

EN BANC

[G.R. No. 189698, December 01, 2009]

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

DECISION

NACHURA, J.:

"In our predisposition to discover the `original intent' of a statute, courts become the unfeeling pillars of the *status quo*. Little do we realize that statutes or even constitutions are bundles of compromises thrown our way by their framers. Unless we exercise vigilance, the statute may already be out of tune and irrelevant to our day."^[1] It is in this light that we should address the instant case.

Before the Court is a petition for prohibition and *certiorari*, with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction, assailing Section 4(a) of Resolution No. 8678 of the Commission on Elections (COMELEC). In view of pressing contemporary events, the petition begs for immediate resolution.

The Antecedents

This controversy actually stems from the law authorizing the COMELEC to use an automated election system (AES).

On December 22, 1997, Congress enacted Republic Act (R.A.) No. 8436, entitled "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES." Section 11 thereof reads:

SEC. 11. *Official Ballot.*--The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

Both sides of the ballots may be used when necessary.

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, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period:** *Provided, finally, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice President, Senators and candidates under the Party-List System as well as petitions for registration and/or manifestation to participate in the Party-List System shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998.*

The official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.^[2]

Almost a decade thereafter, Congress amended the law on January 23, 2007 by enacting R.A. No. 9369, entitled "AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED 'AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTION LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.'" Section 13 of the amendatory law modified Section 11 of R.A. No. 8436, thus:

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

"Section 15. *Official Ballot.*--The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size. The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size.

"A fixed space where the chairman of the board of election inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

"For this purpose, the Commission shall set the deadline for the filing of 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 the start of the aforesaid 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 certificate of candidacy.

"Political parties may hold political conventions to nominate their official candidates within thirty (30) days before the start of the period for filing a certificate of candidacy.

"With respect to a paper-based election system, the official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.

"To prevent the use of fake ballots, the Commission through the

Committee shall ensure that the necessary safeguards, such as, but not limited to, bar codes, holograms, color shifting ink, microprinting, are provided on the ballot.

"The official ballots shall be printed and distributed to each city/municipality at the rate of one ballot for every registered voter with a provision of additional three ballots per precinct."^[3]

Pursuant to its constitutional mandate to enforce and administer election laws, COMELEC issued Resolution No. 8678,^[4] the 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. Sections 4 and 5 of Resolution No. 8678 provide:

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.

SEC. 5. *Period for filing Certificate of Candidacy.*--The certificate of candidacy shall be filed on regular days, from November 20 to 30, 2009, during office hours, except on the last day, which shall be until midnight.

Alarmed that they will be deemed *ipso facto* resigned from their offices the moment they file their CoCs, petitioners Eleazar P. Quinto and Gerino A. Tolentino, Jr., who hold appointive positions in the government and who intend to run in the coming elections,^[5] filed the instant petition for prohibition and *certiorari*, seeking the declaration of the afore-quoted Section 4(a) of Resolution No. 8678 as null and void.

The Petitioners' Contention

Petitioners contend that the COMELEC gravely abused its discretion when it issued the assailed Resolution. They aver that the advance filing of CoCs for the 2010 elections is intended merely for the purpose of early printing of the official ballots in order to cope with time limitations. Such advance filing does not automatically make the person who filed the CoC a candidate at the moment of filing. In fact, the law considers him a candidate only at the start of the campaign period. Petitioners then assert that this being so, they should not be deemed *ipso facto* resigned from their government offices when they file their CoCs, because at such time they are not yet treated by law as candidates. They should be considered resigned from their respective offices only at the start of the campaign period when they are, by law, already considered as candidates.^[6]

Petitioners also contend that Section 13 of R.A. No. 9369, the basis of the assailed COMELEC resolution, contains two conflicting provisions. These must be harmonized or reconciled to give effect to both and to arrive at a declaration that they are not *ipso facto* resigned from their positions upon the filing of their CoCs.^[7]

Petitioners further posit that the provision considering them as *ipso facto* resigned from office upon the filing of their CoCs is discriminatory and violates the equal protection clause in the Constitution.^[8]

The Respondent's Arguments

On the procedural aspect of the petition, the Office of the Solicitor General (OSG), representing respondent COMELEC, argues that petitioners have no legal standing to institute the suit. Petitioners have not yet filed their CoCs, hence, they are not yet affected by the assailed provision in the COMELEC resolution. The OSG further claims that the petition is premature or unripe for judicial determination. Petitioners have admitted that they are merely planning to file their CoCs for the coming 2010 elections. Their interest in the present controversy is thus merely speculative and contingent upon the filing of the same. The OSG likewise contends that petitioners availed of the wrong remedy. They are questioning an issuance of the COMELEC made in the exercise of the latter's rule-making power. *Certiorari* under Rule 65 is then an improper remedy.^[9]

On the substantive aspect, the OSG maintains that the COMELEC did not gravely abuse its discretion in phrasing Section 4(a) of Resolution No. 8678 for it merely copied what is in the law. The OSG, however, agrees with petitioners that there is a conflict in Section 13 of R.A. No. 9369 that should be resolved. According to the OSG, there seems to be no basis to consider appointive officials as *ipso facto* resigned and to require them to vacate their positions on the same day that they file their CoCs, because they are not yet considered as candidates at that time. Further, this "deemed resigned" provision existed in *Batas Pambansa Bilang* (B.P. Blg.) 881, and no longer finds a place in our present election laws with the innovations brought about by the automated system.^[10]

Our Ruling

I.

At first glance, the petition suffers from an incipient procedural defect. What petitioners assail in their petition is a resolution issued by the COMELEC in the exercise of its quasi-legislative power. *Certiorari* under Rule 65, in relation to Rule 64, cannot be availed of, because it is a remedy to question decisions, resolutions and issuances made in the exercise of a judicial or quasi-judicial function.^[11] Prohibition is also an inappropriate remedy, because what petitioners actually seek from the Court is a determination of the proper construction of a statute and a declaration of their rights thereunder. Obviously, their petition is one for declaratory relief,^[12] over which this Court does not exercise original jurisdiction.^[13]

However, petitioners raise a challenge on the constitutionality of the questioned provisions of both the COMELEC resolution and the law. Given this scenario, the Court may step in and resolve the instant petition.