

RECORD OF THE SENATE

MONDAY, AUGUST 21, 2000

OPENING OF THE SESSION

At 3:31 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

The President. The 13th session of the Third Regular Session of the Eleventh Congress is hereby called to order.

We shall be led in prayer by Sen. Robert S. Jaworski.

After the prayer, the Opera Chorus of the Philippines will lead us in the singing of the national anthem. It will also render another song, entitled *Pilipinas, Inang Bayan*.

Everybody rose for the prayer.

PRAYER

Senator Jaworski.

Lord, we bow to Your presence and power over us, over all our affairs on earth - in our homes, communities, and in our nation divided by man-made tragedies and man-made wars.

If we come upon a man by the roadside who was robbed, beaten, and driven from his home, or whose town was visited by pestilence or pillaged by foes, empower us to correct the injuries that man received, salve the wounds that he sustained, find him a home where he can be safe with his family and provide for their needs.

Empower us to lovingly do that to all our neighbors—who may not be of the same race, who may not be of the same social class, who may not have the same lifestyle, who may not share the same beliefs as we have.

In that light, we pray for our brothers chained by all enslaving conditions: war, environmental abuse, disrespect and greed.

Lord, we thank You for the strength and humility that help us affirm Your healing presence. We thank You for showering us with love enough so that we may truly love and extend peace to all our neighbors.

Amen.

NATIONAL ANTHEM

Everybody remained standing for the singing of the national anthem.

The President. The Secretary will please call the roll.

ROLL CALL

The Secretary, reading:

Senator Teresa Aquino-Oreta	Present
Senator Robert Z. Barbers	Present*
Senator Rodolfo G. Biazon	Present*
Senator Renato L. Compañero Cayetano	Present*
Senator Anna Dominique M. L. Coseteng ...	Absent ***
Senator Miriam Defensor Santiago	Present
Senator Juan Ponce Enrile	Present
Senator Juan M. Flavio	Present
Senator Teofisto T. Guingona Jr.	Present
Senator Gregorio B. Honasan	**
Senator Robert S. Jaworski	Present
Senator Loren B. Legarda-Leviste	Present
Senator Ramon B. Magsaysay Jr.	Present
Senator Blas F. Ople	Present
Senator John Henry R. Osmeña	Present*
Senator Sergio R. Osmeña III	Present
Senator Aquilino Q. Pimentel Jr.	Present
Senator Ramon B. Revilla	Present
Senator Raul S. Roco	Present
Senator Vicente C. Sotto III	Present
Senator Francisco S. Tatad	Present
The President	Present

The President. With 16 senators present, there is a quorum.

The Majority Leader is recognized.

JOURNAL

Senator Tatad. Mr. President, I move that we dispense with the reading of the *Journal* of Session No. 12, Wednesday, August 16, 2000 and consider it approved.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

* Arrived after the roll call

** On official mission

*** On account of illness

The President. Is there any objection? *[Silence]* There being none, the session is suspended for a few minutes.

It was 5:19 p.m.

RESUMPTION OF SESSION

At 5:22 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

MOTION OF SENATOR TATAD (Referral of the Privilege Speech of Senator Biazon and the Interpellations Thereon to the National Defense and Security; and Peace, Unification and Reconciliation Committees)

Senator Tatad. Mr. President, may I restate my motion to refer the privilege speech and the interpellations thereto to the Committees on National Defense and Security; and Peace, Unification and Reconciliation. This is with the consent of the sponsor.

Senator Biazon. Yes, Mr. President. I withdraw my motion for referral to the Blue Ribbon Committee. Maybe, initially, we can conduct the hearing together with the Committee on Peace, Unification and Reconciliation.

Thank you, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING S. No. 1742—Lifting the Political Ad Ban (Continuation)

Senator Tatad. Mr. President, I move that we resume consideration of Senate Bill No. 1742 as reported out under Committee Report No. 71. This is the Political Ad Ban Bill.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1742 is now in order.

Senator Tatad. We are now in the period of interpellations. I ask that the distinguished sponsor, Sen. Raul S. Roco, chairman of the Committee on Electoral Reforms, Suffrage and People's Participation, be recognized. For the first interpellation, I ask that Sen. Miriam Defensor Santiago be recognized.

The President. The principal sponsor, Sen. Raul S. Roco, is recognized. For the period of interpellations, Sen. Miriam Defensor Santiago is recognized.

Senator Defensor Santiago. Thank you, Mr. President.

Will the distinguished gentleman yield, please.

Senator Roco. Yes, I will be happy, Mr. President. But before doing so, may we just restate very briefly to put in context for all our colleagues because we have discussed this last May. The committee tried to simplify the issue on the lifting of the ban on election propaganda by having a very straightforward bill, basically a takeoff from the Sergio Osmeña filing. So that lawful election propaganda, all election propagandas are basically allowed, subject to truth in advertising law. Then, we repeal specific laws and existing laws, Section 85, the prohibited election practices; Sections 10-11 of RA No. 6646 on prohibited acts and common poster areas. Then, we delegate to the Comelec the authority to thereafter issue rules and regulations on the matter. And that is how we thought we might be able to simplify the modification of the present law.

Having stated that, Mr. President, we shall gladly yield now to the questions of our distinguished lady senator.

Senator Defensor Santiago. Thank you. In the last Congress, I was the sponsor of a similar bill to lift the political ad ban and I remain a supporter of the bill. However, I would like to raise certain points this afternoon in order to make the bill less susceptible to judicial attack in the event...

I would like to go over the various lines of this one-page bill in the order in which they appear on the page.

I would like to deal first with the title which uses the term "Election Propaganda" and then go to Section 1 which has the subtitle also using the term "election propaganda." However, after the subtitle of Section 1, the first sentence uses another term. It uses "political advertisements." Thus, the situation is that in two cases, the term "election propaganda" is used—that is to say, in the title of the bill and in the subtitle of Section 1. However, the term "political advertisements" is used in the main body or in the main text of the bill found in Section 1.

On this point, please allow me to explain as follows: Our Election Code, by which I refer to BP Blg. 881, uses the term "election propaganda" as a general term, instead of "political advertisement." The term "political advertisement" as in political advertisement or propaganda is used only once in the penultimate sentence of the Election Code, Section 86.

Political advertisement, therefore, is only one of the methods in the whole arsenal of election propaganda. This should be understood very well in our Hall because in the process of amending election propaganda through mass media, which is actually political advertisement, Congress might unintentionally amend or repeal existing provisions of other forms of election propaganda classified under the law as lawful or prohibited.

I would like to beg the indulgence of our colleagues in treating this matter a little further at length. What is election propaganda? Election propaganda should also be understood in the manner that it is defined by law. Election propaganda is designed to promote the election or defeat of a particular candidate or candidates to a public office. It is considered election campaign or partisan political activity and, for this reason, election propaganda must be done only during the campaign period of a particular election as presently contained in our Election Code.

Under the present Election Code, this prohibition, violation of which is an election offense, applies to a candidate, a voter, a political party or an association of persons. There are types of election propaganda. Under our existing law, election propaganda is of two types: (1) election propaganda advertisement; and (2) election propaganda gadget.

Election propaganda advertisements, in turn, are classified into: (1) printed materials; (2) audiovisual by cinematography, audiovisual units or other screen projections; (3) through print media, meaning the newspapers; or (4) through broadcast media, meaning radio or television.

And so, at the end of this lengthy explanation, may I please raise the question: Would the distinguished sponsor clarify whether the term of choice for this Chamber is election propaganda or political advertisement, election propaganda being, I believe, a broader term?

Senator Roco. Yes, Mr. President. The election propaganda is used precisely because it is broader, Mr. President. Then the other sections of existing law, Batas Pambansa Blg. 881, are not modified, and therefore, the definition or the use of the term "election propaganda" under Section 82 of Batas Pambansa Blg. 881, for instance, will remain as defining lawful election propaganda.

The use of political advertisements was intended to distinguish only the first line referring to national elective positions and to the access of local elective officials to political advertisements although this must now be covered by the existing provisions under Sections 90 and 92 of the Omnibus Election Code.

Senator Defensor Santiago. Would the gentleman have any objection if, during amendment stage, I propose that in the first two lines of Section 1, the term used should be "election propaganda" to make this second line consistent with the title and with the subtitle of that same Section 1?

Senator Roco. In fact, Mr. President, if we can further improve it, I think we got snagged with the term "advertising" only because of the reference to the Truth in Advertising Act. But we will certainly appreciate rewording it to accommodate the concept of truth in advertising.

Senator Defensor Santiago. Thank you, Mr. President.

I will now proceed to Section 1 which is entitled "Lawful Election Propaganda." This section begins as follows:

"Subject only to the observance of truth in advertising, all political advertisements" and then it goes on to make a statement.

The only restriction to lawful election propaganda in political advertising under this line is the observance of truth in advertising. However, I would like to beg the indulgence of our colleagues so that I may read Article IX, Letter C of the Constitution, which refers to the Commission on Elections. Section 4 provides in effect:

The Commission may, during the election period, supervise or regulate the enjoyment... media of communication or information... 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.

In other words, our Constitution gives to the Commission on Elections the power to supervise or regulate media of communication or information. Therefore, whether we include it in this bill or not, the political advertising or election propaganda situation is subject to the power of the Comelec either to supervise or to regulate.

Therefore, may I raise the question on whether it might be appropriate. Although it might not be absolutely necessary, still would it be advantageous to amend this line during the proper period such that it will read, subject to style: **SUBJECT ONLY TO THE OBSERVANCE OF TRUTH IN ADVERTISING AND TO THE SUPERVISION OR REGULATION OF THE COMELEC**, and then it will go on?

Senator Roco. Again, Mr. President, the proposed amendment is not deleterious and we are not hostile to the idea. But if I may point out something we tried to do by way of draftsmanship.

The bill just seeks to amend and delete from the existing statute books Section 85 of the Omnibus Election Code and then Sections 10 and 11 of RA No. 6646. We consciously did not want to touch Section 86 which reiterates Article IX, Section 4, Subsection C of the Constitution. So we do appreciate the intent and the express articulation that nothing in this bill, of course, inhibits the constitutional powers granted to the Comelec. But on top of that, we now call attention that we are preserving Section 86 which further refines the constitutional mandate.

So, again, we have no hostility towards the idea. Later on, we will discuss with the lady senator, not necessarily on the floor that avoiding these words in trying to simplify the bill has certain advantages. I hope to demonstrate this during the period of interpellations.

Senator Defensor Santiago. Thank you, Mr. President.

I am still in Section 1. I am now on the last line of that section. It is on line 7 of page 1. It refers to the provisions of Sections 90 and 92 of the Election Code.

On this mention of Sections 90 and 92, please allow me to make an extensive comment.

Senator Roco. Yes, Mr. President.

Senator Defensor Santiago. May I propose that our bill address the constitutional issue of whether newspaper, radio broadcasting, television station or other mass media can be legally compelled to provide to the Comelec free print space or air time.

As far as print space is concerned, Section 90 of the Election Code on the Comelec space provides that the Commission "shall procure space" in at least one newspaper of general circulation in every province or city. This phraseology suggests payment, otherwise, it will amount to unjust taking of property; meaning payment for the print space without due process of law. Newspapers have already refused in the past to provide free print space and have brought the matter to the Supreme Court.

On the other hand, in the case of air time—referring to radio and television time—while Section 92 of the Election Code on Comelec time states that the Commission shall

procure radio and TV time to be known as "Comelec time," there is an added provision which states:

For this purpose, the franchise of all radio broadcasting and TV stations are hereby amended so as to provide radio or TV time free of charge during the period of campaign.

At the very least, the present phraseology of Section 92 raises doubt about the constitutionality of this section. Therefore, if we are going to mention Sections 90 and 92, my question is: Should our bill not address this issue of constitutionality because our bill incorporates by reference Section 90 on Comelec space and Section 92 on Comelec time of the Election Code? These two Sections 90 and 92 have been considered to be constitutionally offensive by certain print and broadcast media members.

Senator Roco. Mr. President, we share the premises of the distinguished lady senator, and again, we are not averse to putting modifications to Section 90 or Section 92 under the current Election Law.

May we, however, point out that there are two policy objectives that are sought by the bill. Our committee thought of concentrating on the first one.

The two policy goals are: First, access to information or opportunity for candidates to inform the people of whatever it is that they think recommends them to the people for election. It flows from the right of the people to be informed or to know about matters of public concern. That is the major policy goal.

The second policy goal, not necessarily in the hierarchy of constitutional values, is equal access to opportunity. This is now where we are treading, and it can comprehend prohibitions on polls or granting rights of reply or granting equal opportunity to be exposed. If one is attacked on page 1, maybe he should not answer on page 18, and that sort of thing, except that it is very difficult to analyze all the myriad possibilities under the second policy goal.

Again, in a desire of our committee to get this done at the earliest possible time so that the Comelec will have time to define the rules and regulations, we thought of concentrating on the policy goal of opportunity for exposure for all candidates.

We are not averse, as I have said, to going into the other policy goals, and at the appropriate time, we are also not averse to modifying specifically Sections 90 and 92 to preclude constitutional issues later on.

Senator Defensor Santiago. I would like to thank the gentleman for his graciousness.

Please allow me to proceed now to Section 2, subtitled "Authority of the Commission to Promulgate Rules; Election Offenses." It starts by stating: "The Commission shall promulgate the rules and regulations..."

I would like to suggest, not necessarily in the form of a question but just to make the plain and bold suggestion, that in this section our bill should mention that Section 86 of the Election Code applies. Section 86, as mentioned by the distinguished sponsor, deals with the topic of regulation of election propaganda through mass media.

Therefore, if this is the case and since there is here in Section 2 a reiteration of the authority of the Commission to promulgate rules, I respectfully suggest that our bill should mention explicitly Section 86 because it provides criteria for the Comelec in the promulgation of rules and regulations. Section 86 also preserves the right of media to broadcast accounts of significant or newsworthy events and views on matters of public interest.

And so the question, if there is a need for one, is simply whether this Section 2 could be improved by making an explicit reference to Section 86.

Senator Roco. Again, Mr. President, we are not against the idea as long as we can avoid mentioning all the other specific sections by way of repleading them in this bill, but to the extent that it is understood statutorily that what we are repealing are only Section 85 of the Omnibus Election Code and Sections 10 and 11 of RA No. 6646.

Actually, there is no statutory need for mentioning Section 86. But if it will help, if it will clarify, if it will pinpoint, Mr. President, the responsibility and duty of the Comelec, again, the committee will, of course, be amenable to improve this bill.

Senator Defensor Santiago. Thank you. I only have two points because the hour is late. I will now go down the bill to Section 3 on the "Repealing Clause." This bill seeks to repeal the Election Code, Section 85 and then Republic Act No. 6646, Sections 10 and 11. May I please request permission to deliver a lengthy explanation of the basis of the question.

I agree with Section 3 that RA No. 6646, Sections 10 and 11, should be repealed. However, even only to put it on record as a guide or an aid to the interpretation of this "Repealing Clause," I would like to appeal to our colleagues for clear understanding that the repeal of RA No. 6646, Section 10,

which refers to common poster areas will not result in a repeal of the Election Code, Section 91, which also refers to common poster areas.

In other words, Section 91 of the Election Code should, in fact, remain, while RA No. 6646, Sections 10 and 11, should be repealed. This repeal will eliminate the confusion about billboards because it will reactivate the provisions of what used to be the Election Code, Section 82, on lawful election propaganda respecting the size, use and removal of posters and streamers. Particularly our colleagues who might be standing for reelection, it might be instructive that under RA No. 6646, posters shall not exceed 2 x 3 feet in area; streamers not exceeding 3 x 8 feet which may be displayed five days before the date of the meeting or rally and shall be removed within 24 hours after the meeting or rally.

The size of posters and streamers are the same in the Election Code, Section 82. The only difference is in the time of display and removal of streamers. Under Section 82, display is one week before the date of meeting or rally not five days, and removal is within 72 hours after said meeting or rally, not within 24 hours.

While I agree to the repeal of RA No. 6646, Section 11, paragraph (b), may I please put on record that I am against the repeal of the last sentence of that section. This last sentence imposes limitations on media personalities. The provision reads:

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.

My view is that this provision should be reiterated as one of the provisions of our instant bill, and I recommend two things: First, we should add to the enumeration of media men the category of reporters and correspondents; and, second, we should extend the period of required leave of absence beyond the campaign period up to election date.

I will not raise a question. I will simply appeal to the Technical Working Group, particularly to the distinguished sponsor, to study these technical points because I intend to raise them as amendments during the proper period and these are so technical that, I think, better advantage is gained if these are researched before final debate on the proposed amendment.

So with the permission of the Senate President, I would like to go to the last question.

The last question...

Senator Roco. May I just comment a little, please?

Senator Defensor Santiago. Yes, Mr. President.

Senator Roco. There was a conscious effort, Mr. President, to, in fact, specifically repeal Sections 10 and 11 of RA No. 6646 because they delimit. So the Comelec, under Section 10, may designate common poster areas which as we know, during all these elections have been ignored because the common poster areas are not enough; and in any event, it is next to impossible to watch out for all of them or even to police them. So rather than having violators of law among all candidates, we thought specifically deleting Section 10 should solve that.

Again, the distinguished lady senator points out correctly that what is left is Section 90 on Comelec space. But in Section 90 of RA No. 6646, we now state specifically, Mr. President, that the Commission shall procure space in at least one newspaper of general circulation in every province or city. *Provided, however, et cetera, if there are absences...*

This has been the practice, Mr. President, since the ConCom elections. We saw it in the 1987 elections which I think brought most of our senior colleagues here into the Senate. We saw it again in 1992 when, I think, the first time my colleagues—Senator Tatad and Senator Coseteng—and I were first elected here. So these are tested and there are limits to the Comelec practice on the matter.

The distinguished lady senator is also correct that in having deleted Section 11 on *Prohibited Forms*, we do not, of course, delete Section 92 on Comelec time. But again on Comelec time now, the Commission shall procure radio and television time to be known as the "Comelec time." For this purpose, the franchise of radio broadcasting, et cetera, is therefore amended.

The distinguished senator is also correct in stating that there is a distinct difference between print and media as regards treatment. Because media—to the extent that these are radio or television and these operate under franchise or by permission of law and the Republic—have certain restrictions that print, in the classic sense of freedom of the press, is not subjected to. After all, print is supported by the readers, and the government, in fact, sometimes can make it very difficult for print to operate by simply imposing higher taxes on newsprint.

So those juridical norms that our distinguished friend has mentioned, Mr. President, are correct.

The committee will certainly dwell on whether there is an appropriate salutary amendment as regards the prohibition on members of the practicing press. We will consider it at length, Mr. President.

Senator Defensor Santiago. Please allow me now to raise a point of personal privilege. I am sure it has been instructive to the Majority Leader at the rate of speed with which I have been zipping through my interpellation that the best way to abbreviate whatever it is that I might want to say on this floor is to call me after five o'clock. But unfortunately, I will have to request a certain amount of time to introduce my last question on "opinion surveys."

Senator Roco. Yes, Mr. President.

Senator Defensor Santiago. Senator Tatad has filed a bill to absolutely prohibit opinion surveys.

I would like to read from his Explanatory Note the first two paragraphs:

At present, the country has no law regulating the conduct of surveys and the activities of survey stations and private groups, particularly those relating to political opinions. In countries like France, Italy, Germany, Portugal, Spain, Greece, Luxembourg and Canada, political opinion polls or surveys are prohibited for certain periods before elections to avoid last minute pressure on voters.

Surveys provide significant pieces of information about public opinion, but the same are not always reliable in presenting accurate popular opinions and may be manipulated to advance the interests of some individuals or groups of individuals. Notably during the election period, politicians and political parties often cause the conduct and dissemination of surveys to advance their political interests. Experience tells us that surveys conducted by different groups are effective in shaping the political preferences and opinion of the public in general. Thus, numerous survey stations conduct and disseminate surveys which are politically motivated or tend to advance the political interests of certain politicians. Furthermore, the conduct and dissemination of these types of surveys tend to show the supposed popularity ratings of some candidates without informing the electorate of other, and more important qualifications.

In addition, last Sunday or yesterday, the various Manila dailies carried news items. One, for example, reads: "A Mindanao

lawmaker has filed a bill prohibiting media outfits from disseminating poll survey results within a month prior to elections."

So we have a bill pending both in the House and in the Senate concerning opinion surveys. This merited at least some background research in everybody's favorite research material, the Internet. What emerged is a report on a worldwide survey on the publication of opinion polls, particularly on the topic: "Embargoes on the Publication of Poll Results Prior to Elections."

Thirty of the 78 countries covered in that Internet survey apply legal restrictions on the publication of public opinion survey results mostly comprising an embargo prior to general elections. In these cases, it is often prohibited to publish poll results 24 hours before an election, sometimes for a week, but rarely for longer periods. The longest period of this kind is in South Africa which has a six-week moratorium.

The total picture according to that world survey is as follows: 47 countries are reported to have no embargoes on opinion surveys; nine countries have 24-hour embargoes before election day; 12 countries have two to seven-day embargoes; nine countries report that they have made their embargoes longer; one country did not answer and there is a total of 78 countries.

This survey produced the following reasons for possible government restrictions on the publication of opinion surveys during the campaign period: There were 24 mentions of considerations of protecting the dignity of the democratic process; four mentioned considerations for the rights of privacy; four mentioned national security considerations; and six gave other reasons. The 38 explanations included duplications for 29 countries with restrictions.

In recent years, concludes this report, some countries have prolonged their embargo periods: Italy, from seven to 28 days; Poland, from seven to 12 days; Canada, from no ban to three days; Chile, from one to seven days; but at the same time, others have shortened or withdrawn their embargoes: Croatia, from three days to 24 hours.

I would not have any certain knowledge on what the weight of Croatia would be in setting an example for the rest of the world but it is mentioned. So I shall read on: Croatia, from three days to 24 hours; Colombia, from 10 to seven days; and Argentina, from two weeks to no ban.

The end question for all these information is: Would the distinguished gentleman consider an amendment during the proper stage concerning opinion surveys not necessarily an absolute prohibition but, at least, at the very minimum, an

enumeration of the criteria which would be observed before opinion surveys may be published particularly when the time before election day becomes more and more abbreviated? Because if the answer is in the affirmative, then I shall get to work and try and formulate an amendment that might find general acceptance among our colleagues.

My fear about opinion surveys is this: It is entirely possible in a culture of corruption that an opinion survey firm might work diligently and conscientiously for, let us say, a period of one year, sufficient to establish a reputation for credibility; and then at the ultimate hour, let us say, the prohibitory period of maybe six (6) weeks or the campaign period, the firm sells its services to the highest bidder so that whoever has the most money will come out leading in that survey and will therefore be in a peculiar advantage over all the rest of his competitors. If that is the case, then it might be fruitful for us to include a provision on the circumstances that are legislatively acceptable for media to publish opinion survey shortly before election day.

Senator Roco. Mr. President, the lady senator will recall that even as we were reading the *Journal*, or reading the Order of the Day, I had discussed with them, seeking our help precisely to dwell a little on this question of polls on surveys. I indicated to the lady senator that maybe we should not restrict our thoughts to just lifting the ban and maybe there should be some area on opportunity on how to give fair protection to candidates, one of them being the unfairness of reporting certain survey results at certain points in the campaign. I also indicated that the committee has been studying the US rule. I understand it to be a voluntary ethical rule imposed by poll surveyors and the basic tenets involved are the following:

If one surveys and he wants to publish it, he must mention who authorized, who paid, and what was the method used. And if somebody feels aggrieved by the results and he asks, then he must be given raw data. Whoever asks for it therefore will be responsible for getting his statistician to consider the data so that it can be rebutted.

But that being said, still there must be a period of time when surveys should be precluded from being published because they do influence elections and some may vote simply because of a misguided survey.

So I will appreciate the help of our distinguished friend as well as of Senator Tatad because that was the bill filed by Senator Tatad.

The committee is concerned, however, that I do not want a full-blown new debate on another area that may impede the

approval of the bill, and that is why we try to simplify. But if the Chamber can reach a consensus on norms acceptable to all as regards publication of poll surveys, Mr. President, we certainly should avoid the unfairness of a poll survey making self-fulfilling predictions.

The first time we ran for elections with Senator Tatad—I think, with one week to go—some survey was published and purportedly very reputable, which placed me under No. 37. I do not know whether Senator Tatad was even within the top 50, which was absolutely wrong, because as it turned out, one of the wealthier candidates turned out to be in No. 37 and not necessarily me. But we do not impugn, Mr. President, the motives. Maybe somebody else just doctored the results. But it was so difficult therefore to scramble in the last week to tell one's constituencies not to lose heart. It is an additional burden to candidates. So if we can create a balance of fair reporting and fair opportunity for the candidates, then the committee will be very happy to introduce in the bill or to accept an amendment to that effect which will require a more generic title, however, because right now we sort of focused on just getting rid of the ban on election propaganda.

So we wish to thank the lady senator for raising it now.

Senator Defensor Santiago. I am very happy at the receptive and hospitable response of the distinguished sponsor. Because certainly, it seems to be a self-evident proposition, at least, to me that the fate of the leadership of our country should not be left in any measure, in the hands of survey firms particularly if there are only two or three of them operating in the country.

In the first place, they are not accountable to the people; and in the second place, they possess no amount of sovereign power. Nobody ever vested any of the sovereignty of the State in these people.

Furthermore, on another point, I absolutely resent the fact that just because I am a public official, I should be treated as if I were a can of sardines and consumers should be asked whether they like me on the basis only of appearances without opening the tin can. In effect, they have reduced political life to a mere matter of appearances or how many sound bytes or how many video clips we appear in, especially if the topic is page 1 topic of the day. There is no extensive analysis of the thought processes, if any, that flit through the mind of the public official. There is much emphasis on posturing, pointing of finger or waving a hand in the air for unstated purposes and objectives.

Therefore, I hope that in the interim, our colleagues will spend much thought on this question of opinion surveys and

what seems to be a malevolent broadening of their powers in our democratic society.

I would like to thank the distinguished sponsor for his hospitable intelligence in entertaining our humble questions.

Thank you.

Senator Roco. I thank the lady senator, Mr. President.

Just by way of adding a little more on the surveys, we—and that includes all of us, the press, all professions that deal with words and communication—are aware that the way we put a question can influence even the answer.

The more simplistic questions can therefore give rise to a host of interpretations which can now be interpreted at will by whoever is supposed to have been objectively assessing the matter.

Mr. President, on the other hand, we should be aware that it is a matter of public interest if there is an attempt to measure validity or acceptability of issues. One can understand that a survey on gun ban may be useful as a guide to candidates. But still, they must mention if that survey on gun ban was funded by the gun lobby. They should say so. Full disclosure and transparency should apply to us, to those who survey, and to all who try to promote and protect public welfare.

So that is just a comment and a reaction to our friend.

The President. The Majority Leader is recognized.

Senator Tatad. Mr. President, may I be allowed to just thank Senator Defensor Santiago for raising a point that is the main issue on the bill I filed. Just one small statement before we leave this issue.

Surveys are really part of market research. It is completely legitimate to commission a survey in order to understand the market. But in our situation, surveys are being used not for market research but for propaganda purposes—purely for propaganda. This is what is objectionable, and that is what we must deal with.

Senator Roco. Mr. President, if the surveyor is related to a candidate, he should say so.

Senator Tatad. Yes, Mr. President. And if the enumerators have been preselected, he should say so. If there is a fixed constituency answering all questions on every issue, he should say so. It has become a racket in this country, I am sorry to say.

Mr. President, at this point, I ask that the distinguished Minority Leader be recognized for the next interpellation.

The President. Sen. Teofisto T. Guingona Jr. is recognized.

Senator Roco. The distinguished Minority Leader is pointing to his watch. But that is precisely why we are calling him at this time.

By all means, Mr. President, whatever is the desire of the Minority Leader.

Senator Guingona. I was looking at the clock, it is already past six.

Senator Tatad. This is the time when the Minority Leader is brightest, after six.

Senator Guingona. I should attend some Cabinet meetings. At any rate, Mr. President, will the distinguished sponsor yield for some questions?

Senator Roco. Of course, Mr. President.

Senator Guingona. During the hearings, I understand that the distinguished sponsor called for several hearings; two, I think?

Senator Roco. That is true, Mr. President.

Senator Guingona. I was privileged to attend one of them, and we asked the Comelec officials what their views were concerning the lifting of the ad ban. As far as I can recall, it was Commissioner Flores of the Comelec who responded and said something to the effect that I did not fully understand. But if I understood her correctly, she said that perhaps a moderation of the political ad ban lifting should be done.

So, I do not know exactly what that is, because there were other interventions. I would like to ask the distinguished sponsor: Does the Comelec have the power to regulate the time and the rates on the basis of equal opportunity or equity for all parties and candidates?

Senator Roco. The answer, Mr. President, is yes. The constitutional mandate that directs the Comelec is Section 4 of Article IX, subsection C which the lady senator read earlier, but which I will read now for the record. It says:

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.

So, it is a specific section of the Constitution, Mr. President, which is repeated under Section 86 of Republic Act No. 6646. It is also articulated in Resolution No. 2983 of the Comelec, and so there is a great basis.

By way of underscoring that duty, we also have Article II, Section 26 of the Constitution which refers to equal access to opportunities for public service. The other section is on the Declaration of Principles which refers to the right of the people to be informed, as well as the Bill of Rights which, again, speaks of the right of the people to know.

Those are the mandates to the Comelec, and the answer is yes.

Senator Guingona. I would like to thank the gentleman for that answer.

The second issue is whether we just leave it to the Comelec to issue the necessary rules and regulations or whether we should put into the bill what we think are equal opportunities and equitable considerations for parties and candidates. For example, how much total airtime can be made available to political parties and candidates per category, prime time, class B, less prime time, class C? Would the distinguished sponsor agree to inputting that into the bill in the period of amendments?

Senator Roco. Let me explain Mr. President, that by deleting Section 85 of the Omnibus Election Code and Sections 10 and 11, we do not delete anything else. The power of the Comelec as regards time and space is already covered by the existing Omnibus Election Code, so that repeating that will just introduce greater debate.

The reason we tried to simplify the bill in this manner was precisely to avoid debating whether one or 10,000 angels can dance on the head of a pin. Airtime, for instance, is so difficult.

When we start cutting airtime, is it 10 minutes? Is it 30 minutes? But what about if it is A, B or C time? That was the point of debate that the committee wanted to avoid on the floor, because it becomes very difficult.

As regards those specifics, we rather prefer that we rely on the mandate of the Constitution that the Comelec has primary jurisdiction and plenary powers on the matter. But many of the laws and rules are still in the Omnibus Election Code and they remain untouched, and they are still in RA No. 6646 and they remain untouched.

So we did not want to debate again because we have been through three, four congresses, and those were the types of debate that became so lengthy. Why not? I mean, if one gets page 1, when do I get page 1? If I get eight o'clock in the airtime, when does she get a time as well?

Somehow, Mr. President, the committee will recommend that we leave these tedious details to Comelec officials. After all, we pay them well.

Senator Guingona. Yes, we pay them well. But if I recall, Commissioner Flores' answer was that,—it seemed to indicate at least at that time—it is better to put it in the bill because what happens if the Comelec, for one reason or another, does not? I am thinking of the Minority who may one day hopefully become the Majority?

Senator Roco. No, no, we have seen that. I have always been very protective of the Minority, Mr. President. I am majority in work because we have to help, but I am really a minority in terms of party affiliation. So the Minority Leader should not feel alone or lost or without a friend in that regard. But again, as I have stated, we do not touch many of the portions of the Omnibus Election Code. That remains in order to protect the Minority and the Majority because that is what laws are all about. The large portion of RA No. 6646 remains untouched.

Now, if the Minority Leader has specific amendments in mind, we certainly will always sit down and listen and heed the proposed amendments. But we will have to go through these one by one in the hope that in so doing, we do not again debate on a myriad of details that become very difficult.

Senator Guingona. If that is the feeling of the distinguished sponsor, who am I to insist. However, can we mandate the rules and regulations—

Senator Roco. Of course.

Senator Guingona. —and outline the things that we would like to see for a fair and equitable...

Senator Roco. Yes, Mr. President. As I indicated to the lady senator, Mr. President, as long as it avoids mentioning every section that is already in the existing law, I am sure, with the Minority Leader, we can craft the appropriate words to cover his apprehensions.

Senator Guingona. Yes, Mr. President. The bill refers only to national elective positions and the reason given is that anyway the locals are covered by Section 90 of the Omnibus Election Code. But if we lift the ad ban, should we not lift it also for local candidates? The local candidates sometimes are better-known in the locality. But if they are sectoral representatives running for public office,—of course, it is a national office, but they are locals and the sector, maybe, is regional—should we not, in the spirit of equality, lift it if we lift the ad ban for national officials?

Senator Roco. Yes, Mr. President. We are not again averse to including, for instance, party-list or sectoral representatives in the coverage.

The reason our committee thought that locally elected... This is the conscious use. So, excluding those locally elected. Because, for instance, in my particular case, I am looking towards running for Congress if my constituents will be happy with that. I have computed that I can probably shake the hands of every single voter in my district twice before the end of the elections, before the campaign period.

Senator Guingona. Including the women?

Senator Roco. Especially, Mr. President, in my district, they are the majority. Demographics in my congressional district are women—56 percent. So, we cannot help that.

So, for locally elected officials—and they are national officials—the time and space allows the candidate to reach out to all the voters, if he or she is so minded. And also for locally elected officials, it is better that the congressman, the mayor, the councilors, in fact, have direct contact with the voters. It is more salutary. But it cannot just be done for senators. It cannot be done for vice president or president. It is just impossible. That is why we restricted to the nationally elected officials.

I can see, Mr. President, valuable suggestion in applying that to sectoral or party-list, because they are two different features under the Constitution.

Senator Guingona. Yes, Mr. President, except that for party-list, it is the party and not the person.

Senator Roco. Even in the sectoral, there are sectoral

parties. I think the Constitution speaks of—we have to elect from the sectors, and they have mandated women, youth, urban poor, et cetera. There are sectors that require the presentation. And then we have the party-list, the registered national or the registered regional. I do not know if there is another kind of party-list representative.

We will be open to suggestion in that regard, Mr. President.

Senator Guingona. Thank you, Mr. President.

Now, may we come to the issue of rates, and this is one of the motives, I understand, for the original bill which the distinguished sponsor is seeking to amend.

What rates should be charged for political advertising? The concern is that stations, especially television stations because of the cost perhaps, could charge what to the candidate would appear as excessive rates. Of course, they always say that this has to be equated with the benefits. The coverage of this station is nationwide, to the ultimate barrio and barangay, and therefore the rate is not excessive and is justified.

But there are legitimate candidates who are relatively poor and who cannot afford P90,000 per 30-second spot advertisement. And if the reality is correct—and I think it is—that one spot is useless unless it is supplemented by five times in prime time and not in one station alone, but in two or three stations, then we can imagine that the rates would, to that individual candidate, seem excessive. Is there a way that we can regulate rates?

Senator Roco. Yes, Mr. President. May I read from Justice Isagani Cruz, who despite the yack [*Laughter*] of our distinguished colleague—but may I read from his strong dissent in the case of the *National Press Club vs. Commission on Elections*—touched the gravamen, the main issue as regards the rich and the poor candidates. He said:

The financial disparity among candidates is a fact of life that cannot be corrected by legislation except only by the limitation of their respective expenses to a common maximum.

So that is the answer to the question of our distinguished friend. But he continues—

The flaw in the prohibition under challenge is that while the rich candidate is barred from buying mass media coverage, it nevertheless allows him to

spend his funds on other campaign activities also inaccessible to his straitened rival.

Thus, the rich candidate may hold as many rallies and meetings as he may desire or can afford, using for the purpose the funds he would have spent for the prohibited mass media time and space. The number of these rallies and meetings which also require tremendous expense cannot be matched by the poor candidate, but the advantage of the rich candidate in this case is not similarly prohibited.

By the same token, the rich candidate may visit more houses, send more letters, make more telephone appeals, distribute more campaign materials, incurring for all these more expenses than the poor candidate can afford. But these advantages are allowed by the law because they do not involve the use of mass media space and time.

But the most serious objection to Section 11, is that it constitutes prior restraint on the dissemination of ideas. In a word, it is censorship. It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so and no more and no less than what he is permitted to say on the pain of punishment should he be so rash as to disobey.

So, Mr. President, again, what the committee is trying to avoid is to debate on very specific rates on how to measure, but the committee is open to legislative standards that may be offered by our distinguished friend to guide the Comelec in ascertaining what is a fair and equitable rate for time and space, considering that elections are also part of public service or the search for an appropriate public official. These things must be balanced, Mr. President, and the committee will be willing to adopt standards for this.

Senator Guingona. For example, would adopting fixed rates for elective officials and nonelective officials, in other words, for ordinary commercial uses—no changes—not hire for candidates—equal to sardines....

Senator Roco. The committee will reflect on this, Mr. President. But what we have seen as a personal experience is, when there is a prohibition, there is a black market. So it looks cheap. But then the books published by the Philippine Center for Investigative Journalism on graft and corruption, even I think in the press, indicates that there are rates and there are rates, and there are rates. So even if we limit it, unless there is an honest, diligent effort to comply with the spirit of the law

on the part of all, fixing rates just generates a black market for services, and what we thought we are avoiding as an evil, Mr. President, we might aggravate.

Senator Guingona. Yes, I understand. However, we are concerned with the time element—there is a campaign period. There is the pre-campaign period and months before the campaign period, knowing or anticipating that the political ad ban would be lifted, naturally there is a tendency to increase the rates.

Senator Roco. I guess that is what is referred to as market forces.

Senator Guingona. But since we are concerned also with the equitable fair treatment, can we balance the market forces with some regulations?

Senator Roco. In the discussions, Mr. President, on the restraining order, we suggested a constitutional basis which is a principle in the Constitution that property has a social function. This is an old function that my friend here, Nene Pimentel, and I, a long time ago were fighting for: this principle. Somehow, it got into the Constitution of 1973 and it was preserved now as a direct principle in the Constitution under property and the economy.

So the social aspect of property, Mr. President, is supposed to be something that guides all of us. That principle can be included in determining the rates or that principle can be a basis.

Again, if the distinguished Minority Leader can come up with the formulation to that effect, our committee certainly will not be hostile to the statement. But we must demonstrate that in seeking to inhibit again, we do not just create a black market for other purposes.

Senator Guingona. I see. Is there a difference between political advertising and political broadcasting? I think the bill refers to political advertising.

Senator Roco. Election propaganda, Mr. President.

Senator Guingona. Election propaganda.

Senator Roco. Yes, which is a broad definition that comprehends all messages that tend to support one candidate against another.

Senator Guingona. When there is a rally, that is also included?

Senator Roco. It is one of the means for promoting political message or for disseminating political propaganda, yes.

Senator Guingona. When a president goes to certain provinces and brings along his candidates, that is also included?

Senator Roco. It is called the benefit of being incumbent because that applies to all of us.

Senator Guingona. But not necessarily an advantage.

Senator Roco. No, being seen, Mr. President, we have learned, does not necessarily mean that one will get votes. Some people get elected because they are not known. But when they get to be known, we do not want to vote for them anymore. So being seen, it is correct, is not necessarily an advantage.

Senator Guingona. How about government television stations, radio stations, and sequestered stations? Would the distinguished sponsor have any objections to having one standard for these also because these are government-owned?

Senator Roco. Yes. Now, that is an appealing idea, Mr. President. I think, for clearly government-owned, one can have more equitable distribution because after all the government-owned belongs to all—majority and minority. So, I can see an equitable argument there.

In the case of sequestered properties, I am not quite sure, Mr. President, if the Supreme Court considers these sequestered properties as government-owned or private. So to that extent, my answer will depend on how we finally ascertain whether sequestered property is government-owned or private.

And as for private, Mr. President, I would imagine there are some benefits to private that cannot be taken away without due process.

Senator Guingona. How about private but related?

Senator Roco. My imagination does not reach that far, Mr. President. But if the distinguished gentleman can fill in the blanks, then our committee will...

Senator Guingona. I will just whisper this to the gentleman later.

Senator Roco. Mr. President, this whispering... Can we imagine the amount of wind that comes from whispers that are forgotten? *[Laughter]*

Senator Guingona. Mr. President, I have some other items that I would like to validate.

Senator Roco. Yes, Mr. President.

Senator Guingona. And it is already 6:30 p.m. *[Laughter]* So with the permission of the distinguished gentleman, may I take leave to resume on a later date.

Senator Roco. I think we look at the Majority Leader.

Thank you, Mr. President.

Senator Tatad. We thank the Minority Leader for his intervention and we look forward to hearing him again soon.

May I ask that Senator Biazon be recognized for a very short interpellation.

The President. Sen. Rodolfo G. Biazon is recognized.

Senator Biazon. Will the gentleman from Bicol and the Republic yield for one question?

Senator Roco. Gladly, Mr. President.

Senator Biazon. Mr. President, by election propaganda, would that include negative information, say, I pay for airtime to reveal information about my opponent? Would that be included?

Senator Roco. As long as it is true, Mr. President. I think the Truth in Advertising Act allows comparative advertisement. Of course, even if in truth there is no social purpose—when it is not covered by privilege communication under the libel laws—I mean whoever says that must answer for it.

So subject to existing law on libel, Mr. President, and the responsibility of truthfulness, of course.

Senator Biazon. Of course, that will be taken care of by the individual buying airtime. He will have to deal with that.

The question is, I buy, for example, space in the print media, and then airtime on radio and television, not talking about me but talking about my opponent. Would the amount that I pay be computed as mine?

Senator Roco. Of course, the answer is yes, Mr. President. Depending on whether the opponent of the gentleman believes that visibility per se is good, he will be very thankful to the gentleman if he keeps on repeating his name, even in the negative advertisement. *[Laughter]*

Senator Biazon. I would like to thank the distinguished gentleman, Mr. President.

Senator Roco. Aside from the fact that it gives him ammunition to sue the gentleman for libel. And that is exactly what the gentleman needs to start a good campaign.

Senator Biazon. I just wanted that for purposes of clarity.

I would like to thank the distinguished gentleman, Mr. President.

Senator Roco. I would like to thank the distinguished gentleman, Mr. President.

SUSPENSION OF CONSIDERATION OF S. NO. 1742

Senator Tatad. Mr. President, there are still a number of senators who have made reservation to interpellate but they would like to do so at a later time.

I therefore move that we suspend consideration of Senate Bill No. 1742.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Roco. Thank you, Mr. President.

Senator Tatad. Mr. President, I move that we proceed to the Additional Reference of Business.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

The Secretary will read the Additional Reference of Business.

ADDITIONAL REFERENCE OF BUSINESS

MESSAGE OF THE PRESIDENT OF THE PHILIPPINES

The Secretary.

August 7, 2000

HON. FRANKLIN M. DRILON

Senate President
Philippine Senate
Pasay City

Dear Senate President Drilon:

Pursuant to the provisions of Article VI, Section 26(2) of the Constitution, I hereby certify to the