional principles. Section 65 was enacted in 1954 as a transitional provision applying only to the 1954 election. Section 65 extended the terms of those offices enumerated in the provision from two to four years. The provision also staggered the terms of other offices so that at least some county and local offices would be contested at each election. The automatic resignation proviso to § 65 was not added until 1958. In that year, a similar automatic resignation provision was added in Art. XI, § 11, which applies to officeholders in home rule cities who serve terms longer than two years. Section 11 allows home rule cities the option of extending the terms of municipal offices from two to up to four years.

Thus, the automatic resignation provision in Texas is a creature of the State's electoral reforms of 1958. That the State did not go further in applying the automatic resignation provision to those officeholders whose terms were not extended by § 11 or § 65, absent an invidious purpose, is not the sort of malfunctioning of the State's lawmaking process forbidden by the Equal Protection Clause. A regulation is not devoid of a rational predicate simply because it happens to be incomplete. The Equal Protection Clause does not forbid Texas to restrict one elected officeholder's candidacy for another elected office unless and until it places similar restrictions on other officeholders. The provision's language and its history belie any notion that § 65 serves the invidious purpose of denying access to the political process to identifiable classes of potential candidates. (citations omitted and italics supplied)

Furthermore, it is unfortunate that the dissenters took the Morial line that "there is no blanket approval of restrictions on the right of public employees to become candidates for public office" out of context. A correct reading of that line readily shows that the Court only meant to confine its ruling to the facts of that case, as each equal protection challenge would necessarily have to involve weighing governmental interests vis-à-vis the specific prohibition assailed. The Court held:

The interests of public employees in free expression and political association are unquestionably entitled to the protection of the first and fourteenth amendments. Nothing in today's decision should be taken to imply that public employees may be prohibited from expressing their private views on controversial topics in a manner that does not interfere with the proper performance of their public duties. In today's decision, there is no blanket approval of restrictions on the right of public employees to become candidates for public office. Nor do we approve any general restrictions on the political and civil rights of judges in particular. Our holding is necessarily narrowed by the methodology employed to reach it. A requirement that a state judge resign his office prior to becoming a candidate for non-judicial office bears a reasonably necessary relation to the achievement of the state's interest in preventing the actuality or appearance of judicial impropriety. Such a requirement offends neither the first amendment's guarantees of free expression and association nor the fourteenth amendment's guarantee of equal protection of the laws. (italics supplied)

Indeed, the Morial court even quoted Broadrick and stated that:

In any event, the legislature must have some leeway in determining which of its employment positions require restrictions on partisan political activities and which may be left unregulated. And a State can hardly be faulted for attempting to limit the positions upon which such restrictions are placed. (citations omitted)

V.

Section 4(a) of Resolution 8678, Section 13 of RA 9369,
and Section 66 of the Omnibus Election Code
Do Not Suffer from Overbreadth

Apart from nullifying Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code on equal protection ground, our assailed Decision struck them down for being overbroad in two respects, viz.:

- (1) The assailed provisions limit the candidacy of all civil servants holding appointive posts without due regard for the type of position being held by the employee seeking an elective post and the degree of influence that may be attendant thereto;^[79] and
- (2) The assailed provisions limit the candidacy of any and all civil servants holding appointive positions without due regard for the type of office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or barangay level.

Again, on second look, we have to revise our assailed Decision.

i. Limitation on Candidacy Regardless of Incumbent Appointive Official's Position, Valid

According to the assailed Decision, the challenged provisions of law are overly broad because they apply indiscriminately to all civil servants holding appointive posts, without due regard for the type of position being held by the employee running for elective office and the degree of influence that may be attendant thereto.

Its underlying assumption appears to be that the evils sought to be prevented are extant only when the incumbent appointive official running for elective office holds an influential post.

Such a myopic view obviously fails to consider a different, yet equally plausible, threat to the government posed by the partisan potential of a large and growing bureaucracy: the danger of systematic abuse perpetuated by a "powerful political machine" that has amassed "the scattered powers of government workers" so as to give itself and its incumbent workers an "unbreakable grasp on the reins of power."^[80] As elucidated in our prior exposition:^[81]

Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable - even innocuous - particularly when viewed in isolation from other similar attempts by other government employees. Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of an emerging central party structure to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy.

...[T]he avoidance of such a "politically active public work force" which could give an emerging political machine an "unbreakable grasp on the reins of power" is reason enough to impose a restriction on the candidacies of all appointive public officials without further distinction as to the type of positions being held by such employees or the degree of influence that may be attendant thereto. (citations omitted)

ii. Limitation on Candidacy Regardless of Type of Office Sought, Valid

The assailed Decision also held that the challenged provisions of law are overly broad because they are made to apply indiscriminately to all civil servants holding appointive offices, without due regard for the type of elective office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or barangay level.

This erroneous ruling is premised on the assumption that "the concerns of a truly partisan office and the temptations it fosters are sufficiently different from those involved in an office removed from regular party politics [so as] to warrant distinctive treatment,"^[82] so that restrictions on candidacy akin to those imposed by the challenged provisions can validly apply only to situations in which the elective office sought is partisan in character. To the extent, therefore, that such restrictions are said to preclude even candidacies for nonpartisan elective offices, the challenged restrictions are to be considered as overbroad.

Again, a careful study of the challenged provisions and related laws on the matter will show that the alleged overbreadth is more apparent than real. Our exposition on this issue has not been repudiated, viz.:

A perusal of Resolution 8678 will immediately disclose that the rules and guidelines set forth therein refer to the filing of certificates of candidacy and nomination of official candidates of registered political parties, in connection with the May 10, 2010 National and Local Elections.^[83] Obviously, these rules and guidelines, including the restriction in Section 4(a) of Resolution 8678, were issued specifically for purposes of the May 10, 2010 National and Local Elections, which, it must be noted, are decidedly partisan in character. Thus, it is

clear that the restriction in Section 4(a) of RA 8678 applies only to the candidacies of appointive officials vying for partisan elective posts in the May 10, 2010 National and Local Elections. On this score, the overbreadth challenge leveled against Section 4(a) is clearly unsustainable.

Similarly, a considered review of Section 13 of RA 9369 and Section 66 of the Omnibus Election Code, in conjunction with other related laws on the matter, will confirm that these provisions are likewise not intended to apply to elections for nonpartisan public offices.

The only elections which are relevant to the present inquiry are the elections for barangay offices, since these are the only elections in this country which involve nonpartisan public offices.[84]

In this regard, it is well to note that from as far back as the enactment of the Omnibus Election Code in 1985, Congress has intended that these nonpartisan barangay elections be governed by special rules, including a separate rule on deemed resignations which is found in Section 39 of the Omnibus Election Code. Said provision states:

Section 39. Certificate of Candidacy. - No person shall be elected punong barangay or kagawad ng sangguniang barangay unless he files a sworn certificate of candidacy in triplicate on any day from the commencement of the election period but not later than the day before the beginning of the campaign period in a form to be prescribed by the Commission. The candidate shall state the barangay office for which he is a candidate.

x x x x

Any elective or appointive municipal, city, provincial or national official or employee, or those in the civil or military service, including those in government-owned or-controlled corporations, shall be considered automatically resigned upon the filing of certificate of candidacy for a barangay office.

Since barangay elections are governed by a separate deemed resignation rule, under the present state of law, there would be no occasion to apply the restriction on candidacy found in Section 66 of the Omnibus Election Code, and later reiterated in the proviso of Section 13 of RA 9369, to any election other than a partisan one. For this reason, the overbreadth challenge raised against Section 66 of the Omnibus Election Code and the pertinent proviso in Section 13 of RA 9369 must also fail. [85]

In any event, even if we were to assume, for the sake of argument, that Section 66 of the Omnibus Election Code and the corresponding provision in Section 13 of RA 9369 are general rules that apply also to elections for nonpartisan public offices, the overbreadth challenge would still be futile. Again, we explained:

In the first place, the view that Congress is limited to controlling only partisan behavior has not received judicial imprimatur, because the general proposition of the relevant US cases on the matter is simply that the government has an interest in regulating the conduct and speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general.[86]

Moreover, in order to have a statute declared as unconstitutional or void on its face for being overly broad, particularly where, as in this case, "conduct" and not "pure speech" is involved, the overbreadth must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.[87]

In operational terms, measuring the substantiality of a statute's overbreadth would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially invalid applications.[88] In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable.[89] The question is a matter of degree.[90] Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge

presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (i.e. the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute.[91]

The state of the record, however, does not permit us to find overbreadth. Borrowing from the words of Magill v. Lynch, indeed, such a step is not to be taken lightly, much less to be taken in the dark,[92] especially since an overbreadth finding in this case would effectively prohibit the State from enforcing an otherwise valid measure against conduct that is admittedly within its power to proscribe.[93]

This Court would do well to proceed with tiptoe caution, particularly when it comes to the application of the overbreadth doctrine in the analysis of statutes that purportedly attempt to restrict or burden the exercise of the right to freedom of speech, for such approach is manifestly strong medicine that must be used sparingly, and only as a last resort.[94]

In the United States, claims of facial overbreadth have been entertained only where, in the judgment of the court, the possibility that protected speech of others may be muted and perceived grievances left to fester (due to the possible inhibitory effects of overly broad statutes) outweighs the possible harm to society in allowing some unprotected speech or conduct to go unpunished.[95] Facial overbreadth has likewise not been invoked where a limiting construction could be placed on the challenged statute, and where there are readily apparent constructions that would cure, or at least substantially reduce, the alleged overbreadth of the statute.[96]

In the case at bar, the probable harm to society in permitting incumbent appointive officials to remain in office, even as they actively pursue elective posts, far outweighs the less likely evil of having arguably protected candidacies blocked by the possible inhibitory effect of a potentially overly broad statute.

In this light, the conceivably impermissible applications of the challenged statutes - which are, at best, bold predictions - cannot justify invalidating these statutes in toto and prohibiting the State from enforcing them against conduct that is, and has for more than 100 years been, unquestionably within its power and interest to proscribe.[97] Instead, the more prudent approach would be to deal with these conceivably impermissible applications through case-by-case adjudication rather than through a total invalidation of the statute itself.[98]

Indeed, the anomalies spawned by our assailed Decision have taken place. In his Motion for Reconsideration, intervenor Drilon stated that a number of high-ranking Cabinet members had already filed their Certificates of Candidacy without relinquishing their posts.[99] Several COMELEC election officers had likewise filed their Certificates of Candidacy in their respective provinces.[100] Even the Secretary of Justice had filed her certificate of substitution for representative of the first district of Quezon province last December 14, 2009[101] - even as her position as Justice Secretary includes supervision over the City and Provincial Prosecutors,[102] who, in turn, act as Vice-Chairmen of the respective Boards of Canvassers.[103] The Judiciary has not been spared, for a Regional Trial Court Judge in the South has thrown his hat into the political arena. We cannot allow the tilting of our electoral playing field in their favor.

For the foregoing reasons, we now rule that Section 4(a) of Resolution 8678 and Section 13 of RA 9369, which merely reiterate Section 66 of the Omnibus Election Code, are not unconstitutionally overbroad.

IN VIEW WHEREOF, the Court RESOLVES to GRANT the respondent's and the intervenors' Motions for Reconsideration; REVERSE and SET ASIDE this Court's December 1, 2009 Decision; DISMISS the Petition; and ISSUE this Resolution declaring as not UNCONSTITUTIONAL (1) Section 4(a) of COMELEC Resolution No. 8678, (2) the second proviso in the third paragraph of Section 13 of Republic Act No. 9369, and (3) Section 66 of the Omnibus Election Code.

SO ORDERED.

Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Carpio, J., see concurring opinion.

Corona, Velasco, Jr., Leonardo-De Castro, and Bersamin, JJ., joins the dissent of Justice Nachura.

Carpio Morales, J., concur in accordance with my dissents to the original ponencia.

Nachura, J., please see dissent.

Brion, J., I concur. Peralta, J., certify that J. Peralta voted in favor of this Resolution.

[1] Penned by Justice Antonio Eduardo B. Nachura, the Decision was promulgated on a vote of 8-6. Justices Corona, Chico-Nazario, Velasco, Leonardo-De Castro, Brion, Bersamin, and Del Castillo concurred. Justices Peralta, Abad and Villarama joined the Dissenting Opinion of Chief Justice Puno, while Justices Carpio and Carpio Morales wrote separate Dissenting Opinions.

[2] SEC. 15. Official Ballot. -

x x x x

For this purpose, the Commission shall set the deadline for the filing of the certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall take effect only upon that start of the campaign period: Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or-controlled corporations, shall be considered ipso facto resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy. (*italics supplied*)

[3] SECTION 66. Candidates holding appointive office or positions. -- Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

[4] SECTION 4. Effects of Filing Certificates of Candidacy.- a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

[5] Sec. 2. Rules applicable. The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:

- a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;
- b) The portions of ssaid Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and
- c) Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.

The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules

prescribed therefor, and those against attorneys by Rule 139-B, as amended.

[6] Section 1. Period for filing. A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

[7] Secretary of Agrarian Reform et al. v. Tropical Homes, G.R. Nos. 136827 & 136799, July 31, 2001, 362 SCRA 115.

[8] Tahanan Development Corporation v. Court of Appeals, G.R. No. 155771, 15 November 1982, 118 SCRA 273.

[9] Director of Lands v. Court of Appeals, G.R. No.L-45168, September 25, 1979, 93 SCRA 238.

[10] Mago v.Court of Appeals, G.R. No. 115624, February 25, 1999, 300 SCRA 600.

[11] G.R. No. 115044, January 27, 1995, 240 SCRA 649.

[12] Heirs of Geronimo Restrivera v. De Guzman, G.R.No.146540, July 14, 2004, 434 SCRA 456; Office of the Ombudsman v. Rolando S. Miedes, G.R. No. 176409, February 27, 2008, 547 SCRA 148.

[13] See Mago v. Court of Appeals, *supra* note 10.

[14] Manila Railroad Company v. Attorney-General, 20 Phil.523, 529 (1912). See also Director of Lands v. Court of Appeals, *supra* note 9 at 246, and Mago v.Court of Appeals, *supra* note 10 at 234.

[15] Manila Railroad Company v. Attorney-General, *id.* at 530.

[16] Motion for Leave to Intervene dated December 14, 2009, p. 2.

[17] SECTION 14. Repealing Clause. -- Sections 67 and 85 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. As a consequence, the first proviso in the third paragraph of Section 11 of Republic Act No. 8436 is rendered ineffective. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly. (*italics supplied*)

[18] SECTION 67. Candidates holding elective office. -- Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

[19] SECTION 11. Official Ballot. --

x x x x

For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections: Provided, That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: Provided, further, That, x x x. (*italics supplied*)

[20] Record of the Constitutional Commission, Vol. I, p. 536.

[21] Section 2(1), Article IX-B, 1987 Constitution.

- [22] Dissenting Opinion of Justice Antonio T. Carpio, p. 5.
- [23] Dissenting Opinion of Justice Conchita Carpio Morales, p. 6.
- [24] Record of the Constitutional Commission, Vol. I, p. 573.
- [25] G.R. No. 147387, December 10, 2003, 417 SCRA 503.
- [26] *Id.* at 525-528.
- [27] *Tan Chong v. Secretary of Labor*, 79 Phil. 249.
- [28] Benjamin N. Cardozo, *The Nature of the Judicial Process* (New Haven and London: Yale University Press), 33-34 (1921).
- [29] *Villanueva, Jr. v. Court of Appeals, et al.*, G.R. No. 142947, March 19, 2002, 379 SCRA 463, 469 citing 21 *Corpus Juris Secundum* §190.
- [30] *Id.* at 469-470.
- [31] *Id.* at 470.
- [32] *Supra* note 29.
- [33] *Id.* at 470.
- [34] *The Philippine Judges Association, et al. v. Prado, et al.*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 712.
- [35] *Id.*
- [36] *The National Police Commission v. De Guzman, et al.*, G.R. No. 106724, February 9, 1994, 229 SCRA 801, 809.
- [37] *People v. Cayat*, 68 Phil. 12, 18 (1939).
- [38] *Decision*, p. 23.
- [39] *Greenberg v. Kimmelman*, 99 N.J. 552, 577, 494 A.2d 294 (1985).
- [40] *New Jersey State League of Municipalities, et al. v. State of New Jersey*, 257 N.J. Super. 509, 608 A.2d 965 (1992).
- [41] *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.*, 80 N.J. 6, 40, 364 A.2d 1016 (1976).
- [42] *Robbiani v. Burke*, 77 N.J. 383, 392-93, 390 A.2d 1149 (1978).
- [43] *De Guzman, et al. v. Commission on Elections*, G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197; *City of St. Louis v. Liberman*, 547 S.W.2d 452 (1977); *First Bank & Trust Co. v. Board of Governors of Federal Reserve System*, 605 F.Supp. 555 (1984); *Richardson v. Secretary of Labor*, 689 F.2d 632 (1982); *Holbrook v. Lexmark International Group, Inc.*, 65 S.W.3d 908 (2002).
- [44] *State v. Ewing*, 518 S.W.2d 643 (1975); *Werner v. Southern California Associated Newspapers*, 35 Cal.2d 121, 216 P.2d 825 (1950).
- [45] *Chamber of Commerce of the U.S.A. v. New Jersey*, 89 N.J. 131, 159, 445 A.2d 353 (1982).
- [46] *Werner v. Southern California Associated Newspapers*, *supra* note 44.

[47] Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 227, 486 A.2d 305 (1985); New Jersey State League of Municipalities, et al. v. State of New Jersey, supra note 40.

[48] New Jersey State League of Municipalities, et al. v. State of New Jersey, supra note 40.

[49] Taule v. Santos, et al., G.R. No. 90336, August 12, 1991, 200 SCRA 512, 519.

[50] Id.

[51] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 60-61.

[52] 476 F.2d 187 (1973).

[53] 413 U.S. 548, 93 S.Ct. 2880 (1973).

[54] 413 U.S. 601, 93 S.Ct. 2908 (1973).

[55] Section 9(a) of the Hatch Act provides:

An employee in an Executive agency or an individual employed by the government of the District of Columbia may not-

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns. 'For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[56] Section 818 of Oklahoma's Merit System of Personnel Administration Act provides:

(1) No person in the classified service shall be appointed to, or demoted or dismissed from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations, or because of race, creed, color or national origin or by reason of any physical handicap so long as the physical handicap does not prevent or render the employee less able to do the work for which he is employed.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for consideration; provided, however, that letters of inquiry, recommendation and reference by public employees of public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, irrelevant, derogatory or false information.

(3) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification or appointment made under any provision of this Act or in any manner commit any fraud preventing the impartial execution of this Act and rules made hereunder.

(4) No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this law, or furnish to any person any special or secret information for the purpose of effecting (sic) the rights or prospects of any person with respect to employment in the classified service.

(5) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

(6) No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service.

(7) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(8) Upon a showing of substantial evidence by the Personnel Director that any officer or employee in the state classified service, has knowingly violate any of the provisions of this Section, the State Personnel Board shall notify the officer or employee so charged and the appointing authority under whose jurisdiction the officer or employee serves. If the officer or employee so desires, the State Personnel Board shall hold a public hearing, or shall authorize the Personnel Director to hold a public hearing, and submit a transcript thereof, together with a recommendation, to the State Personnel Board. Relevant witnesses shall be allowed to be present and testify at such hearings. If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision of this Section, the Board shall direct the appointing authority to dismiss such officer or employee; and the appointing authority so directed shall comply.

[57] See also *Anderson v. Evans*, 660 F.2d 153 (1981).

[58] *Morial, et al. v. Judiciary Commission of the State of Louisiana, et al.*, 565 F.2d 295 (1977).

[59] 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).

[60] See, e.g., *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274 (1972); *Bullock v. Carter*, 405 U.S. 134, 140-141, 92 S.Ct. 849, 854-855, 31 L.Ed.2d 92 (1972); *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971); *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10-11, 21 L.Ed.2d 24 (1968).

[61] *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796.

[62] *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). See *Grayned v. City of Rockford*, 408 U.S. 104, 108-114, 92 S.Ct. 2294, 2298-2302, 33 L.Ed.2d 222 (1972); *Colten v. Kentucky*, 407 U.S. 104, 110-111, 92 S.Ct. 1953, 1957-1958, 32 L.Ed.2d 584 (1972); *Cameron v. Johnson*, 390 U.S. 611, 616, 88 S.Ct. 1335, 1338, 20 L.Ed.2d 182 (1968).

[63] Section 9(a), Hatch Act.

[64] In 1950, Section 9(b) of the Hatch Act was amended by providing the exception that the Civil Service Commission, by unanimous vote, could impose a lesser penalty, but in no case less than 90 days' suspension without pay. In 1962, the period was reduced to 30 days' suspension without pay. The general rule, however, remains to be removal from office.

[65] 560 F.2d 22 (1977).

[66] The relevant charter provisions read as follows:

x x x x

(5) No appointed official, employee or member of any board or commission of the city, shall be a member of any national, state or local committee of a political party or organization, or an officer of a partisan political organization, or take part in a political campaign, except his right privately to express his opinion and to cast his vote.

(6) No appointed official or employee of the city and no member of any board or commission shall be a candidate for nomination or election to any public office, whether city, state or federal, except elected members of boards or commissions running for re-election, unless he shall have first resigned his then employment or office.

x x x x

[67] See also Davis, R., Prohibiting Public Employee from Running for Elective Office as Violation of Employee's Federal Constitutional Rights, 44 A.L.R. Fed. 306.

[68] Alderman v. Philadelphia Housing Authority, 496 F.2d 164, 171 n. 45 (1974).

[69] Fernandez v. State Personnel Board, et al., 175 Ariz. 39, 852 P.2d 1223 (1993).

[70] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 51-56.

[71] Carver v. Dennis, 104 F.3d 847, 65 USLW 2476 (1997); American Constitutional Law Foundation, Inc. v. Meyer, 120 F.3d 1092, 1101 (1997); NAACP, Los Angeles Branch v. Jones, 131 F.3d 1317, 1324 (1997); Brazil-Breashears v. Bilandic, 53 F.3d 789, 792 (1995). See also Bullock v. Carter, supra note 60, quoted in Clements v. Fashing, 457 U.S. 957, 963, 102 S.Ct. 2836, 2843, 73 L.Ed.2d 508 (1982).

[72] Newcomb v. Brennan, 558 F.2d 825 (1977).

[73] 677 F.2d 622, 624 (1982).

[74] Newcomb v. Brennan, supra note 72.

[75] Id.

[76] Supra note 71.

[77] Supra note 58.

[78] The provision in question in Clements covers District Clerks, County Clerks, County Judges, County Treasurers, Criminal District Attorneys, County Surveyors, Inspectors of Hides and Animals, County Commissioners, Justices of the Peace, Sheriffs, Assessors and Collectors of Taxes, District Attorneys, County Attorneys, Public Weighers, and Constables. On the other hand, the provision in Morial covers judges running for non-judicial elective office.

[79] Decision, pp. 25-26.

[80] Magill v. Lynch, supra note 65.

[81] Dissenting Opinion of Chief Justice Reynato S. Puno, p. 63.

[82] Decision, p. 27, citing Mancuso v. Taft, supra note 52.

[83] See rollo, p.3, where the titular heading, as well as the first paragraph of Resolution 8678, refers to the

contents of said Resolution as the "Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections."

[84] The Sangguniang Kabataan elections, although nonpartisan in character, are not relevant to the present inquiry, because they are unlikely to involve the candidacies of appointive public officials.

[85] Dissenting Opinion of Chief Justice Reynato S. Puno, pp. 64-65.

[86] *Smith v. Ehrlich*, 430 F. Supp. 818 (1976).

[87] *Broadrick v. Oklahoma*, supra note 54.

[88] *Magill v. Lynch*, supra note 65.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Broadrick v. Oklahoma*, supra note 54.

[94] *Id.*

[95] *Id.*

[96] *Mining v. Wheeler*, 378 F. Supp. 1115 (1974).

[97] *Broadrick v. Oklahoma*, supra note 54.

[98] *Aiello v. City of Wilmington, Delaware*, 623 F.2d 845 (1980).

[99] Motion for Reconsideration dated December 16, 2009, p. 2.

[100] *Id.* at p. 3, citing Comelec wants SC to reverse ruling on gov't execs, *Philippine Daily Inquirer*, 11 December 2009, available at <http://politics.inquirer.net/view.php?article=20091211-241394>.

[101] *Id.*, citing Devanadera files COC for Quezon congress seat, *The Philippine Star*, 15 December 2009, available at <http://www.philstar.com/Article.aspx?articleId=532552&publicationSubCategoryId=67>.

[102] REVISED ADMINISTRATIVE CODE, TITLE 3, BOOK IV, Chapter 8, Sec. 39

[103] Republic Act No. 6646, Sec. 20.

CONCURRING OPINION

CARPIO, J.:

I concur with the ponencia of Chief Justice Reynato S. Puno.

The filing of a Certificate of Candidacy for an elective position is, by the very nature of the act, an electioneering or partisan political activity.

Two provisions of the Constitution, taken together, mandate that civil service employees cannot engage in any

electioneering or partisan political activity except to vote. Thus, the Constitution provides:

Section 2(4), Article IX-B of the Constitution

No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity.

Section 5(3), Article XVI of the Constitution

No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote.

During the deliberations of the Constitutional Commission on these provisions of the Constitution, it was clear that the exercise of the right to vote is the only non-partisan political activity a citizen can do. All other political activities are deemed partisan. Thus, Commissioner Christian Monsod declared that, "As a matter of fact, the only non partisan political activity one can engage in as a citizen is voting."^[1]

Indisputably, any political activity except to vote is a partisan political activity. Section 79(b) of the Omnibus Election Code implements this by declaring that any act designed to elect or promote the election of a candidate is an electioneering or partisan political activity, thus:

The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office xxx."

Filing a certificate of candidacy is obviously a partisan political activity.

First, the mere filing of a Certificate of Candidacy is a definitive announcement to the world that a person will actively solicit the votes of the electorate to win an elective public office. Such an announcement is already a promotion of the candidate's election to public office. Indeed, once a person becomes an official candidate, he abandons the role of a mere passive voter in an election, and assumes the role of a political partisan, a candidate promoting his own candidacy to public office.

Second, only a candidate for a political office files a Certificate of Candidacy. A person merely exercising his or her right to vote does not. A candidate for a political office is necessarily a partisan political candidate because he or she is contesting an elective office against other political candidates. The candidate and the electorate know that there are, more often than not, other candidates vying for the same elective office, making the contest politically partisan.

Third, a candidate filing his or her Certificate of Candidacy almost always states in the Certificate of Candidacy the name of the political party to which he or she belongs. The candidate will even attach to his or her Certificate of Candidacy the certification of his or her political party that he or she is the official candidate of the political party. Such certification by a political party is obviously designed to promote the election of the candidate.

Fourth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is intended, among others, to keep the civil service non-partisan. This constitutional ban is violated when a civil servant files his or her Certificate of Candidacy as a candidate of a political party. From the moment the civil servant files his or her Certificate of Candidacy, he or she is immediately identified as a political partisan because everyone knows he or she will prepare, and work, for the victory of his or her political party in the elections.

Fifth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is also intended to prevent civil servants from using their office, and the resources of their office, to promote their candidacies or the candidacies of other persons. We have seen the spectacle of civil servants who, after filing their certificates of candidacies, still cling to their public office while campaigning during office hours.

Sixth, the constitutional ban prohibiting civil servants from engaging in partisan political activities is further intended to prevent conflict of interest. We have seen Comelec officials who, after filing their certificates of candidacies, still hold on to their public office.

Finally, filing of a Certificate of Candidacy is a partisan political act that ipso facto operates to consider the candidate deemed resigned from public office pursuant to paragraph 3, Section 11 of R.A. No. 8436, as amended by R.A. No. 9369, as well as Section 66 of the Omnibus Election Code, as amended.

Accordingly, I vote to grant respondent Comelec's Motion for Reconsideration.

[1] Records of the Constitutional Commission, Vol. I, p. 543.

DISSENTING OPINION

NACHURA, J.:

I vote to maintain this Court's December 1, 2009 Decision. The automatic resignation rule on appointive government officials and employees running for elective posts is, to my mind, unconstitutional. I therefore respectfully register my dissent to the resolution of the majority granting the motion for reconsideration.

I earnestly believe that by this resolution, the majority refused to rectify an unjust rule, leaving in favor of a discriminatory state regulation and disregarding the primacy of the people's fundamental rights to the equal protection of the laws.

Let it be recalled that, on December 1, 2009, the Court rendered its Decision granting the petition and declaring as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act (R.A.) No. 9369, Section 66 of the Omnibus Election Code (OEC) and Section 4(a) of Commission on Elections (COMELEC) Resolution No. 8678.[1]

Claiming to have legal interest in the matter in litigation, Senator Manuel A. Roxas filed, on December 14, 2009, his Omnibus Motion for Leave of Court to: (a) Intervene in the Instant Case; (b) Admit Attached Motion for Reconsideration; and (c) If Necessary, Set the Instant Case for Oral Arguments.[2]

On the same date, respondent COMELEC, through its Law Department, moved for the reconsideration of the aforesaid December 1, 2009 Decision.[3]

Expressing a similar desire, Franklin M. Drilon, a former senator and a senatorial candidate in the 2010 elections, filed, on December 17, 2009, his Motion for Leave to Intervene and to Admit the Attached Motion for Reconsideration in Intervention.[4]

On December 28, 2009, the Integrated Bar of the Philippines (IBP), Cebu City Chapter, also filed its Motion for Leave to Intervene[5] and Motion for Reconsideration in Intervention.[6]

In a related development, on January 8, 2010, the Office of the Solicitor General (OSG), which initially represented the COMELEC in the proceedings herein, this time disagreed with the latter, and, instead of moving for the reconsideration of the December 1, 2009 Decision, moved for clarification of the effect of our declaration of unconstitutionality.[7]

Subsequently, Tom V. Apacible, a congressional candidate in the 2010 elections, filed, on January 11, 2010, his Motion to Intervene and for the Reconsideration of the Decision dated December 1, 2009.[8]

In its January 12, 2010 Resolution,[9] the Court required petitioners to comment on the aforesaid motions.

On February 1, 2010, petitioners filed their consolidated comment on the motions.

Parenthetically, petitioner Quinto admitted that he did not pursue his plan to run for an elective office.[10] Petitioner Tolentino, on the other hand, disclosed that he filed his certificate of candidacy but that he had recently resigned from his post in the executive department. These developments could very well be viewed by the Court as having rendered this case moot and academic. However, I refuse to proceed to such a conclusion, considering that the issues, viewed in relation to other appointive civil servants running for elective office, remain ubiquitously present. Thus, the issues in the instant case could fall within the classification of controversies that are capable of repetition yet evading review.

It is then proper that the Court rule on the motions.

The intervention

The motions for intervention should be denied. Section 2, Rule 19 of the Rules of Court explicitly states that motions to intervene may be filed at any time "before the rendition of judgment." [11] Obviously, as this Court already rendered judgment on December 1, 2009, intervention may no longer be allowed.[12] The movants, Roxas, Drilon, IBP-Cebu City Chapter, and Apacible, cannot claim to have been unaware of the pendency of this much publicized case. They should have intervened prior to the rendition of this Court's Decision on December 1, 2009. To allow their intervention at this juncture is unwarranted and highly irregular.[13]

While the Court has the power to suspend the application of procedural rules, I find no compelling reason to excuse movants' procedural lapse and allow their much belated intervention. Further, a perusal of their pleadings-in-intervention reveals that they merely restated the points and arguments in the earlier dissenting opinions of Chief Justice Puno and Senior Associate Justices Carpio and Carpio Morales. These very same points, incidentally, also constitute the gravamen of the motion for reconsideration filed by respondent COMELEC. Thus, even as the Court should deny the motions for intervention, it is necessary to, pass upon the issues raised therein, because they were the same issues raised in respondent COMELEC's motion for reconsideration.

The COMELEC's motion for reconsideration

Interestingly, in its motion for reconsideration, the COMELEC does not raise a matter other than those already considered and discussed by the Court in the assailed decision. As aforesaid, the COMELEC merely echoed the arguments of the dissenters.

I remain unpersuaded.

I wish to reiterate the Court's earlier declaration that the second proviso in the third paragraph of Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678 are unconstitutional for being violative of the equal protection clause and for being overbroad.

In considering persons holding appointive positions as ipso facto resigned from their posts upon the filing of their certificates of candidacy (CoCs), but not considering as resigned all other civil servants, specifically the elective ones, the law unduly discriminates against the first class. The fact alone that there is substantial distinction between the two classes does not justify such disparate treatment. Constitutional law jurisprudence requires that the classification must and should be germane to the purposes of the law. As clearly explained in the assailed decision, whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain. Indeed, a candidate, whether holding an appointive or an elective office, may use his position to promote his candidacy or to wield a dangerous or coercive influence on the electorate. Under the same scenario,

he may also, in the discharge of his official duties, be swayed by political considerations. Likewise, he may neglect his or her official duties, as he will predictably prioritize his campaign. Chief Justice Puno, in his dissent to the assailed decision, even acknowledges that the "danger of systemic abuse" remains present whether the involved candidate holds an appointive or an elective office, thus--

Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable--even innocuous--particularly when viewed in isolation from other similar attempts by other government employees. Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of a reigning political party to advance its own agenda through a "carefully orchestrated use of [appointive and/or elective] officials" coming from various levels of the bureaucracy.[14]

To repeat for emphasis, classifying candidates, whether they hold appointive or elective positions, and treating them differently by considering the first as ipso facto resigned while the second as not, is not germane to the purposes of the law, because, as clearly shown, the measure is not reasonably necessary to, nor does it necessarily promote, the fulfillment of the state interest sought to be served by the statute.

In fact, it may not be amiss to state that, more often than not, the elective officials, not the appointive ones, exert more coercive influence on the electorate, with the greater tendency to misuse the powers of their office. This is illustrated by, among others, the proliferation of "private armies" especially in the provinces. It is common knowledge that "private armies" are backed or even formed by elective officials precisely for the latter to ensure that the electorate will not oppose them, be cowed to submit to their dictates and vote for them. To impose a prohibitive measure intended to curb this evil of wielding undue influence on the electorate and apply the prohibition only on appointive officials is not only downright ineffectual, but is also, as shown in the assailed decision, offensive to the equal protection clause.

Furthermore, as the Court explained in the assailed decision, this ipso facto resignation rule is overbroad. It covers all civil servants holding appointive posts without distinction, regardless of whether they occupy positions of influence in government or not. Certainly, a utility worker, a messenger, a chauffeur, or an industrial worker in the government service cannot exert the same influence as that of a Cabinet member, an undersecretary or a bureau head. Parenthetically, it is also unimaginable how an appointive utility worker, compared to a governor or a mayor, can form his own "private army" to wield undue influence on the electorate. It is unreasonable and excessive, therefore, to impose a blanket prohibition--one intended to discourage civil servants from using their positions to influence the votes--on all civil servants without considering the nature of their positions. Let it be noted, that, despite their employment in the government, civil servants remain citizens of the country, entitled to enjoy the civil and political rights granted to them in a democracy, including the right to aspire for elective public office.

In addition, this general provision on automatic resignation is directed to the activity of seeking any and all public elective offices, whether partisan or nonpartisan in character, whether in the national, municipal or barangay level. No compelling state interest has been shown to justify such a broad, encompassing and sweeping application of the law.

It may also be pointed out that this automatic resignation rule has no pretense to be the exclusive and only available remedy to curb the uncontrolled exercise of undue influence and the feared "danger of systemic abuse." As we have explained in the assailed decision, our Constitution and our body of laws are replete with provisions that directly address these evils. We reiterate our earlier pronouncement that specific evils require specific remedies, not overly broad measures that unduly restrict guaranteed freedoms.

It should be stressed that when the Court struck down (in the earlier decision) the assailed provisions, the Court did not act in a manner inconsistent with Section 2(4) of Article IX-B of the Constitution, which reads:

Sec. 2. x x x.

(4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity.

or with Section 5(3), Article XVI of the Constitution, which reads:

Sec. 5. x x x.

(3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics.

No member of the military shall engage, directly or indirectly, in any partisan political activity, except to vote.

Neither does the Court's earlier ruling infringe on Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987, which reads:

Sec. 55. Political Activity.--No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

"Partisan political activity" includes every form of solicitation of the elector's vote in favor of a specific candidate.[15] Section 79(b) of the OEC defines "partisan political activity" as follows:

SEC. 79. Definitions.--As used in this Code:

x x x x

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(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.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan political activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

Given the aforequoted Section 79(b), it is obvious that the filing of a Certificate of Candidacy (CoC) for an elective position, while it may be a political activity, is not a "partisan political activity" within the contemplation of the law. The act of filing is only an announcement of one's intention to run for office. It is only an aspiration for a public office, not yet a promotion or a solicitation of votes for the election or defeat of a candidate for public office. In fact, even after the filing of the CoC but before the start of the campaign period, there is yet no candidate whose election or defeat will be promoted. *Rosalinda A. Penera v. Commission on Elections and Edgar T. Andanar*[16] instructs that any person who files his CoC shall only be considered a candidate at the start of the campaign period. Thus, in the absence of a "candidate," the mere filing of CoC cannot be considered as an "election campaign" or a "partisan political activity." Section 79 of the OEC does not even consider as "partisan political activity" acts performed for the purpose of enhancing the chances of aspirants for nominations for candidacy to a public office. Thus, when appointive civil servants file their CoCs, they are not engaging in a "partisan political activity" and, therefore, do not transgress or violate the Constitution and the law. Accordingly, at that moment, there is no valid basis to consider them as ipso facto resigned from their posts.

There is a need to point out that the discussion in *Fariñas v. The Executive Secretary*,[17] relative to the differential treatment of the two classes of civil servants in relation to the ipso facto resignation clause, is obiter dictum. That discussion is not necessary to the decision of the case, the main issue therein being the constitutionality of the repealing clause in the Fair Election Act. Further, unlike in the instant case, no direct challenge was posed in *Fariñas* to the constitutionality of the rule on the ipso facto resignation of appointive officials. In any event, the Court en banc, in deciding subsequent cases, can very well reexamine, as it did in the assailed decision, its earlier pronouncements and even abandon them when perceived to be incorrect.

Let it also be noted that *Mancuso v. Taft*[18] is not the heart of the December 1, 2009 Decision. *Mancuso* was only cited to show that resign-to-run provisions, such as those which are specifically involved herein, have been stricken down in the United States for unduly burdening First Amendment rights of employees and voting rights of citizens, and for being overbroad. Verily, in our jurisdiction, foreign jurisprudence only enjoys a persuasive influence on the Court. Thus, the contention that *Mancuso* has been effectively overturned by subsequent American cases, such as *United States Civil Service Commission v. National Association of Letter Carriers*[19] and *Broadrick v. State of Oklahoma*,[20] is not controlling.

Be that as it may, a closer reading of these latter US cases reveals that *Mancuso* is still applicable.

On one hand, *Letter Carriers* and *Broadrick*, which are based on *United Public Workers of America v. Mitchell*,[21] involve provisions prohibiting Federal employees from engaging in partisan political activities or political campaigns.

In *Mitchell*, the appellants sought exemption from the implementation of a sentence in the Hatch Act, which reads: "No officer or employee in the executive branch of the Federal Government x x x shall take any active part in political management or in political campaigns." [22] Among the appellants, only George P. Poole violated the provision [23] by being a ward executive committeeman of a political party and by being politically active on election day as a worker at the polls and a paymaster for the services of other party workers. [24]

In *Letter Carriers*, the plaintiffs alleged that the Civil Service Commission was enforcing, or threatening to enforce, the Hatch Act's prohibition against "active participation in political management or political campaigns."

The plaintiffs desired to campaign for candidates for public office, to encourage and get federal employees to run for state and local offices, to participate as delegates in party conventions, and to hold office in a political club.[25]

In *Broadrick*, the appellants sought the invalidation for being vague and overbroad a provision in the Oklahoma's Merit System of Personnel Administration Act restricting the political activities of the State's classified civil servants, in much the same manner as the Hatch Act proscribed partisan political activities of federal employees.[26] Prior to the commencement of the action, the appellants actively participated in the 1970 reelection campaign of their superior, and were administratively charged for asking other Corporation Commission employees to do campaign work or to give referrals to persons who might help in the campaign, for soliciting money for the campaign, and for receiving and distributing campaign posters in bulk.[27]

Mancuso, on the other hand, involves, as aforesaid, an automatic resignation provision. Kenneth Mancuso, a full-time police officer and classified civil service employee of the City of Cranston, filed his candidacy for nomination as representative to the Rhode Island General Assembly. The Mayor of Cranston then began the process of enforcing the resign-to-run provision of the City Home Rule Charter.[28]

Clearly, as the above-cited US cases pertain to different types of laws and were decided based on a different set of facts, *Letter Carriers* and *Broadrick* cannot be interpreted to mean a reversal of *Mancuso*. Thus, in *Magill v. Lynch*,[29] the same collegial court which decided *Mancuso* was so careful in its analysis that it even remanded the case for consideration on the overbreadth claim. The *Magill* court stated thus-

Plaintiffs may very well feel that further efforts are not justified, but they should be afforded the opportunity to demonstrate that the charter forecloses access to a significant number of offices, the candidacy for which by municipal employees would not pose the possible threats to government efficiency and integrity which *Letter Carriers*, as we have interpreted it, deems significant. Accordingly, we remand for consideration of plaintiffs' overbreadth claim.[30]

As observed by the Court (citing *Clements v. Fashing*[31]) in the December 1, 2009 Decision, U.S. courts, in subsequent cases, sustained the constitutionality of resign-to-run rules when applied to specified or particular officials, as distinguished from all others, under a classification that is germane to the purposes of the law. These resign-to-run legislations were not expressed in a general and sweeping provision, and thus did not violate the test of being germane to the purpose of the law, the second requisite for a valid classification. Directed, as they were, to particular officials, they were not overly encompassing as to be overbroad. In fact, *Morial v. Judiciary Commission of the State of Louisiana*,[32] where the resign-to-run provision pertaining to judges running for political offices was upheld, declares that "there is no blanket approval of restriction on the right of public employees to become candidates for public office." [33] The *Morial* court instructed thus--

Because the judicial office is different in key respects from other offices, the state may regulate its judges with the differences in mind. For example the contours of the judicial function make inappropriate the same kind of particularized pledges of conduct in office that are the very stuff of campaigns for most non-judicial offices. A candidate for the mayoralty can and often should announce his determination to effect some program, to reach a particular result on some question of city policy, or to advance the interests of a particular group. It is expected that his decisions in office may be predetermined by campaign commitment. Not so the candidate for judicial office. He cannot, consistent with the proper exercise of his judicial powers, bind himself to decide particular cases in order to achieve a given programmatic result. Moreover, the judge acts on individual cases and not broad programs. The judge legislates but interstitially; the progress through the law of a particular judge's social and political preferences is, in Mr. Justice Holmes' words, "confined from molar to molecular motions."

As one safeguard of the special character of the judicial function, Louisiana's Code of Judicial Conduct bars candidates for judicial office from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." Candidates for non-judicial office are not subject to such a ban; in the conduct of his campaign for the mayoralty, an erstwhile judge is more free to make promises of post-campaign conduct with respect both to issues and personnel, whether publicly or privately, than he would be were he a candidate for re-election to his judgeship. The state may reasonably conclude that such pledges and promises, though made in the course of a campaign for non-judicial office, might affect or, even more plausibly, appear to affect the post-election conduct of a judge who had returned to the bench following an electoral defeat. By requiring resignation of any judge who seeks a non-judicial office and leaving campaign conduct unfettered by the restrictions which would be applicable to a sitting judge, Louisiana has drawn a line which protects the state's interests in judicial integrity without sacrificing the equally important interests in robust campaigns for elective office in the executive or legislative branches of government.

This analysis applies equally to the differential treatment of judges and other office holders. A judge who fails in his bid for a post in the state legislature must not use his judgeship to advance the cause of those who supported him in his unsuccessful campaign in the legislature. In contrast, a member of the state legislature who runs for some other office is not expected upon his return to the legislature to abandon his advocacy of the interests which supported him during the course of his unsuccessful campaign. Here, too, Louisiana has drawn a line which rests on the different functions of the judicial and non-judicial office holder.[34]

Indeed, for an ipso facto resignation rule to be valid, it must be shown that the classification is reasonably necessary to attain the objectives of the law. Here, as already explained in the assailed decision, the differential treatment in the application of this resign-to-run rule is not germane to the purposes of the law, because whether one holds an appointive office or an elective one, the evils sought to be prevented are not effectively addressed by the measure. Thus, the ineluctable conclusion that the concerned provisions are invalid for being unconstitutional.

Without unnecessarily preempting the resolution of any subsequent actual case or unwittingly giving an advisory opinion, the Court, in the December 1, 2009 Decision, in effect, states that what should be implemented are the other provisions of Philippine laws (not the concerned unconstitutional provisions) that specifically and directly address the evils sought to be prevented by the measure. It is highly speculative then to contend that members of the police force or the armed forces, if they will not be considered as resigned when they file their COCs, is a "disaster waiting to happen." There are, after all, appropriate laws in place to curb abuses in the government service.

The invalidation of the ipso facto resignation provisions does not mean the cessation in operation of other provisions of the Constitution and of existing laws. Section 2(4) of Article IX-B and Section 5(3), Article XVI of the Constitution, and Section 55, Chapter 8, Title I, Book V of the Administrative Code of 1987 still apply. So do other statutes, such as the Civil Service Laws, OEC, the Anti-Graft Law, the Code of Conduct and Ethical Standards for Public Officials and Employees, and related laws. Covered civil servants running for political offices who later on engage in "partisan political activity" run the risk of being administratively charged.[35] Civil servants who use government funds and property for campaign purposes, likewise, run the risk of being prosecuted under the Anti-Graft and Corrupt Practices Act or under the OEC on election offenses. Those who abuse their authority to promote their candidacy shall be made liable under the appropriate laws. Let it be stressed at this point that the said laws provide for specific remedies for specific evils, unlike the automatic resignation provisions that are sweeping in application and not germane to the purposes of the law.

To illustrate, we hypothetically assume that a municipal election officer, who is an employee of the COMELEC, files his CoC. Given the invalidation of the automatic resignation provisions, the said election officer is not considered as ipso facto resigned from his post at the precise moment of the filing of the CoC. Thus, he remains in

his post, and his filing of a CoC cannot be taken to be a violation of any provision of the Constitution or any statute. At the start of the campaign period, however, if he is still in the government service, that is, if he has not voluntarily resigned, and he, at the same time, engages in a "partisan political activity," then, he becomes vulnerable to prosecution under the Administrative Code, under civil service laws, under the Anti-Graft and Corrupt Practices Act or under the OEC. Upon the proper action being filed, he could, thus, be disqualified from running for office, or if elected, prevented from assuming, or if he had already assumed office, be removed from, office.

At this juncture, it may even be said that Mitchell, Letter Carriers and Broadrick, the cases earlier cited by Chief Justice Puno and Associate Justices Carpio and Carpio-Morales, support the proposition advanced by the majority in the December 1, 2009 Decision. While the provisions on the ipso facto resignation of appointive civil servants are unconstitutional for being violative of the equal protection clause and for being overbroad, the general provisions prohibiting civil servants from engaging in "partisan political activity" remain valid and operational, and should be strictly applied.

The COMELEC's motion for reconsideration should, therefore, be denied.

The OSG's motion for clarification

In its motion, the OSG pleads that this Court clarify whether, by declaring as unconstitutional the concerned ipso facto resignation provisions, the December 1, 2009 Decision intended to allow appointive officials to stay in office during the entire election period.[36] The OSG points out that the official spokesperson of the Court explained before the media that "the decision would in effect allow appointive officials to stay on in their posts even during the campaign period, or until they win or lose or are removed from office." [37]

I pose the following response to the motion for clarification. The language of the December 1, 2009 Decision is too plain to be mistaken. The Court only declared as unconstitutional Section 13 of R.A. No. 9369, Section 66 of the OEC and Section 4(a) of COMELEC Resolution No. 8678. The Court never stated in the decision that appointive civil servants running for elective posts are allowed to stay in office during the entire election period.

The only logical and legal effect, therefore, of the Court's earlier declaration of unconstitutionality of the ipso facto resignation provisions is that appointive government employees or officials who intend to run for elective positions are not considered automatically resigned from their posts at the moment of filing of their CoCs. Again, as explained above, other Constitutional and statutory provisions do not cease in operation and should, in fact, be strictly implemented by the authorities.

Let the full force of the laws apply. Then let the axe fall where it should.

[1] Rollo, p. 122.

[2] Id. at 210-215.

[3] Id. at 236.

[4] Id. at 265-270.

[5] Id. at 310-311.

[6] Id. at 315-322.

[7] Id. at 326-329.

[8] Id. at 333-374.

[9] Id. at 386-388.

[10] Petitioner Quinto was appointed, and on January 13, 2010, took his oath of office as Acting Secretary of the Department of Environment and Natural Resources (DENR). Subsequently, as reported in the February 11, 2010 issue of Philippine Daily Inquirer, he was appointed as Director General of the Presidential Coalition Affairs Office.

[11] Rule 19, Section 2 provides in full:

SEC. 2. Time to intervene.--The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

[12] Associated Bank (now United Overseas Bank [Phils.]) v. Spouses Rafael and Monaliza Pronstroller, G.R. No. 148444, September 3, 2009; Chavez v. Presidential Commission on Good Government, 366 Phil. 863, 867 (1999).

[13] Sofia Aniosa Salandanan v. Spouses Ma. Isabel and Bayani Mendez, G.R. No. 160280, March 13, 2009; Republic v. Gingoyon, G.R. No. 166429, February 1, 2006, 481 SCRA 457, 470.

[14] Dissenting Opinion of Chief Justice Puno, p. 63. (*Italics supplied.*)

[15] Bernas, The 1987 Constitution of the Republic of the Philippines, A Commentary (2003 ed.), p. 1026, citing *People v. de Venecia*, 14 SCRA 864, 867.

[16] G.R. No. 181613, November 25, 2009.

[17] 463 Phil. 179, 205-208 (2003).

[18] 476 F.2d 187, 190 (1973).

[19] 413 U.S. 548 (1973).

[20] 413 U.S. 601 (1973).

[21] 330 U.S. 75 (1947).

[22] Id. at 82.

[23] Id. at 83.

[24] Id. at 94.

[25] Supra note 19, at 551-552.

[26] Supra note 20, at 602.

[27] Id. at 609.

[28] Supra note 18, at 188-189.

[29] 560 F. 2d 22 (1977).

[30] Id. at 30-31.

[31] 457 U.S. 957; 102 S.Ct. 2836 (1982).

[32] 565 F. 2d 295 (1977).

[33] Id. at 306.

[34] Id. at 305-306. (Citations omitted.)

[35] The constitutional proscription on engagement by members of the military in partisan political activity applies only to those in the active military service, not to reservists (*Cailles v. Bonifacio*, 65 Phil. 328 [1938]). The same proscription relating to civil servants does not also extend to members of the Cabinet as their positions are essentially political (*Santos v. Yatco*, G.R. No. L-16133, November 6, 1959, 55 O.G. 8641-8642).

[36] Rollo, p. 323.

[37] Id. at 327.

DISSENTING OPINION

CARPIO MORALES, J.

I dissent from the majority opinion which declares as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act No. 9369 (January 23, 2007) and Section 66 of Batas Pambansa Blg. 881 (December 3, 1985) or the Omnibus Election Code, respectively quoted as follows:

SEC. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

Sec. 15. x x x

x x x Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered ipso facto resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy. (underscoring supplied)

x x x x

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SEC. 66. Candidates holding appointive office or positions. - Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy. (underscoring supplied)

What petitioners assail, however, is paragraph (a) of Section 4 of Comelec Resolution No. 8678[1] (October 6, 2009) which mirrors the above-quoted provisions. Section 4 thereof provides:

SEC. 4. Effects of Filing Certificates of Candidacy.- a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.

(b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position. (underscoring supplied)

As presented by the ponencia, a parallel provision on persons holding elective office or position existed in Section 67 of the Omnibus Election Code (December 3, 1985) until it was repealed by Republic Act No. 9006 (February 12, 2001) or the Fair Election Act. Prior to the repeal, the provision was amplified by the first proviso of the third paragraph of Section 11 of Republic Act No. 8436 (December 22, 1997) otherwise known as the Election Automation Law until said proviso was rendered ineffective in 2001 by the Fair Election Act and was totally abandoned in 2007 by the amendatory law of Republic Act No. 9369.

In granting the petition, the ponencia eliminates the ipso facto resignation from public office by an appointive public official upon the filing of the certificate of candidacy, thereby removing the distinction between one holding an appointive position and one holding an elective position.

The ponencia revisits *Fariñas v. The Executive Secretary*,^[2] notwithstanding its submission that the discussion therein on the equal protection clause was obiter dictum, albeit the issue was squarely raised therein.

The ponencia adds that *Fariñas* focused on the validity of the repeal of Section 67 (on elective positions) of the Omnibus Election Code and never posed a direct challenge to the constitutionality of retaining Section 66 (on appointive positions) thereof. En passant, I observe that neither is the constitutionality of Section 13 of Republic Act No. 9369 and Section 66 of Batas Pambansa Blg. 881 challenged by petitioners in the present case. What petitioners assail is, it bears repeating, Section 4(a) of Comelec Resolution No. 8678.

In *Fariñas*, the Court ruled:

The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.

The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under the same provision, elective officials,

or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, i.e., elected officials vis-a-vis appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[3] (*italics in the original; underscoring supplied*)

Fariñas pointed out at least three material and substantial distinctions that set apart elective officials from appointive officials (i.e., mandate of the electorate, removal from office only upon stringent conditions, no prohibition against partisan political activity). The ponencia does not dispute the presence of this set of distinctions as one of the grounds for a classification to be valid and non-violative of the equal protection clause.

The ponencia does not correlate the impact of the prohibition against partisan political activity on the provisions on ipso facto resignation. Section 55, Chapter 8, Title I, Subsection A, Book V of the Administrative Code of 1987[4] reads:

Sec. 55. Political Activity. - No officer or employee in the Civil Service including members of the Armed Forces, shall engage, directly or indirectly, in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of his candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code. (*underscoring supplied*)

To allow appointive officials to hang on to their respective posts after filing their certificate of candidacy will open the floodgates to countless charges of violation of the prohibition on partisan political activity. The filing of the certificate of candidacy is already deemed as a partisan political activity, which also explains why the appointive official is considered ipso facto resigned from public office upon the date of the filing of the certificate of candidacy, and not the date of the start of the campaign period. *Pagano v. Nazarro, Jr.*[5] teaches:

Clearly, the act of filing a Certificate of Candidacy while one is employed in the civil service constitutes a just cause for termination of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official ipso facto resigned, merely provides for the immediate implementation of the penalty for the prohibited act of engaging in partisan political activity. This provision was not intended, and should not be used, as a defense against an administrative case for acts committed during government service.[6] (*emphasis and underscoring supplied*)

The Court cannot look into the wisdom of the classification, as it runs the risk of either unduly magnifying the minutiae or viewing the whole picture with a myopic lens. The Court cannot strike down as unconstitutional the above-mentioned provisions without crossing the path of said Section 55 of the Administrative Code, among other things,[7] on political activity or without rebutting the apolitical nature of an appointive office. Section 55, however, is, as earlier stated, neither challenged in the present case, nor are Section 13 of Republic Act No. 9369 and Section 66 of the Omnibus Election Code.

While the ponencia admits that there are substantial distinctions, it avers that the requisite that the classification be germane to the purposes of the law is absent.

In discussing the underlying objectives of the law, the majority opinion identifies the evils sought to be prevented by the law and opines that these evils are present in both elective and appointive public offices. Ultimately, the ponencia kills the law and spares the evils. It raises arguments that lend support more to a parity of application of the ipso facto resignation than a parity of non-application of the ipso facto resignation.

In explaining Section 2 (4) of Article IX-B of the Constitution,[8] an eminent constitutionalist elucidated that the general rule is "intended to keep the Civil Service free of the deleterious effects of political partisanship." [9] Political partisanship, meanwhile, is the inevitable essence of a political office, elective positions included.

Unfortunately, the ponencia does not refute the apolitical nature of an appointive office. To the issues surrounding the policy of reserving political activities to political officers, the remedy is legislation.

The ponencia proceeds to discuss the right to run for public office in relation to the freedom of expression and of association. It cites *Mancuso v. Taft*, [10] a case decided by the United States Court of Appeals, First Circuit, involving a city home rule charter in Rhode Island, to buttress its conclusion and to persuade [11] that this jurisdiction too should follow suit.

In U.S. jurisdiction, however, the Hatch Act of 1939 [12] which imposes limitations on the political activities of federal government employees is still considered good law. It prohibits government employees from running for or holding public office or participating in the campaign management for another. On two occasions, the Hatch Act has been brought to the US Supreme Court, both times based on First Amendment arguments that the prohibitions were unduly restrictive on the private constitutional liberties of government employees. The statute was upheld in both cases, *United Public Workers of America v. Mitchell*, [13] and *United States Civil Service Commission v. National Association of Letter Carriers*. [14]

The Hatch Act has since been applied or copied in most states with respect to state or local government employees. While the spirit of the ruling in *Mitchell* has been questioned or overturned by inferior courts in cases assailing similar state laws or city charters (such as *Mancuso*), *Mitchell* has not, however, been overturned by the U.S. Supreme Court. An inferior court can never erode a Supreme Court decision.

Finally, a public employee holding appointive office or position, by accepting a non-political government appointment, binds himself to the terms and conditions of employment fixed by law. In one case, it was held that in government employment, "it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through the statutes or administrative circulars, rules, and regulations[,] [15] part of which is the setting of standards for allowable limitations in the exercise of the rights of free expression and of assembly. [16]

WHEREFORE, I vote to DISMISS the petition.

[1] Entitled "Guidelines on the Filing of Certificates of Candidacy (CoC) and Nomination of Official Candidates of Registered Political Parties in connection with the May 10, 2010 National and Local Elections."

[2] 463 Phil. 179 (2003).

[3] Id. at 205-208.

[4] EXECUTIVE ORDER No. 292 (July 25, 1987).

[5] G.R. No. 149072, September 21, 2007, 533 SCRA 622.

[6] Id. at 635-636.

[7] OMNIBUS ELECTION CODE, Sec. 261(i) on election offenses; ADMINISTRATIVE CODE of 1987, Sec 44(b)(26) on grounds for disciplinary action.

[8] Sec. 2(4) reads: No officer or employee in the Civil Service shall engage, directly or indirectly, in any electioneering or partisan political campaign.

[9] JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1996), p. 919.

[10] 476 F.2d 187, 190 (1973).

[11] Cases decided in foreign jurisdictions are merely persuasive in this jurisdiction.

[12] Formally cited as 5 USCA 7324, named after the bill's sponsor, New Mexico Senator Carl Hatch.

[13] 330 US 75 (1947).

[14] 413 US 548 (1973).

[15] Social Security System Employees Association (SSSEA) v. Court of Appeals, G.R. No. 85279, July 28, 1989, 175 SCRA 686, 697 citing Alliance of Government Workers v. Minister of Labor, G.R. No. 60403, August 3, 1983, 124 SCRA 1; vide supra note 7.

[16] Jacinto v. CA, 346 Phil. 656, 669 (1997).

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