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# [ G.R. No. 132231, March 31, 1998 ]

## EMILIO M. R. OSMEÑA AND PABLO P. GARCIA, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

## D E C I S I O N

**MENDOZA, J.:**

This is a petition for prohibition, seeking a reexamination of the validity of §11(b) of R.A. No. 6646, the Electoral Reforms Law of 1987, which prohibits mass media from selling or giving free of charge print space or air time for campaign or other political purposes, except to the Commission on Elections.[1] Petitioners are candidates for public office in the forthcoming elections. Petitioner Emilio M. R. Osmeña is candidate for President of the Philippines, while petitioner Pablo P. Garcia is governor of Cebu Province, seeking reelection. They contend that events after the ruling in *National Press Club v. Commission on Elections*[2] "have called into question the validity of the very premises of that [decision]."[3]

### *There Is No Case or Controversy to Decide, Only an Academic Discussion to Hold*

*NPC v. COMELEC* upheld the validity of §11(b) of R.A. No. 6646 against claims that it abridged freedom of speech and of the press.[4] In urging a reexamination of that ruling, petitioners claim that experience in the last five years since the decision in that case has shown the "undesirable effects" of the law because "the ban on political advertising has not only failed to level the playing field, [but] actually worked to the grave disadvantage of the poor candidate[s]"[5] by depriving them of a medium which they can afford to pay for while their more affluent rivals can always resort to other means of reaching voters like airplanes, boats, rallies, parades, and handbills.

No empirical data have been presented by petitioners to back up their claim, however. Argumentation is made at the theoretical and not the practical level. Unable to show the "experience" and "subsequent events" which they claim invalidate the major premise of our prior decision, petitioners now say "there is no need for 'empirical data' to determine whether the political ad ban offends the Constitution or not."[6] Instead they make arguments from which it is clear that their disagreement is with the opinion of the Court on the constitutionality of §11(b) of R.A. No. 6646 and that what they seek is a reargument on the same issue already decided in that case. What is more, some of the arguments were already considered and rejected in the *NPC* case.[7]

Indeed, petitioners do not complain of any harm suffered as a result of the operation of the law. They do not complain that they have in any way been disadvantaged as a result of the ban on media advertising. Their contention that, contrary to the holding in *NPC,* §11(b) works to the disadvantage of candidates who do not have enough resources to wage a campaign outside of mass media can hardly apply to them. Their financial ability to sustain a long drawn-out campaign, using means other than the mass media to communicate with voters, cannot be doubted. If at all, it is candidates like intervenor Roger Panotes, who is running for mayor of Daet, Camarines Norte, who can complain against §11(b) of R.A. No. 6646. But Panotes is for the law which, he says, has "to some extent, reduced the advantages of moneyed politicians and parties over their rivals who are similarly situated as ROGER PANOTES." He claims that "the elimination of this substantial advantage is one reason why ROGER PANOTES and others similarly situated have dared to seek an elective position this coming elections."[8]

What petitioners seek is not the adjudication of a case but simply the holding of an academic exercise. And since a majority of the present Court is unpersuaded that its decision in *NPC* is founded in error, it will suffice for present purposes simply to reaffirm the ruling in that case. *Stare decisis et non quieta movere*. This is what makes the present case different from the overruling decisions[9] invoked by petitioners.

Nevertheless, we have undertaken to revisit the decision in *NPC v. COMELEC* in order to clarify our own understanding of its reach and set forth a theory of freedom of speech.

***No Ad Ban, Only a Substitution of COMELEC Space and COMELEC Time for the Advertising Page and Commercials in Mass Media***

The term political "ad ban," when used to describe §11(b) of R.A. No. 6646, is misleading, for even as §11(b) prohibits the sale or donation of print space and air time to political candidates, it mandates the COMELEC to procure and itself allocate to the candidates space and time in the media. There is no suppression of political ads but only a regulation of the time and manner of advertising.

Thus, §11(b) states:

> *Prohibited Forms of Election Propaganda*. — In addition to the forms of election propaganda prohibited in Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:
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> . . . .
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> (b) for any newspapers, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

On the other hand, the Omnibus Election Code provisions referred to in §11(b) read:

> SEC. 90. *Comelec space*. -— The Commission shall procure space in at least one newspaper of general circulation in every province or city: *Provided, however,* That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "Comelec Space" wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated. (Sec. 45, 1978 EC).
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> SEC. 92. *Comelec time*. - The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign. (Sec. 46, 1978 EC)

The law's concern is not with the message or content of the ad but with ensuring media equality between candidates with "deep pockets," as Justice Feliciano called them in his opinion of the Court in *NPC*, and those with less resources.[10] The law is part of a package of electoral reforms adopted in 1987. Actually, similar effort was made in 1970 to equalize the opportunity of candidates to advertise themselves and their programs of government by requiring the COMELEC to have a COMELEC space in newspapers, magazines, and periodicals and prohibiting candidates to advertise outside such space, unless the names of all the other candidates in the district in which the candidate is running are mentioned "with equal prominence." The validity of the law was challenged in *Badoy, Jr. v. COMELEC.*[11] The voting was equally divided (5-5), however, with the result that the validity of the law was deemed upheld.

There is a difference in kind and in severity between restrictions such as those imposed by the election law provisions in question in this case and those found to be unconstitutional in the cases cited by both petitioners and the Solicitor General, who has taken the side of petitioners. In *Adiong v. COMELEC*[12] the Court struck down a regulation of the COMELEC which prohibited the use of campaign decals and stickers on mobile units, allowing their location only in the COMELEC common poster area or billboard, at the campaign headquarters of the candidate or his political party, or at his residence. The Court found the restriction "so broad that it encompasses even the citizen's private property, which in this case is a privately-owned car."[13] Nor was there a substantial governmental interest justifying the restriction.

> [T]he constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Article II, Section 26 and Article XIII, Section 1 in relation to Article IX(c) Section 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles. Compared to the paramount interest of the State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.[14]

*Mutuc v. COMELEC*[15] is of a piece with *Adiong.* An order of the COMELEC prohibiting the playing of taped campaign jingles through sound systems mounted on

mobile units was held to be an invalid prior restraint without any apparent governmental interest to promote, as the restriction did not simply regulate time, place or manner but imposed an absolute ban on the use of the jingles. The prohibition was actually content-based and was for that reason bad as a prior restraint on speech, as inhibiting as prohibiting the candidate himself to use the loudspeaker. So is a ban against newspaper columnists expressing opinion on an issue in a plebiscite a content restriction which, unless justified by compelling reason, is unconstitutional.[16]

Here, on the other hand, there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and air time can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution, which provides:

> The commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and air time to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates.

Nor can the validity of the COMELEC take-over for such temporary period be doubted.[17] In *Pruneyard Shopping Center v. Robbins*,[18] it was held that a court order compelling a private shopping center to permit use of a corner of its courtyard for the purpose of distributing pamphlets or soliciting signatures for a petition opposing a UN resolution was valid. The order neither unreasonably impaired the value or use of private property nor violated the owner's right not to be compelled to express support for any viewpoint since it can always disavow any connection with the message.

On the other hand, the validity of regulations of time, place and manner, under well-defined standards, is well-nigh beyond question.[19] What is involved here is simply regulation of this nature. Instead of leaving candidates to advertise freely in the mass media, the law provides for allocation, by the COMELEC, of print space and air time to give all candidates equal time and space for the purpose of ensuring "free, orderly, honest, peaceful, and credible elections."

In *Gonzales v. COMELEC*,[20] the Court sustained the validity of a provision of R.A. No. 4880 which in part reads:

> SEC. 50-B. *Limitation upon the period of Election Campaign or Partisan Political Activity*. -— It is unlawful for any person whether or not a voter or candidate, or for

> any group, or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.
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> The term "Candidate" refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.
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> The term "Election Campaign" or "Partisan Political Activity" refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:
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> (a) Forming Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a party or candidate;
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> (b) Holding political conventions, 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 or party; . . .

In *Valmonte v. COMELEC*,[21] on the other hand, the Court upheld the validity of a COMELEC resolution prohibiting members of citizen groups or associations from entering any polling place except to vote. Indeed, §261(k) of the Omnibus Election Code makes it unlawful for anyone to solicit votes in the polling place and within a radius of 30 meters thereof.

These decisions come down to this: the State can prohibit campaigning outside a certain period as well as campaigning within a certain place. For unlimited expenditure for political advertising in the mass media skews the political process and subverts democratic self-government. What is bad is if the law prohibits campaigning by certain candidates because of the views expressed in the ad. Content regulation cannot be done in the absence of any compelling reason.

***Law Narrowly Drawn to Fit Regulatory Purpose***

The main purpose of §11(b) is regulatory. Any restriction on speech is only incidental, and it is no more than is necessary to achieve its purpose of promoting equality of opportunity in the use of mass media for political advertising. The restriction on speech, as pointed out in *NPC*, is limited both as to time and as to scope.

Petitioners and the dissenters make little of this on the ground that the regulation, which they call a ban, would be useless any other time than the election period. Petitioners state: "[I]n testing the reasonableness of a ban on mountain-skiing, one cannot conclude that it is limited because it is enforced only during the winter season."[22] What makes the regulation reasonable is precisely that it applies only to the election period. Its enforcement outside the period would make it unreasonable. More importantly, it should be noted that a "ban on mountain skiing" would be passive in nature. It is like the statutory cap on campaign expenditures, but is so unlike the real nature of §11(b), as already explained.