

**EN BANC**

**[ G.R. No. 157870, November 03, 2008 ]**

**SOCIAL JUSTICE SOCIETY (SJS), PETITIONER, VS. DANGEROUS DRUGS BOARD AND PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA), RESPONDENTS.**

**[G.R. No. 158633]**

**ATTY. MANUEL J. LASERNA, JR., PETITIONER, VS. DANGEROUS DRUGS BOARD AND PHILIPPINE DRUG ENFORCEMENT AGENCY, RESPONDENTS.**

**[G.R. No. 161658]**

**AQUILINO Q. PIMENTEL, JR., PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.**

**D E C I S I O N**

**VELASCO JR., J.:**

In these kindred petitions, the constitutionality of Section 36 of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, insofar as it requires mandatory drug testing of candidates for public office, students of secondary and tertiary schools, officers and employees of public and private offices, and persons charged before the prosecutor's office with certain offenses, among other personalities, is put in issue.

As far as pertinent, the challenged section reads as follows:

SEC. 36. *Authorized Drug Testing.*—Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of the test results. x x x The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of drug used and the confirmatory test which will confirm a positive screening test. x x x The following shall be subjected to undergo drug testing:

x x x x

(c) Students of secondary and tertiary schools.—Students of secondary and tertiary schools shall, pursuant to the related rules and regulations as contained in the school's student handbook and with notice to the parents, undergo a random drug testing x x x;

(d) Officers and employees of public and private offices.—Officers and

employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, x x x for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

x x x x

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall undergo a mandatory drug test;

(g) All candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test.

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act.

**G.R. No. 161658** (*Aquilino Q. Pimentel, Jr. v. Commission on Elections*)

On December 23, 2003, the Commission on Elections (COMELEC) issued Resolution No. 6486, prescribing the rules and regulations on the mandatory drug testing of candidates for public office in connection with the May 10, 2004 synchronized national and local elections. The pertinent portions of the said resolution read as follows:

WHEREAS, Section 36 (g) of Republic Act No. 9165 provides:

SEC. 36. *Authorized Drug Testing.*—x x x

x x x x

(g) All candidates for public office x x x both in the national or local government **shall undergo a mandatory drug test.**

WHEREAS, Section 1, Article XI of the 1987 Constitution provides that public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency;

WHEREAS, by requiring candidates to undergo mandatory drug test, the public will know the quality of candidates they are electing and they will be assured that only those who can serve with utmost responsibility, integrity, loyalty, and efficiency would be elected x x x.

NOW THEREFORE, The [COMELEC], pursuant to the authority vested in it under the Constitution, Batas Pambansa Blg. 881 (Omnibus Election Code), [RA] 9165 and other election laws, RESOLVED to promulgate, as it hereby promulgates, the following rules and regulations on the conduct

of mandatory drug testing to candidates for public office[:]

**SECTION 1. Coverage.—All candidates for public office, both national and local, in the May 10, 2004 Synchronized National and Local Elections** shall undergo mandatory drug test in government forensic laboratories or any drug testing laboratories monitored and accredited by the Department of Health.

SEC. 3. x x x

On March 25, 2004, in addition to the drug certificates filed with their respective offices, the Comelec Offices and employees concerned shall submit to the Law Department two (2) separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply x x x.

*SEC. 4. Preparation and publication of names of candidates.—*Before the start of the campaign period, the [COMELEC] shall prepare two separate lists of candidates. The first list shall consist of those candidates who complied with the mandatory drug test while the second list shall consist of those candidates who failed to comply with said drug test. x x x

*SEC. 5. Effect of failure to undergo mandatory drug test and file drug test certificate.—*No person elected to any public office shall enter upon the duties of his office until he has undergone mandatory drug test and filed with the offices enumerated under Section 2 hereof the drug test certificate herein required. (Emphasis supplied.)

Petitioner Aquilino Q. Pimentel, Jr., a senator of the Republic and a candidate for re-election in the May 10, 2004 elections,<sup>[1]</sup> filed a Petition for Certiorari and Prohibition under Rule 65. In it, he seeks (1) to nullify Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 dated December 23, 2003 for being unconstitutional in that they impose a qualification for candidates for senators in addition to those already provided for in the 1987 Constitution; and (2) to enjoin the COMELEC from implementing Resolution No. 6486.

Pimentel invokes as legal basis for his petition Sec. 3, Article VI of the Constitution, which states:

**SECTION 3.** No person shall be a Senator unless he is a natural-born citizen of the Philippines, and, on the day of the election, is at least thirty-five years of age, able to read and write, a registered voter, and a resident of the Philippines for not less than two years immediately preceding the day of the election.

According to Pimentel, the Constitution only prescribes a maximum of five (5) qualifications for one to be a candidate for, elected to, and be a member of the Senate. He says that both the Congress and COMELEC, by requiring, via RA 9165 and Resolution No. 6486, a senatorial aspirant, among other candidates, to undergo a mandatory drug test, create an additional qualification that all candidates for senator must first be certified as drug free. He adds that there is no provision in the

Constitution authorizing the Congress or COMELEC to expand the qualification requirements of candidates for senator.

**G.R. No. 157870** (*Social Justice Society v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*)

In its Petition for Prohibition under Rule 65, petitioner Social Justice Society (SJS), a registered political party, seeks to prohibit the Dangerous Drugs Board (DDB) and the Philippine Drug Enforcement Agency (PDEA) from enforcing paragraphs (c), (d), (f), and (g) of Sec. 36 of RA 9165 on the ground that they are constitutionally infirm. For one, the provisions constitute undue delegation of legislative power when they give unbridled discretion to schools and employers to determine the manner of drug testing. For another, the provisions trench in the equal protection clause inasmuch as they can be used to harass a student or an employee deemed undesirable. And for a third, a person's constitutional right against unreasonable searches is also breached by said provisions.

**G.R. No. 158633** (*Atty. Manuel J. Laserna, Jr. v. Dangerous Drugs Board and Philippine Drug Enforcement Agency*)

Petitioner Atty. Manuel J. Laserna, Jr., as citizen and taxpayer, also seeks in his Petition for Certiorari and Prohibition under Rule 65 that Sec. 36(c), (d), (f), and (g) of RA 9165 be struck down as unconstitutional for infringing on the constitutional right to privacy, the right against unreasonable search and seizure, and the right against self-incrimination, and for being contrary to the due process and equal protection guarantees.

**The Issue on *Locus Standi***

First off, we shall address the justiciability of the cases at bench and the matter of the standing of petitioners SJS and Laserna to sue. As respondents DDB and PDEA assert, SJS and Laserna failed to allege any incident amounting to a violation of the constitutional rights mentioned in their separate petitions.<sup>[2]</sup>

It is basic that the power of judicial review can only be exercised in connection with a *bona fide* controversy which involves the statute sought to be reviewed.<sup>[3]</sup> But even with the presence of an actual case or controversy, the Court may refuse to exercise judicial review unless the constitutional question is brought before it by a party having the requisite standing to challenge it.<sup>[4]</sup> To have standing, one must establish that he or she has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.<sup>[5]</sup>

The rule on standing, however, is a matter of procedure; hence, it can be relaxed for non-traditional plaintiffs, like ordinary citizens, taxpayers, and legislators when the public interest so requires, such as when the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.<sup>[6]</sup> There is no doubt that Pimentel, as senator of the Philippines and candidate for the May 10, 2004 elections, possesses the requisite standing since he has substantial interests in the subject matter of the petition, among other preliminary considerations. Regarding SJS and Laserna, this Court is wont to relax the rule on

*locus standi* owing primarily to the transcendental importance and the paramount public interest involved in the enforcement of Sec. 36 of RA 9165.

### **The Consolidated Issues**

The principal issues before us are as follows:

(1) Do Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 impose an additional qualification for candidates for senator? Corollarily, can Congress enact a law prescribing qualifications for candidates for senator in addition to those laid down by the Constitution? and

(2) Are paragraphs (c), (d), (f), and (g) of Sec. 36, RA 9165 unconstitutional? Specifically, do these paragraphs violate the right to privacy, the right against unreasonable searches and seizure, and the equal protection clause? Or do they constitute undue delegation of legislative power?

### **Pimentel Petition (Constitutionality of Sec. 36[g] of RA 9165 and COMELEC Resolution No. 6486)**

In essence, Pimentel claims that Sec. 36(g) of RA 9165 and COMELEC Resolution No. 6486 illegally impose an additional qualification on candidates for senator. He points out that, subject to the provisions on nuisance candidates, a candidate for senator needs only to meet the qualifications laid down in Sec. 3, Art. VI of the Constitution, to wit: (1) citizenship, (2) voter registration, (3) literacy, (4) age, and (5) residency. Beyond these stated qualification requirements, candidates for senator need not possess any other qualification to run for senator and be voted upon and elected as member of the Senate. The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate,<sup>[7]</sup> or alter or enlarge the Constitution.

Pimentel's contention is well-taken. Accordingly, Sec. 36(g) of RA 9165 should be, as it is hereby declared as, unconstitutional. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.<sup>[8]</sup> In the discharge of their defined functions, the three departments of government have no choice but to yield obedience to the commands of the Constitution. Whatever limits it imposes must be observed.<sup>[9]</sup>

Congress' inherent legislative powers, broad as they may be, are subject to certain limitations. As early as 1927, in *Government v. Springer*, the Court has defined, in the abstract, the limits on legislative power in the following wise:

Someone has said that the powers of the legislative department of the Government, like the boundaries of the ocean, are unlimited. In constitutional governments, however, as well as governments acting under delegated authority, the powers of each of the departments x x x are limited and confined within the four walls of the constitution or the charter, and each department can only exercise such powers as are