

SEVENTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES
H.B. No. 665

Introduced by Representative Herminio Harry L. Roque Jr.

AN ACT
AMENDING SECTIONS 79, 80 AND 81 OF BATAS PAMBANSA BILANG 881
OTHERWISE KNOWN AS THE "OMNIBUS ELECTION CODE
OF THE PHILIPPINES"

EXPLANATORY NOTE

Premature campaigning, which is an election offense, simply means electioneering conducted before the official campaign period. It is prohibited under Section 80 of Batas Pambansa Blg. 881 aka the "Omnibus Election Code". However, in the highly controversial 2009 case of *Peñera v. Commission on Elections*, the Supreme Court, by a split vote of 8-7, ruled in effect that the offense of premature campaigning has already been repealed by Republic Act No. 8436¹ or the new Poll Automation Law, as amended.

Because of the *Peñera* case, some wealthy senatoriables have started taking out campaign advertising in both traditional and social media. Some senatoriables, who are either incumbent elective or appointive officials, are even using public funds to advertise themselves under the guise of infomercials. On the other hand, to be

¹ 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.

popular, some political aspirants are appearing or guesting in movies, commercials and radio and TV programs.

In the 2004 case of *Chavez v. Commission on Elections* (437 SCRA 415), the Supreme Court ruled that if a person entered into contracts or agreements to endorse certain products, appeared in billboards, and subsequently filed his certificate of candidacy (COC) for senator, he may be held liable for “indirectly promoting his candidacy,” which falls under the activities included in the definition of an “election campaign” or “partisan political activity”.

Under the Omnibus Election Code, “election campaign” or “partisan political activity” is defined as an act designed to promote the election or defeat of a particular candidate or candidates to a public office. One of the activities included under this definition is: “Directly or **indirectly soliciting votes, pledges or support for or against a candidate.**”

In the *Chavez* case, the Supreme Court held:

It is true that when petitioner entered into the contracts or agreements to endorse certain products, he acted as a private individual and had all the right to lend his name and image to these products. However, when he filed his certificate of candidacy for Senator, the billboards featuring his name and image assumed partisan political character because the same indirectly promoted his candidacy. Therefore, the COMELEC was acting well within its scope of powers when it required petitioner to discontinue the display of the subject billboards. If the subject billboards were to be allowed, candidates for public office whose name and image are used to advertise commercial products would have more opportunity to make themselves known to the electorate, to the disadvantage of other candidates who do not have the same chance of lending their faces and names to endorse popular commercial products as image models. Similarly, an individual intending to run for public office within the next few months, could pay private corporations to use him as their image model with the intention of familiarizing the public with his name and image even before the start

of the campaign period. This, without a doubt, would be a circumvention of the rule against premature campaigning:

In the 2009 case of *Peñera v. Commission on Elections* (599 SCRA 609), the Supreme Court stated that the laudable and exemplary intention behind the prohibition against premature campaigning is to level the playing field for candidates of public office, to equalize the situation between the popular or rich candidate, on one hand, and lesser-known or poorer candidates, on the other, by preventing the former from enjoying undue advantage in exposure and publicity on account of their resources and popularity.

The Supreme Court further stated:

We cannot stress strongly enough that premature campaigning is a pernicious act that is continuously threatening to undermine the conduct of fair and credible elections in our country, no matter how great or small the acts constituting the same are. The choice as to who among the candidates will the voting public bestow the privilege of holding public office should not be swayed by the shrewd conduct, verging on bad faith, of some individuals who are able to spend resources to promote their candidacies in advance of the period slated for campaign activities.

Verily, the consequences provided for in Section 68 of the Omnibus Election Code for the commission of the prohibited acts of premature campaigning are severe: the candidate who is declared guilty of committing the offense shall be disqualified from continuing as a candidate, or, if he/she has been elected, from holding office. Not to mention that the said candidate also faces criminal prosecution for an election offense under Section 262 of the same Code.

Thus, this bill seeks to enumerate and specify the acts constituting “indirectly soliciting votes, pledges or support”, in order to educate and inform the political aspirants of the acts that may be considered as election campaigning or partisan political activities. With regard the appearance of a political aspirant as a guest in any

TV or radio program, the appearance should be only for purposes of legitimate news coverage.

This bill also expanded the scope of the prohibition against premature campaigning. R.A. No. 8436 or the Poll Automation Law, as amended by R.A. No. 9369, Section 15, paragraph 3, states:

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 effect only upon that 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 factor* 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. (Emphasis Supplied)

This provision is the reason for the split decision in the *Peñera* case. The Supreme Court ruled:

In view of the third paragraph of Section 15 of Republic Act No. 8436, as amended, the he Dissenting Opinion argues that Section 80 of the Omnibus Election Code can not be applied to the present case since, as the Court held in *Lanot v. Commission on Elections*,² the election campaign or partisan political activity, which constitute the prohibited premature campaigning, should be designed to promote the election or defeat of a particular candidate or candidates. Under the present election law, while a person may have filed his/her COC within the prescribed period for doing so, said person shall not be considered a candidate until the start of the campaign period. Thus, prior to the start of the campaign period, there can be no election campaign or partisan political activity designed to promote the election or defeat of a particular candidate to public office because there is no candidate to speak of.

² 507 SCRA 114 (2006).

