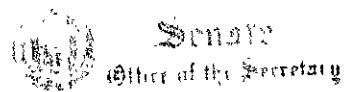


SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)



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SENATE
S. No. 2445

RECEIVED BY: lv

Introduced by Senator Miriam Defensor Santiago

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the Supreme Court, by a split vote of 8-7, ruled in effect that the offense of premature campaigning has already been repealed by Republic Act No. 8436¹ or the new Poll Automation Law, as amended.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 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

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.

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 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. (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.

According to the Dissenting Opinion, even if Peñera's acts before the start of the campaign period constitute election campaigning or partisan political activities, these are not punishable under Section 80 of the Omnibus Election Code given that she was not yet a candidate at that time. On the other hand, Peñera's acts if committed within the campaign period, when she was already a candidate, are likewise not covered by Section 80 as this provision punishes only acts outside the campaign period.

The Dissenting Opinion ultimately concludes that because of Section 15 of Republic Act No. 8436, as amended, the prohibited act of premature campaigning in Section 80 of the Omnibus Election Code, is practically impossible to commit at any time.

In order to avoid any confusion in the future, the bill includes "prospective candidates" in the scope of the prohibition against premature campaigning. Prospective candidates are those political aspirants, whether or not he/she explicitly declared his/her intention to run in the immediately preceding elections, who eventually file their COCs. The bill also re-defines the term "candidate". Under the bill, from the moment any person files his/her COC, he/she shall be considered as a candidate, and the acts constituting premature campaigning shall apply to candidates upon filing of their COCs. This is a clear repudiation of the Supreme Court decision in *Peñera*.

Further, to make the acts of candidates or prospective candidates constituting election campaigning or partisan political activities that are committed even prior to start

² 507 SCRA 114 (2006).

of the campaign period punishable, the bill prohibits candidates or prospective candidates from engaging in any act of premature campaigning within one year before the start of the campaign period. This will in effect, repeal Section 15 of R.A. No. 8436. The only condition required in order to be held liable is that the candidate should have continued with his/her candidacy; or that the prospective candidate should have subsequently filed his/her COC and actually continued with his/her candidacy.

our
Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

1 CANDIDATES UPON THE FILING OF THEIR
2 CERTIFICATE OF CANDIDACY.

3 ON THE OTHER HAND, THE TERM "PROSPECTIVE
4 CANDIDATE" REFERS TO ANY PERSON ASPIRING
5 FOR OR SEEKING AN ELECTIVE PUBLIC OFFICE,
6 WHETHER OR NOT HE/SHE HAS EXPLICITLY
7 DECLARED HIS/HER INTENTION TO RUN AS A
8 CANDIDATE IN THE IMMEDIATELY PRECEDING
9 ELECTIONS, WHO EVENTUALLY FILES A
10 CERTIFICATE OF CANDIDACY;

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

15 1. Forming organizations, associations, clubs, committees or
16 other groups of persons for the purpose of soliciting votes
17 and/or undertaking any campaign for or against a
18 candidate;

19 2. Holding political caucuses, conferences, meetings, rallies,
20 parades, or other similar assemblies, for the purpose of
21 soliciting votes and/or undertaking any campaign or
22 propaganda for or against a candidate;

23 3. Making speeches, announcements or commentaries, or
24 holding interviews for or against the election of any
25 candidate **OR PROSPECTIVE CANDIDATE** for public
26 office, **PROVIDED, THAT NEWS COVERAGE AND**

1 **INTERVIEW SHALL NOT BE CONSIDERED**
2 **PARTISAN POLITICAL ACTIVITY.**

- 3 4. Publishing or distributing campaign literature or materials
4 designed to support or oppose the election of any
5 candidate **OR PROSPECTIVE CANDIDATE**; or
6 5. Directly or indirectly soliciting votes, pledges or support
7 for or against a candidate **OR PROSPECTIVE**
8 **CANDIDATE.**

9 **THE TERM "INDIRECTLY SOLICITING**
10 **VOTES, PLEDGES OR SUPPORT" INCLUDES THE**
11 **FOLLOWING ACTS:**

- 12 a. **ENDORISING ANY PRODUCT OR**
13 **SERVICE, WHETHER FOR A FEE OR**
14 **NOT;**
15 b. **APPEARING IN ANY INFOMERCIAL;**
16 c. **APPEARING IN A DOCUMENTARY OR**
17 **MOVIE WHETHER FOR A FEE OR NOT;**
18 d. **APPEARING OR GUESTING IN ANY**
19 **TELEVISION OR RADIO PROGRAM,**
20 **EXCEPT FOR PURPOSES OF**
21 **LEGITIMATE NEWS COVERAGE;**
22 e. **ACCEPTING ANY EMPLOYMENT IN**
23 **ANY MEDIA OUTFIT AS A NEWS**
24 **ANCHOR, WRITER, OR REGULAR**
25 **TALENT; OR**

1 **f. BUYING ANY PRINT, RADIO,**
2 **TELEVISION OR INTERNET SPACE TO**
3 **ADVERTISE HIM/HER-SELF OR ANY**
4 **PRODUCT OR SERVICE.**

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

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

14 SECTION 3. Batas Pambansa Blg. 881 aka the “Omnibus Election Code of the
15 Philippines”, Section 80 is hereby amended to read as follows:

16 Sec. 80. Election campaign or partisan political activity outside
17 campaign period. – It shall be unlawful for any person, whether a candidate
18 **OR PROSPECTIVE CANDIDATE**, or for any party, or association of
19 persons, to engage in an election campaign or partisan political activity
20 except during the campaign period: Provided, That political parties may
21 hold political conventions or meetings to nominate their official candidates
22 within thirty days before the commencement of the campaign period and
23 forty-five days for Presidential and Vice-Presidential election.

24 **ANY PERSON, WHETHER A CANDIDATE OR**
25 **PROSPECTIVE CANDIDATE MAY BE HELD LIABLE UNDER**
26 **THIS SECTION FOR THE ACTS COMMITTED WITHIN ONE**

1 YEAR BEFORE THE START OF THE CAMPAIGN PERIOD;
2 *PROVIDED, HOWEVER,* THE CANDIDATE SHOULD HAVE
3 ACTUALLY CONTINUED WITH HIS/HER CANDIDACY;
4 *PROVIDED, FURTHER,* THE PROSPECTIVE CANDIDATE WHO
5 ENGAGED IN AN ELECTION CAMPAIGN OR PARTISAN
6 POLITICAL ACTIVITY TO PROMOTE HIS/HER INTENDED
7 CANDIDACY SHOULD HAVE SUBSEQUENTLY FILED HIS/HER
8 CERTIFICATE OF CANDIDACY AND ACTUALLY CONTINUED
9 WITH HIS/HER CANDIDACY.

10 SECTION 4. Batas Pambansa Blg. 881 aka the “Omnibus Election Code of the
11 Philippines”, Section 81 is hereby amended to read as follows:

12 Sec. 81. Intervention of foreigners. – It shall be unlawful for any
13 foreigner, whether judicial or natural person, to aid any candidate **OR**
14 **PROSPECTIVE CANDIDATE** or political party, directly or indirectly, or
15 take part in or influence in any manner any election, or to contribute or
16 make any expenditure in connection with any election campaign or partisan
17 political activity.

18 SECTION 5. *Separability Clause.* – If any provision of this Act shall be declared
19 unconstitutional, any other provision not affected thereby shall remain in full force and
20 effect.

21 SECTION 6. *Repealing Clause.* – All laws, decrees, orders, rules and regulations,
22 or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

1 SECTION 7. *Effectivity.* – This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

Approved,

/fldp30oct2014