

## RECORD OF THE SENATE

MONDAY, AUGUST 28, 2000

### OPENING OF THE SESSION

*At 3:25 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.*

The President. The 16th session of the Senate in the Third Regular Session of the Eleventh Congress is hereby called to order.

Let us all stand for the opening prayer to be led by Sen. Blas Fajardo Ople.

After the prayer, the Commission on Audit Chorale will lead us in the singing of the national anthem. The chorale will also render another song, entitled *Bahay*.

*Everybody rose for the prayer.*

### PRAYER

Senator Ople.

Lord Jesus Christ, Lord of Hosts, Lord of History, in the midst of our grave and critical problems, we thank You for the gift of life;

Thank You for the sun that nourishes all forms of life on this modest planet that we inhabit by Your grace;

Thank You for the gift of a beautiful land, "Pearl of the Orient Seas," the only country You have given us;

Thank You for our people's trust that has sent us to this august institution, the Senate of the Philippines, to make good laws and otherwise serve the interests of our people, especially the poor;

Thank You for the privilege of associating together for the conquest of the millennial poverty of our people in the greatest political adventure of our lives under the leadership of our friend and President, Joseph Ejercito Estrada, and the wise direction and guidance of our Senate President, Franklin M. Drilon, and the other officers of this institution.

For all these blessings, we thank You, Lord.

Amen.

The President. Amen.

### NATIONAL ANTHEM

*Everybody remained standing for the singing of the national anthem.*

The President. The Chair would like to thank the Commission on Audit Chorale for that beautiful rendition of the national anthem and another song, entitled *Bahay*.

### ROLL CALL

The Secretary will please call the roll.

The Acting Secretary [Atty. Reyes], reading:

Senator Teresa Aquino-Oreta .....	Present
Senator Robert Z. Barbers .....	Present
Senator Rodolfo G. Biazon .....	Present
Senator Renato L. <i>Compañero</i> Cayetano ....	Present
Senator Anna Dominique M.L. Coseteng ....	Present
Senator Miriam Defensor Santiago .....	Present
Senator Juan Ponce Enrile .....	Present**
Senator Juan M. Flavier .....	*
Senator Teofisto T. Guingona Jr. ....	Present
Senator Gregorio B. Honasan .....	Absent***
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 19 senators present, there is a quorum.

The Majority Leader is recognized.

### THE JOURNAL

Senator Tatad. Mr. President, I move that we dispense

\* On official mission

\*\* On official mission but arrived after the roll call

\*\*\* On account of illness

thereto be referred to the Committee on Constitutional Amendments, Revision of Codes and Laws.

**The President.** Is there any objection? *[Silence]* There being none, the speech and the interpellations are so referred.

**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.

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

**Senator Tatad.** Mr. President, this is the Political Ad Ban Bill. We are now in the period of amendments. This is a substitute measure; therefore, the committee amendments are all in but Senator Roco has been asked to receive all the proposed individual amendments coming from the various members of the Chamber. I now ask that he be recognized to introduce the individual amendments coursed through him.

**The President.** Senator Roco is recognized.

**Senator Roco.** Mr. President, may I ask permission to give out the proposed committee amendment first? A copy should be distributed by the legislative page. I could not distribute it without authority from the President.

**SUSPENSION OF SESSION**

**Senator Tatad.** Mr. President, I move that we suspend the session for a few minutes.

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

*It was 4:50 p.m.*

**RESUMPTION OF SESSION**

*At 4:52 p.m., the session was resumed.*

**The President.** The session is resumed.

**Senator Roco.** Mr. President.

**The President.** Sen. Raul S. Roco is recognized.

**Senator Roco.** Just for orderly proceeding, Mr. President, our colleagues have been given two pieces of paper—one is the proposed committee amendments dated August 28, 2000 and the other one is the draft of the bill assuming that the proposed committee amendments are already approved, so that every colleague of ours can see it in context. But for orderly proceedings, I will have to... I can, of course, shorten and abbreviate, with the consent of the Majority Leader, by having an omnibus motion based on the proposed committee amendments, if this is acceptable to the Chamber. But it may be good if I just outline a little because there are some amendments that require some explanations.

**Senator Cayetano.** Mr. President.

**The President.** Sen. Renato L. *Compañero* Cayetano is recognized.

**Senator Cayetano.** With the permission of the principal sponsor and the Majority Leader.

**Senator Roco.** Yes, Mr. President.

**Senator Cayetano.** I just want to be enlightened, Mr. President. This is supposed to be a committee amendment. I do recall that the Majority Leader called the attention of the Floor with respect to the proposed substitute bill on prohibiting lower courts on issuing temporary restraining order and that the substitute bill by itself is already the committee amendment.

Now, I do recall that as far as this political ad ban is concerned, the committee report substituted a bill consolidating several of the proposals on allowing political advertisement by repealing precisely this ban.

So if we are going to follow the initial ruling of the Chair on that bill I spoke about, which is on the TRO, then the substitute bill filed by the Committee on Electoral Reforms last week, which was the subject of sponsorship and interpellations, would be the committee amendments. So, I just wanted to find out, Mr. President, for the record: What is the parliamentary status now of all these collated suggestions from our colleagues?

**Senator Tatad.** Mr. President, that is correct. Under our *Rules*, whenever several bills are consolidated and a substitute bill is introduced as part of the committee report, that substitute bill becomes itself the committee amendments. After that, we now proceed to the individual amendments.

We have been very liberal in our practice, however, and

we have allowed the sponsor to collate all the possible individual amendments and the sponsor is allowed to introduce them into the *Record*. We have also been more liberal than that. With the consent of the Chamber, we have allowed that all these proposed amendments be inserted in the proposed bill itself. Sometimes we have considered these as still committee amendments. That is how liberal the Chamber has been.

**Senator Cayetano.** I am satisfied with that explanation. I just wanted to find out exactly what the parliamentary status of all of these is. If these would now be proposed by the sponsor as collated from our colleagues, then what would these be? Committee amendments or just a collation and insertion into this bill?

#### SUSPENSION OF SESSION

**Senator Tatad.** Mr. President, I move that we suspend the session for one minute.

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

*It was 4:57 p.m.*

#### RESUMPTION OF SESSION

*At 5:07 p.m., the session was resumed.*

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

**Senator Tatad.** Mr. President, with the consent of the Chamber, we will now ask the distinguished sponsor to propose the committee amendments.

#### COMMITTEE AMENDMENTS

**Senator Roco.** Thank you, Mr. President.

This will result in rearranging the numbers, but the committee wishes to introduce a *Declaration of Principles* which is borrowed from the Constitution. And the *Declaration of Principles* shall read:

THE STATE SHALL, DURING THE ELECTION PERIOD, SUPERVISE OR REGULATE THE ENJOYMENT OR UTILIZATION OF ALL FRANCHISES OR PERMITS FOR THE OPERATION OF MEDIA OF COMMUNICATION OR INFORMATION TO ENSURE EQUAL OPPORTUNITY, TIME AND SPACE, AND THE EQUITABLE RIGHT TO REPLY TO PUBLICIZED CRITICISM, FOR PUBLIC

INFORMATION CAMPAIGNS AND FORUMS AMONG CANDIDATES AND ASSURE FREE, ORDERLY, HONEST, PEACEFUL AND CREDIBLE ELECTIONS.

THE STATE SHALL ENSURE THAT BONA FIDE CANDIDATES FOR ANY PUBLIC OFFICE SHALL BE FREE FROM ANY FORM OF HARASSMENT AND DISCRIMINATION.

Both provisions are paraphrased from the Constitution—Section 4 of Article IX (C) and Section 10 of Article IX-C. We will seek the help of the Chamber to introduce this *Declaration of Principles*.

**Senator Guingona.** Mr. President.

**The President.** Senator Guingona is recognized.

**Senator Guingona.** Just for clarification from the distinguished sponsor.

**Senator Roco.** Of course, Mr. President.

**Senator Guingona.** Would this be true of government stations as well as private stations?

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** Will it be the same degree of supervision for private radio and television stations?

**Senator Roco.** In terms of the *Declaration of Principles*, it applies to both. Perhaps in the individual amendment period—it is not in the proposed committee amendments but in the individual amendments. I can see that there might be logic in requiring a different rule for a government-owned radio or television. I do not know if there is a government-owned newspaper.

**Senator Guingona.** I do not think there is. But it says here, "regulate the enjoyment or utilization of all franchises or permits..."

**Senator Roco.** Yes, Mr. President. That is a direct quote from Section 4 of Article IX(C) of the Constitution.

**Senator Guingona.** So we are recognizing the power of Comelec, in effect, to regulate.

**Senator Roco.** That is the constitutional mandate, Mr. President. That is really the inherent power of Comelec during the election period.

**Senator Guingona.** Yes, during the election period. Will this include rates?

**Senator Roco.** Of course, Mr. President. It includes everything. Theoretically, the Comelec can dictate, except that we cannot intrude on the freedom of the press. We cannot intrude on the freedom of the people to be informed, and we cannot intrude on provisions, like bona fide candidates cannot be subject to harassment.

**Senator Guingona.** Can the distinguished sponsor just give us an idea of "harassment" and "discrimination" in the last sentence?

**Senator Roco.** Right now, I do not think there is a case defining these. But based on the debates in the Constitutional Commission, there were also very little informative materials. I guess we will have to understand the way it is worded in the Constitution—"harassment and discrimination." They should be entitled to all the freedoms as guaranteed by the Constitution. They are not subjected to investigations.

But these are my legal opinions, unless for substantive and, well, for violations of law. So, unnecessary harassment is a mandate. I guess the courts eventually will have to define what it means.

**Senator Guingona.** Will this include equitable access to media? Because many times, the opposition or the minority may be told that there is no more time slot.

**Senator Roco.** That is what the whole bill is about, Mr. President.

**Senator Guingona.** So it will include protection for equal time, equal space, et cetera.

**Senator Roco.** That is what it says, Mr. President.

**Senator Guingona.** How about "harassment"? What is this "harassment"?

**Senator Roco.** I guess the dictionary will indicate that "harassment" is anything that is abusive or that infringes on one's freedom of action to the extent that it is allowed by law. "Discrimination" is when one is subjected to disfavor or unnecessary disadvantage simply because he is in one state of life or another.

**Senator Guingona.** So giving prime time to some candidates and no prime time to others would be some form of discrimination?

**Senator Roco.** No. It will be some form of unequal access.

**Senator Guingona.** Unequal access. Would that be covered by this policy?

**Senator Roco.** Again, these are still the broad principles, Mr. President. One can answer, yes. But maybe, the distinguished Minority Leader would want to go to the substantive provisions instead of the *Declaration of Principles* because then we can answer the questions more specifically.

**Senator Guingona.** Thank you, Mr. President.

**Senator Roco.** Thank you, Mr. President.

**Senator Biazon.** Mr. President.

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

**Senator Biazon.** Thank you, Mr. President.

Will the gentleman respond to some clarificatory questions?

**Senator Roco.** I did not realize I had a choice, Mr. President.

**Senator Biazon.** Mr. President, will the provisions of Section 2 of the *Declaration of Principles* be effective only during the election period?

**Senator Roco.** In this particular case, the Constitution says so. It is effective only during the election period.

**Senator Biazon.** Is this with reference to the regulation and supervision of the utilization of all franchises?

**Senator Roco.** That is correct, Mr. President, that is the constitutional mandate.

**Senator Biazon.** All right, fine. Mr. President, may we be enlightened as to what "criticism" refers to? This is in the phrase "THE OPERATION OF MEDIA OF COMMUNICATION OR INFORMATION TO ENSURE EQUAL OPPORTUNITY, TIME AND SPACE AND EQUITABLE RIGHT TO REPLY TO PUBLICIZED CRITICISM." May we be enlightened on what this refers to?

**Senator Roco.** I can visualize, Mr. President, the example, and this still has to be interpreted and refined by the Comelec because these are general principles. If one is criticized on page 1 in two paragraphs, fairness requires that we give the other side

his reply basically on the same space or at the same time. But we have seen that very often a reply can be buried on page 18 when the criticism was on page 1. So there is an unfairness because there are readers who would read only page 1.

But again, Mr. President, the "Declaration of Principles" just raised the groundwork for guiding the Comelec in its philosophy in seeking to interpret and implement this statute. So those specific questions may be addressed in the body of the bill.

**Senator Biazon.** Mr. President, would publicized criticisms or criticism refer to, let us say, a report, an article with a byline by a reporter? Would this refer to that?

**Senator Roco.** In my view, yes.

**Senator Biazon.** So that if, for example, a reporter or correspondent charges me of a wrongdoing and it is published in his newspaper, would that newspaper be mandated to allow me equal time and space to reply publicly too?

**Senator Roco.** That is what the "Declaration of Principles" tries to elicit as a philosophy.

**Senator Biazon.** And it is going to be mandated?

**Senator Roco.** Yes, Mr. President. But on specific instances, the bill itself leaves rule-making to the Comelec.

**Senator Biazon.** I asked those questions with reference to the maintained power of the Comelec to supervise or regulate the utilization of franchises.

**Senator Roco.** Yes, but that is under Section 2 on "Declaration of Principles." The only reason for putting it there is precisely for stress because the aspect of lifting the ban on commercial advertisements during election period tends to impinge precisely on existing constitutional precepts which we thought should be underscored at this point. So the specific problems will have to be settled by the Comelec in the ordinary course.

**Senator Biazon.** Let us assume, Mr. President, that my political opponent commissioned a newspaper to publish one-full page of advertisement attacking me, of course, being paid for by my political opponent. Would I also have the same one-full page to answer these attacks free of charge?

**Senator Roco.** No, the distinguished gentleman has equal opportunity to pay for one-full page. That is the only interpretation, otherwise we cannot implement it. The distinguished gentleman has equal opportunity to pay for one-full page reply.

**Senator Biazon.** We are going to make the newspaper publishers rich. Because all I have to do is attack somebody and then get the one being attacked to pay for the cost of the same space.

**Senator Roco.** If there are those who will attack themselves just to get space, then I guess the print media deserves the pay. Somebody is so foolish as to attack himself just to have two exposures; he deserves it.

**Senator Biazon.** I am referring, Mr. President, to two opponents. One opponent paying for a one-full page and the other one who is being attacked, cannot afford to pay for the cost of a one-full page reply. Where is the fairness there? Remember, we also have to protect the rights of the one being attacked.

**Senator Roco.** Maybe the gentleman would want to recommend that as an individual amendment, Mr. President, if he so desires. Then, we will discuss it at that moment.

**Senator Biazon.** Thank you, Mr. President.

**Senator Roco.** Yes, Mr. President.

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

**Senator Pimentel.** Will the distinguished senator kindly yield for a few questions, Mr. President?

**Senator Roco.** Yes, Mr. President.

**Senator Pimentel.** What if the criticism is not in the form of a paid advertisement but in a news report, Mr. President, or even a commentary perhaps by a columnist or a letter to the editor probably?

**Senator Roco.** That was my original example, Mr. President, that one should get equitable space corresponding to the degree of prominence given to the criticism.

As I understand it, Mr. President, in the ethics of the trade on journalism, it does give equal space.

I have seen letters of our colleagues getting printed almost *in toto*, for example, in columns, Mr. President. So I guess we must rely on the sense of fairness of the writer and the newspaper publisher in this regard.

**Senator Pimentel.** And probably, Mr. President, include this area as one of the things that the Commission on Elections

can provide for in its rules and regulations implementing this proposed law. Would the gentleman think that...

**Senator Roco.** Yes, Mr. President. In fact, in Section 6, we propose an addition that incorporates by reference the codes of ethics of the agencies. But I can see that some of our colleagues may not find this acceptable because we have not been able to review all of them. Maybe, I will even skip that just to avoid discussion on very thick codes. That is the value of having inputs from our colleagues.

**Senator Pimentel.** Thank you, Mr. President.

On the wording of this phrase "PUBLICIZED CRITICISM," Mr. President, rather than allowing, let us say, the Commission on Elections or the courts for that matter to interpret what is meant by "publicized criticism," I would like to introduce an amendment at the proper time, to modify the term "criticisms," in plural form, as follows: "Criticisms aired over radio or television or published in any newspaper, magazine or print media."

**Senator Roco.** May I elicit the reaction of our distinguished colleague, Mr. President?

The committee amendments, I think, are subject to at least one proposed amendment. Would the gentleman be amenable to delete that phrase "TO PUBLICIZED CRITICISM" so that we just have the equitable right to reply? Then, we will go to the text and suggest later on if there is need for specifics on...

What I am trying to avoid, Mr. President, is putting details in a declaration of principles.

**Senator Pimentel.** That is correct, Mr. President. As a matter of fact, that would even be better, except for the fact that if we do away with the modifications, the phrase "EQUITABLE RIGHT TO REPLY" can be very broad and, probably, in all likelihood, can stray into other matters that cannot be covered by the criticism that we are trying to reply to.

**Senator Roco.** That is correct, Mr. President. In fact, the term "TO PUBLICIZED CRITICISM" was introduced as an addition to the constitutional phrase because it seems to have no direct object and there was an awkwardness. That is why we put in "TO PUBLICIZED CRITICISM." But if this will constitute some difficulty, we can return to the general form mandated by the Constitution and then put the details in a subsequent specific section on the matter.

**Senator Pimentel.** Yes, Mr. President. The point is, we have to narrow down this "EQUITABLE RIGHT TO REPLY" to

just exactly what it encompasses so that we do not unnecessarily burden the media in deciphering to what extent this "equitable right to reply" be accorded publicity in their media—newspapers, and those aired over television or radio.

**Senator Roco.** So, if the distinguished gentleman would propose an amendment to the committee amendment to delete "TO PUBLICIZED CRITICISM", we can accede to that and remove this phrase and subsequently revisit it in the period of individual amendments for its definition.

**Senator Pimentel.** Yes, Mr. President.

**Senator Roco.** So, is it so proposed so that I have something to accept, Mr. President?

**Senator Pimentel.** Yes, Mr. President, with the caveat that the "EQUITABLE RIGHT TO REPLY" will be somehow included in some other section or in some other area here.

**Senator Roco.** At the appropriate moment during the period of individual amendments.

With that, Mr. President, the committee is happy to delete the phrase "TO PUBLICIZED CRITICISM." As we accept that proposed amendment and if there are no further amendments, I move that we approve the proposed amendment.

**Senator Pimentel.** Thank you, Mr. President.

**The President.** For the clarification of the Chair, in the proposed amendment, the phrase "AND THE EQUITABLE RIGHT TO REPLY TO PUBLICIZED CRITICISM" is deleted?

**Senator Roco.** No, Mr. President. In line 7 of the draft, the phrase "TO PUBLICIZED CRITICISM" is deleted so it becomes as originally stated in the Constitution: "AND THE EQUITABLE RIGHT TO REPLY, FOR PUBLIC INFORMATION CAMPAIGNS AND FORUMS AMONG CANDIDATES." We just delete those three words.

**The President.** All right. There is a proposal by the committee to incorporate the *Declaration of Principles* with the phraseology read into the *Record*. Is there any objection? [Silence] There being none, the proposed *Declaration of Principles* is hereby approved.

**Senator Roco.** Thank you, Mr. President.

If all the amendments are accepted,—and we cannot go there yet because the title comes last—the original Section 1 is proposed to be amended so that it becomes Section 3 or as renumbered. Basically, it is just a transposition of the sentence.

So we begin with the subject: "ELECTION PROPAGANDA, whether on television, community antennae or cable television, radio, newspapers,"— delete the word "surveys"—or whatever medium shall henceforth be allowed for all REGISTERED political parties and for all *BONA FIDE* candidates seeking national AND LOCAL elective positions, SUBJECT TO THE LIMITATION ON AUTHORIZED EXPENSES OF CANDIDATES AND POLITICAL PARTIES, OBSERVANCE OF TRUTH IN ADVERTISING, AND TO SUPERVISION AND REGULATION OF THE COMMISSION."

This is not new, Mr. President. What is new is the deletion of the term "surveys" and the addition of the phrase AND LOCAL. The deletion of the word "surveys" is really an amendment of Senator Tatad, and the addition of the phrase AND LOCAL is really a proposal of Senator Legarda-Leviste. So, essentially, it is the same, except for the transpositions. Therefore, the beginning of the sentence starts with the words "ELECTION PROPAGANDA", et cetera.

**The President.** And also the deletion of the last sentence of the original Section 1?

**Senator Roco.** Yes, Mr. President. Since we put "ELECTION PROPAGANDA" as available to all local elective positions, as a consequence, the last sentence is therefore deleted.

**The President.** All right. The Minority Leader is recognized, after which Sen. Aquilino Q. Pimentel Jr. is also recognized.

**Senator Guingona.** Just for clarification, if the distinguished sponsor will yield.

**Senator Roco.** Yes, please.

**Senator Guingona.** The block timers have a leeway in making commentaries subject only to the laws on libel. Would the Comelec's supervision and regulation extend to them?

**Senator Roco.** To?

**Senator Guingona.** To block timers.

**Senator Roco.** During the election period, yes.

**Senator Guingona.** Yes?

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** So they can call the attention of the block timers.

**Senator Roco.** In my view, yes, during election periods. The powers of the Comelec are plenary in character.

**Senator Guingona.** Now, "OBSERVANCE OF TRUTH IN ADVERTISING." The problem here is, what is "truth?" Because in political campaigns, we all know that truths and lies are sometimes stretched for political purposes. So, if we adhere to this strictly, and we have a candidate saying, "My opponent is a *Kawatan*," would that violate the truth?

**Senator Roco.** I guess that will depend on circumstances. In my view, Mr. President, in the first place, under the *New York Times* rule, one should not get into public office if he is overly sensitive about these things. So that some exaggerations are allowed under the libel laws. I think the *New York Times* rule says that when one is in the vortex of public affairs, he should not be so sensitive.

Truths, as far as legal standards are concerned, as far as they can be proven, are those that find support from testimony, documents or other relevant evidence that are admissible. That is as far as legal standards are concerned. What truth is, philosophically, Mr. President, well, we can discuss that forever.

**Senator Guingona.** So, this "observance of truth in advertising" is really relaxed in a political campaign?

**Senator Roco.** No, it is truth as defined by law and by the Rules of Court. What is true, Mr. President, and what one can prove as true so that it becomes actionable are two different things under the law.

**Senator Guingona.** Well, it is very hard to make specifics. But generalized charges in elections—supposing there is a charge that he is a grafter, and he does not prove it with specifics, or he does not allege the specific acts of corruption, would that be violative of this?

**Senator Roco.** No, he may be entitled to a libel charge; whether he can sustain it is another matter. Or he may just prove that it is so, because truth is a defense, Mr. President.

So, libel charges. In a political arena, Mr. President, one is still entitled to seek refuge in the libel laws. Whether one will have the time during the 45 or the 90 days of campaign to do so is something that is a judgment call by the candidate.

**Senator Guingona.** What is the penalty on the violation of "observance of truth in advertising?"

**Senator Roco.** Under the proposed bill, Mr. President, as

presently stated, the penalties under Section 264 of Batas Pambansa Blg. 881 or the Omnibus Election Code are imposed upon those who violate the provisions of this Code. I think, going on memory, it is one year to six-year imprisonment and P10,000 to something as a fine.

**Senator Guingona.** Mr. President, I have no basic objection to putting it here. But is it not a fact that in political campaigns, there are always exaggerations and it is up to the people and not to courts to judge the allegations of every candidate?

**Senator Roco.** I guess that is correct, Mr. President. That is why I would imagine that a prudent candidate would not go to court on such an allegation of graft and corruption.

**Senator Guingona.** So what is the reason? I would like to know why it is placed here.

**Senator Roco.** Because truth should be the guide in campaigns, Mr. President. Whether one wants to go actionable if we think somebody is lying is for the candidate to decide. The principle of law is to tell the truth.

**Senator Guingona.** Yes. As one partyman said, "We will tell the truth about you. Do not lie about us."

**Senator Roco.** That is correct, Mr. President. As the Majority Leader would put it in a political contest, "What you say about me is false, and what I say about you is true."

I guess that is all there is to it, Mr. President. But whether I want to act on that in court should be for me to decide.

**Senator Guingona.** Will the Comelec have the power to suppress? Because it says, "REGULATION OF THE COMMISSION OF THIS OBSERVANCE OF TRUTH IN ADVERTISING."

**Senator Roco.** No, Mr. President. The imposition of penalties is always with the Judiciary. The power of the Comelec in this regard will be, if a candidate commits violations that subject him to the nullification of his certificate, to nullify the candidate's certificate.

If there is a rule, for instance, that the Comelec later on says, "You cannot talk for more than five minutes," and the candidate talks for six minutes, maybe the Comelec can stop him at five minutes.

**Senator Guingona.** If there is a TV station that airs false allegations to the opposing candidate, does the candidate

have a right to reply to those false allegations, as he perceives them, in the same station and at the same prime time, if it is prime time, et cetera?

**Senator Roco.** Again, Mr. President, I would prefer that such specific problem be addressed by the rules and regulations of the Comelec. If we analyze the problem, if the opponent pays for it, I guess he is entitled to ask for the same hours from the station so that he can give an adequate reply. But in the same way that his opponent may have paid for it, I guess one will have to be reconciled to get a bill from the station. That is the same question, I think, of Senator Biazon.

**Senator Guingona.** Does the right of reply depend already on the implementation by the Comelec?

**Senator Roco.** I would imagine, Mr. President, because what the committee is avoiding is to debate on the million-and-one possibilities of violation of the election laws. While we can resolve them in this Chamber, it becomes very difficult to resolve all of them. That is why we have a rule-making power given to the SEC since the Constitution recognized it as having plenary powers in any event.

**Senator Guingona.** But would the distinguished gentleman accept an amendment at the proper time that would authorize political parties to answer the allegations that the party or the candidate feels are false in the same prime time or in the same station?

**Senator Roco.** I guess, Mr. President, that is in the spirit of the bill, and if appropriately worded, we can get around to it.

**Senator Guingona.** Thank you.

**The President.** Sen. Aquilino Pimentel Jr. was earlier recognized, after which the Chair will recognize Sen. Robert Z. Barbers.

**Senator Pimentel.** Thank you, Mr. President.

**Senator Roco.** The proposed committee amendment is also reflected in the new Section 3, where we transposed the first sentence to become the qualifying sentence.

**Senator Pimentel.** Thank you, Mr. President. Are we therefore not yet amending?

**Senator Roco.** That is the proposed committee amendment.

**Senator Pimentel.** Yes.



**Senator Roco.** So again, committee amendments are subject, I think, under the Rule XXI - proposed amendment, on per topic basis.

**Senator Pimentel.** That being the case, Mr. President, may I just suggest that instead of the adjective **WHATEVER** **DEFINING MEDIUM**—see that line?

**Senator Roco.** Yes.

**Senator Pimentel.** FOR **WHATEVER MEDIUM**...

**Senator Roco.** I will look now at the draft, although it is not yet approved, so that it becomes line 1 of page 2 of the working draft.

**Senator Pimentel.** We substitute the word "**WHATEVER**" with the phrase **OR ANY OTHER MASS MEDIUM**, Mr. President.

**Senator Roco.** **OR ANY OTHER MASS MEDIUM? MASS MEDIA**—whatever is correct. **OR ANY OTHER MASS**...

**Senator Pimentel.** **MEDIUM**.

**Senator Roco.** **MEDIUM. OR ANY OTHER MASS MEDIUM.** I accept it, Mr. President.

**Senator Pimentel.** Thank you very much for that, Mr. President.

**Senator Roco.** Thank you, Mr. President.

**Senator Pimentel.** Just for the record, I was also a proponent of expanding the lifting of the ad ban to local government.

**Senator Roco.** Yes. I am sorry. Maybe I did not get a specific written amendment.

**Senator Pimentel.** No, I did not make any written proposal to that effect but I placed it on record.

**Senator Roco.** Yes, during the interpellation. I guess I was being guided only by those that I received that were written. But that is absolutely correct, Mr. President. I am sorry, I missed to mention the name of the gentleman.

**Senator Pimentel.** Thank you very much, Mr. President.

**The President.** So in line 1, the committee amendment was amended to delete the word "**WHATEVER**" and substitute the same with the phrase **ANY OTHER MASS**.

**Senator Roco.** Yes, Mr. President, it has been accepted by the committee.

**The President.** All right. Sen. Robert Z. Barbers is recognized.

**Senator Barbers.** Thank you very much, Mr. President. I am one hundred percent behind this proposal. I have just one clarificatory question to raise and this is in connection with the phrase "**OBSERVANCE OF TRUTH IN ADVERTISING**" under Section 3.

**Senator Roco.** Yes, Mr. President.

**Senator Barbers.** Now, may I know, Mr. President, if this phrase now, under Section 3, will disqualify a political advertisement using cinematography or movies where truth in advertising in this kind of a medium is sometimes violated or sometimes not followed. Why? Because they are more concerned on the cinematic effect of a movie to attract and to impress the public that this story is a very good story and that the cinematic effect is the one behind the impression or behind the power of the cinema to convince the customers or the public to watch this kind of a movie.

So may I be enlightened on this, Mr. President?

**Senator Roco.** Mr. President, I did not realize and maybe I should have realized it sooner. But the questions are really very deeply philosophical and constitutional. In the case of a movie, it will be my opinion that to the extent it is presented as true, then one can complain and we can take action...

*At this juncture, there was a power interruption.*

**The President.** Senator Roco may proceed.

**Senator Roco.** Yes. So in the case of a movie, if it is presented as depicting truth, then I guess it will be actionable if truth is violated. If it is depicted as an art, as a story, I would imagine, Mr. President,—and this is not a final position—the right, the freedom-of-expression provision in the Bill of Rights will prevail because the producer and the director are guaranteed not only freedom of speech but also freedom of expression. So, the courts will have to balance where freedom of expression ends and where the requirements for truth in political advertisement come in.

It is a difficult situation. But to the extent that a movie is presented to be true, its falsities can be questioned in court.

**Senator Barbers.** I made mention of this, Mr. President,

because this will put the movie actors running for a national position or for an office at a very great advantage against his opponents.

Almost always, in my experience, Mr. President, if the movie depicts the true life story of one person, for example, not 100 percent is true in that movie. I would suppose that only around 70 percent is true and 30 percent is more on cinematic effect. Now, this cinematic effect could spell the difference for a candidate who is in the movies. So, that is only my point.

**The President.** But may the Chair invite the attention of the two gentlemen on the Floor that the way the opinions being expressed by Senator Barbers may seem to underscore the need to retain the phrase which is being deleted by the committee chair. Because the phrase "SUBJECT TO THE OBSERVANCE OF TRUTH IN ADVERTISING" is proposed to be deleted.

So, is the gentleman proposing the retention of that deleted phrase?

**Senator Barbers.** That is correct, Mr. President, to protect the other candidates who are not engaged in the movies, to be fair to all the candidates.

**Senator Roco.** Mr. President, in fact, I will ask for a recess right now to trace where the deletion of this phrase came from. But in the present instance, if a movie actor, for instance, is projected as a labor leader in a real movie, then there is nothing we can do about that because we cannot carve the movie itself under the Bill of Rights' freedom of expression.

But if it is now projected as political propaganda, that the person is really a labor leader, that the main actor is really a labor leader, that is false. That cannot be done.

There was a suggested amendment which, I think, I did not act on. The projected amendment was to prohibit movies for the candidate from being shown during the campaign period.

**Senator Barbers.** I think that is embodied under the Omnibus Election Code.

**Senator Roco.** I doubt it because the movies were being shown. But maybe it is.

**Senator Barbers.** Section 85 of the Omnibus Election Code—

**Senator Roco.** In which case, that answers the question because we have not touched that.

**Senator Barbers.** —bans the use of political advertisement by means of cinematography.

**Senator Roco.** Yes. Maybe we should include that, Mr. President. At the appropriate moment we can put that back.

**The President.** Senator Pimentel wishes to be recognized before we declare a one-minute recess to address this matter.

**Senator Roco.** Yes, Mr. President.

**Senator Barbers.** Thank you very much, Mr. President.

**Senator Pimentel.** With the permission of the gentlemen who have the floor, Mr. President.

Maybe we should include cinematographic films in the enumeration of the medium for election propaganda. In other words, when a movie purporting to be on the life of a candidate is being shown during the election period, that should be included in the supervision and regulation powers of the Commission on Elections.

So, to be more specific then, I would like to suggest that in the enumeration, "election propaganda, whether as a cinematographic film or exhibition or on television..." et cetera. In other words, include the movies here, Mr. President.

**The President.** But the Chair thought Section 85 would ban the showing of such movies during the election period.

**Senator Pimentel.** May I just explain, Mr. President, that we have seen how Section 85 has been handled by the Commission on Elections in recent and earlier electoral exercises. And probably, what we can do now is to include it as one of the things that we should allow provided that the conditions set forth in this bill, as proposed by the chair of this committee, will be observed.

**Senator Roco.** A fundamental issue, Mr. President, is, whether we still have "unlawful propaganda" or not. As a general proposition, the committee is suggesting that we delete the provisions on "unlawful propaganda" because it is the simplest way to go about it.

So that prohibited forms of election propaganda are now going to be deleted. That is in Section 85. But I can understand how some of our colleagues may want, for instance, a specific rule on movies. Section 85 itself only differs, and Senator Osmeña here is pointing out to subsection d) which says: "To show or display publicly any advertisement or propaganda for or against any candidate by means of

cinematography, audio visual units or other screen projections."

This prohibited propaganda today, the form—we keep gathering the form. But it is different from what the problem of Senator Barbers was. Today, it is prohibited to show a movie but when we liberalize, the problem of Senator Barbers will now be...Supposing we project his life and half of the movie is untrue, then, in my opinion, Mr. President, under this bill, it will be actionable.

**Senator Barbers.** I submit, Mr. President.

**Senator Roco.** Yes, no. But I appreciate especially because, I think, there was the Barbers' story? *[Laughter]* I could not comment. I assume it was totally truthful.

#### SUSPENSION OF SESSION

**The President.** With the permission of the Chamber, the Chair declares a one-minute suspension of the session so this thing can be threshed out and the final proposed amendment can be...

**Senator Roco.** Sure, Mr. President, if I may confer with the gentlemen.

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

*It was 5:52 p.m.*

#### RESUMPTION OF SESSION

*At 6:08 p.m., the session was resumed.*

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

#### ACKNOWLEDGMENT OF THE OFFICIAL VISIT OF BURMESE DELEGATION

**Senator Roco.** Mr. President, just a parliamentary courtesy. I have the privilege of announcing that a Burmese delegation led by Ms. Mary Ferrer is here. The delegates just arrived from the airport and they have been seeking support of the government and the senators for their plight in Myanmar or Burma. The delegation is headed by Mr. Teddy Buri, an elected MP of the National League for Democracy Party. He is now the Minister for Asia Pacific Affairs of the National Coalition Government of the Union of Burma. Mr. Buri is with the delegation under the National Council of Union of Burma.

The other members of the delegation, Mr. President, are Mr. Maung Mauang of the Free Trade Union of Burma; Mr. Sonny Mahindir; and Mr. Kim Omar. They have been here for the past 30 minutes. So I thought I would just mention them because they will be seeking individual appointments with the different senators after today.

**The President.** The Chair welcomes the delegation from Myanmar. The legislative pages will lead the delegation to the seats reserved for the VIPs at the back of the Hall.

**Senator Roco.** Mr. President.

**The President.** Senator Roco may proceed. Before we declared a recess, we were looking at the amendments on the present Section 1 which now becomes Section 3.

**Senator Roco.** Yes, Mr. President. Maybe the simplest is for us to finish the proposed committee amendments and then tomorrow or at the appropriate time, we can go through individual amendments. If this is acceptable to all...

**The President.** Are we approving the committee amendments or just reading them into the *Record*?

**Senator Roco.** We need approval, Mr. President, so that somebody can individually modify them.

**Senator Sotto.** Mr. President.

**The President.** The Acting Majority Leader is recognized.

**Senator Sotto.** Yes. With the understanding that individual amendments can be introduced tomorrow by the members of the minority, headed by the Minority Leader.

**The President.** So, with the permission of the Chamber, we will allow Senator Roco to introduce the committee amendments into the *Record*, have them approved, close the period of committee amendments and open the period of individual amendments with the understanding that the approval of these committee amendments is without prejudice to the submission and approval of individual amendments at a subsequent session.

**Senator Pimentel.** Mr. President.

**The President.** Sen. Aquilino Q. Pimentel is recognized.

**Senator Pimentel.** Are we foreclosing the right of the members of this Chamber to ask questions? Because there are

certain clarificatory questions that we would like to raise as we go along. So I hope that that is not being foreclosed.

**The President.** The Chair rules that given this special arrangement, the sponsor would certainly be willing to answer questions on the proposed committee amendments approved by the Chamber even if they have already been approved.

**Senator Pimentel.** No. Before approval, Mr. President.

**Senator Roco.** Yes. Mr. President, I think we better just follow the normal rules. The committee amendment, as far as I know the rules, can be subjected to one amendment because it becomes the second. We are always entitled only to two amendments—committee amendment plus one.

**The President.** All right.

**Senator Roco.** On any particular subject. But when we get to the individual amendment, then it becomes two. Because the first amendment, for instance, at this point, Mr. President just to give an example, 10 percent is the reduction to the rates. At this point, somebody can say 15 percent and the committee can accept it. Therefore, it becomes the committee amendment, as amended.

So it simplifies. It shortens also the period of individual amendments and because of the questions... There are so many abstract rights, Mr. President, and maybe we can really just proceed. Whatever it takes us, that is all right.

**The President.** May we just pursue that example, Senator Roco?

**Senator Roco.** Yes, Mr. President.

**The President.** In the period of individual amendments, suppose somebody proposes to make the "15%", 20%?

**Senator Roco.** Theoretically, Mr. President, at that time, the committee would normally say, "We are sorry, we have to give it to the Body." And the Body will now select. But if the committee again accepts it by our practice... We had been allowing this kind of...

**The President.** All right.

**Senator Roco.** And the relaxed practice, Mr. President, helps when it is very sick. But when it is very difficult, the relaxed practice makes it more difficult.

**The President.** All right. So we proceed along those

lines. So we go back now to Section 1 which is now proposed to be Section 3.

**Senator Roco.** Yes, Mr. President.

**Senator Pimentel.** Mr. President, I am not talking of the amendments. I am talking of questions that will be raised to clarify these. Because sometimes when the answer comes, it might obviate the necessity of introducing an amendment.

**The President.** Yes.

**Senator Pimentel.** I hope that that is clear, Mr. President.

**The President.** Yes.

**Senator Pimentel.** Thank you.

**Senator Roco.** Yes, Mr. President. So we have a proposed committee amendment in Section 3, with a deletion. The reason for the deletion in the end is that with the extension of election propaganda to local elective positions, the last sentence will no longer be necessary.

Originally, local positions were subject to election propaganda as may be allowed under Sections 90 and 92 of the Election Code which are the powers of the Comelec. But since pursuant to the amendments of Senator Legarda-Leviste and Senator Pimentel, the committee has already incorporated "AND LOCAL" in line 3 of page 2, then the local candidates do not now have to go to the Comelec to find out what their rights are. We shall have settled that question. Local candidates have access to political propaganda.

If this committee amendment is acceptable to our colleagues, we will be happy to have it approved.

**The President.** The amendment as previously read by the committee chairman with the amendment proposed by Senator Pimentel consists of the deletion of the word "whatever" found in line 4 of page 1 and its change with the phrase ANY OTHER MASS.

**Senator Roco.** Yes, Mr. President.

**The President.** Is there any objection to the proposed amendments in Section 1 which now becomes Section 3? [Silence] There being none, the amendments are approved.

**Senator Roco.** Thank you. Mr. President.

Now for the next committee amendment. These are as regards election surveys, and it is proposed that these become

the new Section 4, if everything is accepted. These are really flowing from the bills of Senator Tatad and Senator Defensor Santiago. It is shown in the draft as of August 28 of page 2, line 10 all the way to line 7 of page 3.

May we just read them again because they involve certain notions that may be very critical for some people.

SECTION 4. *ELECTION SURVEYS.* - 4.1. ELECTION SURVEYS REFER TO THE MEASUREMENT OF OPINIONS AND PERCEPTIONS OF THE VOTERS AS REGARDS A CANDIDATE'S POPULARITY, QUALIFICATIONS, PLATFORMS OR A MATTER OF PUBLIC DISCUSSION IN RELATION TO THE ELECTION, INCLUDING AN OPINION SURVEY RESPECTING AN ISSUE DISCUSSED PUBLICLY IN THE ELECTION (HEREINAFTER REFERRED TO AS "SURVEY").

4.2. DURING THE ELECTION PERIOD, ANY PERSON, CANDIDATE OR ORGANIZATION WHO PUBLISHES A SURVEY MUST LIKEWISE PUBLISH THE FOLLOWING INFORMATION:

(A) THE NAME OF THE PERSON, CANDIDATE, PARTY OR ORGANIZATION WHO COMMISSIONED OR PAID FOR THE SURVEY;

(B) THE NAME OF THE PERSON, POLLING FIRM OR SURVEY ORGANIZATION WHO CONDUCTED THE SURVEY;

(C) THE METHODOLOGY USED, INCLUDING THE NUMBER OF INDIVIDUAL RESPONDENTS AND THE AREAS FROM WHICH THEY WERE SELECTED, AND THE SPECIFIC QUESTIONS ASKED.

The reason for this is, if we survey and we survey only in Bicol, for instance, it is likely that those who are from Bicol will be ahead in the survey. But if we, on the other hand, omit Region V, then it is very likely that those from Bicol, Region VI or Region VIII, wherever they may be based, will suffer in the survey.

(D) SUCH OTHER INFORMATION THAT THE COMMISSION MAY REQUIRE.

THE SURVEY TOGETHER WITH RAW DATA GATHERED TO SUPPORT ITS CONCLUSION SHALL BE AVAILABLE FOR INSPECTION, COPYING AND VERIFICATION BY THE COMMISSION ON ELECTIONS OR BY A REGISTERED POLITICAL PARTY OR A *BONA FIDE*

CANDIDATE. A REASONABLE FEE SUFFICIENT TO COVER THE COSTS OF INSPECTION, COPYING AND VERIFICATION MAY BE CHARGED.

The reason for this is that the statisticians analyze raw data. But we can always rearrange raw data. So that if they say that one is totally lost, the statisticians may show why he is not totally lost.

IN NO CASE SHALL SURVEYS BE PUBLISHED THIRTY (30) DAYS BEFORE AN ELECTION. NEITHER SHALL EXIT POLLS TAKEN ON ELECTION DAY OR IMMEDIATELY THEREAFTER BE ALLOWED.

That is the proposed amendment, Mr. President. The committee will be happy to answer questions.

Senator Pimentel. Mr. President.

The President. Senator Pimentel is recognized.

Senator Pimentel. Thank you, Mr. President.

On the paragraph after letter (D), who is going to charge the fees? Is it the owner of the survey or the ...

Senator Roco. The company that owns the survey and the one who conducted the raw data. But this is purely for costs of inspection, copying and verification. If the gentleman wants to verify that they asked 10 people in Cagayan de Oro, then it should be at the expense of the gentleman.

Senator Pimentel. Mr. President, the paragraph after that speaks of prohibiting the surveys from being published 30 days before an election.

Senator Roco. I had assured the Minority Leader that if he proposes an amendment to 90 days, the committee will be hospitable to the idea, Mr. President.

Senator Pimentel. My question really relates to the matter of leakage. We can very well provide a prohibition against the publication of surveys. But if that is the thrust of this particular proposal, we have to make it very clear whom are we banning or prohibiting from publishing the survey.

Are we referring to the ones who conducted the survey or the candidates for whom the surveys were taken? If so, what about other parties? Because there is no stopping the surveys from being leaked to columnists, radio commentators, television announcers, et cetera. And once the surveys get to these people, there is no stopping them, legally speaking,

unless we are very specific about the prohibition, Mr. President.

**Senator Roco.** May we call attention to paragraph 4.2, "DURING THE ELECTION PERIOD..." An election period commences on December 15 because our elections should be on May 14. "DURING THE ELECTION PERIOD,"—meaning to say from December 15 of this year, unless we also modify the definition of election period—"ANY PERSON,"—whether he is an announcer, a columnist or whatever—"CANDIDATE OR ORGANIZATION WHO PUBLISHES A SURVEY"—so the newspapers, I would imagine, fall under organization or the radio or TV—"MUST LIKEWISE PUBLISH THE FOLLOWING INFORMATION." So the following information must be carried. It is all right as long as we show who is paying.

During the ban in the present state of the bill, during the 30-day period, then it is again actionable because even if we publish this data, we cannot. It is prohibited already. It is a prohibited publication because it tends to influence already the choice of the voters not on the basis of qualifications or platform but on the basis of propaganda on winnability.

**Senator Pimentel.** Naturally, Mr. President, this particular provision would have a penal sanction to it.

**Senator Roco.** Yes, Mr. President.

**Senator Pimentel.** In which case, since we are talking here of criminal law, it must be necessary that we are specific as to who is going to be penalized in the event that this violation is committed because the previous paragraphs speak of the need to publish information. The persons covered are those who are enumerated here—any person, candidate or organization. But that is as regards the duty to publicize the information that has to do with the taking of the survey.

**Senator Roco.** Yes, Mr. President.

**Senator Pimentel.** The last paragraph speaks of prohibiting the publication within 30 days before an election or the publication of exit polls.

**Senator Roco.** Yes.

**Senator Pimentel.** Therefore, there is a slight difference here as to the personalities involved. Perhaps they should really be enumerated.

**Senator Roco.** The committee will be amenable at the appropriate moment to accept an amendment to that effect.

**Senator Pimentel.** Thank you, Mr. President.

**The President.** So when will the amendments be introduced? At the appropriate time, meaning...

**Senator Roco.** In the period of individual amendments.

**The President.** Is it during the period of individual amendments?

**Senator Pimentel.** Tomorrow after the rain, Mr. President.

**Senator Guingona.** Mr. President.

**The President.** Senator Guingona is recognized.

**Senator Guingona.** Would the surveys prohibited in the last paragraph of Section 4 include asking voters how they voted right after the elections?

**Senator Roco.** That is the one that is "NEITHER SHALL EXIT POLLS TAKEN ON ELECTION DAY..."

**Senator Guingona.** No, it is not a poll. It is just asking opinions as to how the voters voted.

**Senator Roco.** Yes, that is what exit polls mean.

**Senator Guingona.** Without recording, without formalizing, I mean, just at random.

**Senator Roco.** And it is not published.

**Senator Guingona.** Because the distinguished gentleman's definition of "surveys" refers to opinions and perceptions. Whereas this one, they no longer formed an opinion nor a perception, they have actually voted. But it is not systematized in such a way that it will be exit polls such as the one we witnessed in 1998. It is just at random.

**Senator Roco.** I guess, Mr. President, as described by the Minority Leader, there is nothing anyone can do about that random asking.

**Senator Guingona.** I just wanted that clarified because, as defined, the "survey" is for perceptions or opinions.

**Senator Roco.** Yes, but in the question at hand, Mr. President, it refers to exit polls the way it is described here. But if it is an exit poll at random that is not published, then I guess anybody is free to ask any voter how he voted if he should agree to reveal to the distinguished gentleman. I doubt if many voters will be very eager to reveal how they voted.

**Senator Guingona.** The prohibition against surveys is 30 days before an election.

**Senator Roco.** Yes, Mr. President.

**Senator Guingona.** Would a forecast based on previous surveys fall within this?

**Senator Roco.** In my opinion, Mr. President, yes. It is a derivative, according to Sen. John H. Osmeña. That is a good way to look at it. It is a derivative. And it is even worse because if it is prior survey, it may be time-bound. So one may have been at the top of the list in January but not necessarily in August.

**Senator Guingona.** Would this not violate the freedom of expression?

**Senator Roco.** I do not see how. Freedom of expression refers, as best as I understand the Constitution, to cultural and artistic precreations and presentations. So I do not know whether this will violate the freedom of speech. But the Supreme Court has said that regulation of these matters is allowed by the Constitution because of the general welfare judgment during the election period.

**Senator Guingona.** Yes, but this is a forecast made 30 days before the election based on surveys of issues and personalities.

**Senator Roco.** So that a columnist or a writer says that he forecast the following?

**Senator Guingona.** Yes.

**Senator Roco.** And if a columnist is saying that this is as far as he can see and it is not projected to be a scientific measurement of reality, I guess anybody is entitled to say anything.

**Senator Guingona.** No, he gives the reasons for it.

**Senator Roco.** And he has a survey or some kind of... Then that will be covered. But an opinion on the matter, to me... What can we do if somebody thinks that Racuyal... Racuyal, in fact, believed he will win.

**Senator Guingona.** But the surveys were made 30 days prior to the election, at least.

**Senator Roco.** We cannot publish it anymore under the terms, unless the Minority Leader has a proposed amendment to that.

**Senator Guingona.** No. The last paragraph prohibits the publication of any survey 30 days before an election. But this

is a forecast based on surveys conducted before the 30-day period.

**Senator Roco.** Again, forecasts, Mr. President, if these are just the usual fearless forecasts, who cares? Voters will always forecast that their candidates will win, and that is understood in an election. I would imagine writers who think that their candidates will win, that is also up to them.

**Senator Guingona.** Yes. As long as it is backed up by reason or survey.

**Senator Roco.** No. I mean, an opinion. Precisely, if a writer says, "In my opinion, Roco will win," he is entitled to that opinion. Because all voters are entitled to their own opinion.

**Senator Guingona.** I understand that the surveys abroad are very sophisticated and sometimes, barring any fundamental change, 30 days. The same trend will continue.

So what I am asking is just for clarification. A forecaster, based on surveys and with reason, makes a projection that does not fall under this prohibition.

**Senator Roco.** If it is based on surveys or derivatives, it will be barred by this prohibition.

**Senator Guingona.** Before 30 days.

**Senator Roco.** Well, 30 days before. Then we must comply with the other requirements that the survey upon which one based his forecast was paid for by so and so, et cetera.

**Senator Guingona.** Yes. But it was a survey made before the 30-day ban.

**Senator Roco.** Yes. As long as one complies with the other requirements.

**Senator Guingona.** What other requirements?

**Senator Roco.** Who paid? What questions were asked?

**Senator Guingona.** Yes. That goes with the...

**Senator Roco.** Yes. Then as worded, of course, it is not covered.

**Senator Guingona.** It is permissible.

**Senator Roco.** It is not prohibited.

**Senator Guingona.** I just wanted to clarify because earlier, the derivative issue came up.

**Senator Roco.** That is exactly what I mean by derivative. The derivatives of a survey will not be allowed publication 30 days before an election. But outside the 30 days, it can be published, of course.

**Senator Guingona.** No, the survey was made 30 days before, but the forecast is within the 30 days.

**Senator Roco.** I think, Mr. President, we are splitting hairs. If the forecast is based on surveys, then it cannot be used.

**Senator Guingona.** The survey was made before the 30-day ban that the gentleman is proposing here.

**Senator Roco.** No, the 30-day ban refers to publication.

**Senator Guingona.** Not to survey.

**Senator Roco.** Surveys cannot be published within 30 days. A forecast is just a way of going around the term "survey." It means the same to me.

**Senator Guingona.** It is not a publication of the survey; it is a forecast.

**Senator Roco.** That is exactly where the derivatives come in. Derivatives of a survey will also be covered by the prohibition.

**Senator Guingona.** I would like to agree, but I think that is a matter of freedom of the individual to make the necessary forecast. However, if that is the opinion...

**Senator Roco.** Mr. President, if I said that it is just a matter of opinion, anybody can give an opinion based on what he thinks—who is the candidate, who is the winner.

**Senator Guingona.** So, I will ask the question again.

There is a survey that is made prior to the 30-day period and the forecast is made based, among other things, on the survey that was made before the 30-day period.

**Senator Roco.** Then it cannot be published within 30 days.

**Senator Guingona.** It cannot be published?

**Senator Roco.** Because that is what it says, unless we modify the phrase "IN NO CASE SHALL SURVEYS BE PUBLISHED 30 DAYS."

If the Minority Leader wishes to add some forecasts based also on the surveys, then the committee can accept such clarification.

**Senator Guingona.** As we agreed, we will let this go now until the period of amendments, Mr. President.

**Senator Roco.** Yes, Mr. President. May we have an approval of the proposed committee amendment?

**The President.** There is a proposed committee amendment which is supposed to be Section 4 of the bill as read by the sponsor. Is there any objection? *[Silence]* There being none, the committee amendment is approved, subject to the submission of individual amendments at the appropriate period.

**Senator Roco.** Thank you, Mr. President.

May we now propose a new Section 5, entitled, *RATES FOR POLITICAL PROPAGANDA*. It appears on page 3 of the draft as given to our colleagues and which reads as follows:

**SEC. 5. RATES FOR POLITICAL PROPAGANDA.** - DURING THE ELECTION PERIOD, MEDIA OUTLETS SHALL CHARGE REGISTERED POLITICAL PARTIES AND *BONA FIDE* CANDIDATES NO MORE THAN NINETY PERCENT (90%) OF PREVAILING COMMERCIAL RATES OF THE NEWSPAPER, TELEVISION OR RADIO STATIONS DURING THE OFF-ELECTION PERIOD.

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

**Senator Roco.** May we have the air-conditioning on, Mr. President?

#### SUSPENSION OF SESSION

**The President.** The session is suspended for one minute, if there is no objection. *[There was none.]*

*It was 6:36 p.m.*

#### RESUMPTION OF SESSION

*At 6:37 p.m., the session was resumed.*

**The President.** The session is resumed. Senator Pimentel is recognized.



**Senator Pimentel.** Mr. President, in our last discussion on this particular point about *Rates For Political Propaganda*, I was given the impression that the owners of media outlets were willing to charge rates that are much lower—not only much lower but would even go to the extent of offering discounted rates. But the way I see Section 5 as worded now, the idea is to limit or put a ceiling on the charge that media outlets could impose on registered political parties and *bona fide* candidates at no more than ninety percent (90%) of prevailing commercial rates.

Mr. President, I would like to mention this very briefly. During an election campaign, there will certainly be an avalanche of would-be political advertisers. Normally speaking, if we use market rates, that should lead to a lower rate rather than a higher rate.

There is the added observation that if high rates are allowed to be charged, then only the well-to-do candidates, people who are affluent or rich, would have a chance to buy political propaganda. The idea of putting, more or less, a restrictive ceiling on the amount of money that can be charged by media outlets for political propaganda would come in the nature of maybe an application of the police power of the State to ensure, as they say, the leveling of the playing field during a campaign period.

**Senator Roco.** Mr. President, actually, the phraseology here—we can go back to rates with 10 percent discount. But if my good friend will bear with me, when we put a ceiling, therefore it can even be as low as 50 percent. But when we put a limitation to the discount of 10 percent, then it will always be at least 90 percent. So it depends on the phraseology. I mean, we have no quarrel with the concept.

At the appropriate time, during the period of amendments, we can see our way clear to accepting a lower rate. I think the Minority Leader will suggest 15 percent, and I heard the representatives of media organizations say 15 percent will be acceptable. But I prefer that that comes from the Minority Leader as an individual amendment.

**Senator Pimentel.** Yes. But even as we are not yet a Minority Leader, Mr. President, I am just speaking as a senator and as a politician. Just looking at the way Section 5 is worded now, it actually allows the media outlets to charge no more than 90 percent. So we are not talking at this point of discounts. We are talking of maximum or ceiling of the rates that can be imposed. So, probably, if we put it down more drastically, then the media outlets would have no leeway to impose a higher rate because we can put a cap, as it were, on the amount that they can charge. Of course, they can lower

it as the market forces would demand. There is no question about it.

**Senator Roco.** Again, we are amenable to a change in the phraseology, Mr. President, as long as it affects the 10% discount because that is the figure that we bid on in terms with the media representatives. Whether it is termed “discount” or “not more than 90%,” arithmetically, it is the same to me except that a ceiling is better because it can be lower than a discount if we put a discount of 10%. So they cannot even give us a 15% discount, even the private, because we limit.

So, Mr. President, that is why I put it this way. The original phraseology made by the staff referred to a discount. But if we say “10% discount,” then our media friend cannot even give us 15%.

**Senator Pimentel.** Not only that, Mr. President. If we speak of a discount without a ceiling as to the amount that they can charge, 10% discount of P200,000, as we know, is not really favorable to candidates who are barely able to survive.

**Senator Roco.** I understand, Mr. President, that in determining the prevailing commercial rates—because this really will be one of the areas that the Comelec again must issue rules and regulations—the Comelec selects therefore a three to four-month period that is not the high period. So, if it selects, for instance, August, September, October, November, which is a normal range, then the Comelec can determine what are the prevailing market rates. Not more than 90% of that figure can therefore be the guide. But it does not prevent us from bargaining. If we say, “not more,” then the candidate can bargain for less. If it cannot go beyond 90%, we can bargain by saying, “*Baka naman puwedeng 50% na lamang ako. Mahina naman ang pondo ko.*”

**Senator Pimentel.** Yes. Our disagreement apparently, Mr. President, may be more theoretical than real, except for the fact that there is really a need to state a maximum over which the media outlets cannot charge rather than say “not more than 90% may be charged by the media outlets,” as is presently the wording of this section.

**Senator Roco.** Yes, the committee is amenable to rephrase it.

**Senator Pimentel.** Yes. And probably, the prevailing commercial rates, as the Chair has already cogently pointed out, must be based over a certain period of the current year, of the year of the election, or probably a one-year period covering the election month going backwards. So we will have, more or less, an averaging of the commercial rates.

**Senator Roco.** No, it must be before the election period. So it must be before December.

**Senator Pimentel.** Going backwards.

**Senator Roco.** Yes. December 15 backwards to, let us say, July 15, an average. So that becomes prevailing.

Mr. President, again, such a definition can be acceptable.

**Senator Pimentel.** Thank you, Mr. President.

**The President.** Just for clarity. Is it an average of the one-year period prior to the election period?

**Senator Roco.** No, maybe, just a five-month or a six-month period before the election period.

**Senator Pimentel.** That is acceptable to me, Mr. President.

**The President.** Before the Chair recognizes the Minority Leader, how about the instances, as we know, where candidates can blanket and purchase all the time on the air or all the newspaper space? Is that covered by this prohibition?

**Senator Roco.** No, Mr. President. We are hoping that that will be covered by Comelec rules and regulations. But I know that some of our colleagues want specifics on that. So we will look at that as well. During the period of individual amendments, we will be happy to accept amendments as they support the end visualized by the bill.

**Senator Pimentel.** Mr. President, just before our next session on this issue, probably the chairman of the committee can already introduce a committee amendment to that effect covering the possibility of the affluent candidates cornering all possible radio time or television time at prime time.

**Senator Roco.** We would have done so, Mr. President, but it is so difficult to do so. That is why I prefer to delegate this to the Comelec, but subject to individual amendments if somebody feels very strongly about something.

The House bill has very specific provisions. But as we see, Mr. President, the problems are myriad. Page 1. If somebody gets into page 1, shall we require page 1-treatment for all? If we have 10 opponents, how in heaven's name can they all be accommodated on page 1? The same on page 2.

That is why, Mr. President, I suspect that what the Comelec will do is to say, "Okay, page 2 will now be open,"—which is the old rule—"it will now be Comelec space and the

following candidates will have access to it on Monday." It is too bad for those who are on Tuesday, depending on whether one thinks that Tuesday has more readership. But that is the way it is. We cannot accommodate all; otherwise, we will end up with page 2 just with single liners. But if we give them 1/8 or 1/12 or 1/16, then everybody will have the same 1/16 for page 2.

That is why we stressed Sections 90 and 92 or the powers of the Comelec, Mr. President, because these are the sections that give the Comelec, under the statutory right, the right to say, "Comelec space taken; Comelec time taken."

Mr. President, instead of reinventing all the rules and putting them in the statutes, the committee feels that there is greater flexibility in leaving them to the Comelec. But I do know that some of our colleagues will find it more acceptable to have specific guides.

**Senator Pimentel.** Yes, Mr. President, that is exactly what I was about to say—that whatever would be the details on how to ensure that nobody, no candidate corners all the prime time on television or radio or the prime space in a newspaper, would be provided for.

That is all what I am saying, Mr. President.

**The President.** The Minority Leader is now recognized.

**Senator Guingona.** Thank you, Mr. President.

I would just like to clarify this Section 5. As we understand it, there are different rates for advertising. There is this rate card and the negotiated rate that advertisers give to favored clients. What would be the basis of this 90 percent? Would it be on a negotiated rate? Because the rate card, I understand, is for ordinary customer, but for special clients we have the negotiated card. This could put the minority or the poor and the less favored at a disadvantage, Mr. President.

**Senator Roco.** Mr. President, I would prefer that the answer come from the Minority Leader since he seemed to be informed. All I am saying is that it cannot be more than 90 percent of prevailing commercial rates. And I will leave it to the Comelec to define, although the committee can see its way to the wisdom of imposing a time frame within which to determine the commercial rates. I really cannot answer whether it is negotiated. I do not have any ideas as to whether it is a negotiated or a rate card.

**Senator Guingona.** At any rate, thank you for that. Will the distinguished sponsor accept an amendment to make this

15 percent—instead of 10 percent—based on the lowest negotiated or rate card?

**Senator Roco.** That is very difficult to determine, Mr. President. If the Minority Leader can demonstrate it to me, maybe we can see our way clear to accepting that.

**Senator Guingona.** I understand that McCann-Erickson has a special negotiated rate with its clients because it brings in a lot of advertisements to media. Therefore, it has special discounts. So that if a candidate gets that advertiser as the campaign handler for advertisements, he would be at a disadvantage as against the others. We are just trying to...

**Senator Roco.** I have no problems with equalizing, Mr. President, if the Minority Leader wants. Anyway, we put a ceiling. So anything below 90 percent or below 85 percent, I mean, one can negotiate and can do whatever it is.

Mr. President, now that McCann-Erickson is mentioned, I concede the need and the committee can accept the proposal lowering also what we call the service fee of agencies.

**The President.** The commission.

**Senator Roco.** Yes, Mr. President. So that if it is 15 percent, maybe we could limit them to 7.5 percent or 5 percent. Because for the same reason, since there will be an increase in the market for advertisements, I can see some equity in saying that advertising rates should be lower by 10 percent. So I can accept that. I think that is a valid observation if we are talking about advertising rates.

**Senator Guingona.** Yes.

**Senator Roco.** Because if the media, if the publisher or the owner of the corporation accepts the 15 percent or 10 percent reduction, then the advertising agencies should also accept the same.

**Senator Guingona.** Yes. So we will make the proposed amendments—

**Senator Roco.** Yes, of course, Mr. President.

**Senator Guingona.** —tomorrow. I think that is the last section.

**Senator Roco.** No. We will continue, we will finish because there are small amendments.

So if the Chamber will accept this committee amendment, Mr. President...

**The President.** All right. There is a proposed committee amendment on proposed Section 5 - *Rates on Political Propaganda*.

Is there any objection? *[Silence]* There being none, the proposed amendment is hereby approved with the caveat that there will be proposed individual amendments during the period of amendments.

Senator Roco may now proceed.

**Senator Roco.** Yes. Section 6, as it appears in the draft, will no longer be presented by the committee as a committee amendment to avoid extensive discussion and debate on the matter because it involves fairly thick codes.

Conceptually, Mr. President, we could understand how it can become actionable by incorporating it here. But, as a lawyer, I can visualize how I can sue somebody for violation of the Television Code. I guess we can leave it that way.

To avoid debates on this particular area, we will not present this. But it takes us to what will now become the new Section 6, the *Authority of the Commission to Promulgate Rules; Election Offenses*. We propose the following to read as follows: "The Commission shall promulgate the rules and regulations for the implementation of this Act, CONSISTENT WITH THE CRITERIA ESTABLISHED IN ARTICLE IX-C, SECTION 4 OF THE CONSTITUTION AND SECTION 86 OF THE OMNIBUS ELECTION CODE, (BP BLG. 881). Violation of the rules and regulations of the Commission issued to implement this Act shall be an election offense punishable under THE FIRST AND SECOND PARAGRAPHS OF Section 264 of the Omnibus Election Code (BP BLG. 881)."

The articles mentioned, Mr. President, from the Constitution and Section 86 of the Omnibus Election Code are really...Section 86 implements Article IX-C, Section 4 of the Constitution.

So, it just gives a legislative constitutional standard for determining whether the Comelec was acting within its rights. If there are no objections to this, Mr. President.

**The President.** The present Section 2 is proposed to be amended to become Section 6, and is amended in the manner that the sponsor has presented it.

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

**Senator Roco.** Thank you, Mr. President.

The present Section 3 is proposed now to be Section 7. As to the *Repealing Clause*, pursuant to all the discussions, it is proposed that Sections 67 and 85 of the Omnibus Election Code, and Sections 10 and 11 of RA No. 6646 be hereby repealed. That is the proposed amendment.

**The President.** The present Section 3 is proposed to become now Section 7 and is amended in the manner presented by the sponsor.

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

**Senator Roco.** Thank you, Mr. President.

The *Separability Clause* is supposed to be simplified. "If any provision, or part hereof, is held invalid or unconstitutional, the remainder of this Act shall REMAIN valid and subsisting."

**The President.** The present Section 4 is proposed to be renumbered as Section 8 and amended in the manner presented by the sponsor.

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

**Senator Roco.** Thank you again, Mr. President.

In which case, we can now propose an amendment, a more generic title and, as a consequence also, a more generic Section 1 as regards the title.

In Section 1, the caption *SHORT TITLE* is proposed to read as follows: THIS ACT SHALL BE KNOWN AS THE "FAIR ELECTION PRACTICES ACT."

If we have the consent of the Chamber.

**The President.** So in Section 1, the caption *SHORT TITLE* is inserted and is proposed to be amended in the manner read and presented by the sponsor.

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

**Senator Roco.** In implementing this short title under Section 1, we now enhance the overall generic title to read as follows: AN ACT TO ENHANCE THE HOLDING OF FREE, ORDERLY, HONEST, PEACEFUL, AND CREDIBLE ELECTIONS THROUGH FAIR ELECTION PRACTICES.

If we have the consent of the Chamber.

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

**Senator Roco.** Those are the committee amendments, Mr. President. We thank our colleagues for the patience and we hope that the individual amendments can meet with the same approval.

Thank you, Mr. President.

**The President.** Before that, Section 5 now becomes Section 9. Just a renumbering.

**Senator Roco.** Yes, Mr. President. Maybe an omnibus renumbering so that it suits the numbers, whatever it may be.

I move that it be approved, Mr. President.

**The President.** Is there any objection? *[Silence]* There being none, the amendment to renumber the sections accordingly to reflect the various provisions is approved.

Is there a motion to suspend consideration of the bill?

**Senator Roco.** We can close the period of committee amendments, Mr. President.

**Senator Sotto.** Mr. President, I move that we close the period of committee amendments, subject to the understanding that it can be open to certain amendments that may be proposed during the period of individual amendments.

**Senator Roco.** In fact, we opened the individual amendments here.

**The President.** Is there any objection? *[Silence]* There being none, the period of committee amendments on Senate Bill No. 1742 is hereby terminated.

**Senator Sotto.** Mr. President, I move that we suspend consideration of Senate Bill No. 1742.

**The President.** Before we act on the motion, the Secretary is directed to prepare a new version of Senate Bill No. 1742.

#### MOTION OF SENATOR ROCO (To Prepare a New Version of Committee Amendments as Basis for Individual Amendments)

**Senator Roco.** May we just ask permission, by way of motion, that the new version will no longer be engrossed, and if it is now accepted as the basis for committee amendments,

that we will now proceed with the individual amendments using the new version.

**The President.** That is correct.

**Senator Roco.** So that we do not have the brackets, the caps, et cetera. This is now the version that will be subject to individual amendments, Mr. President.

**Senator Sotto.** We concur with the gentleman, Mr. President.

**The President.** Although, if the Chair recalls correctly, Senator Roco, in one particular provision there was a discussion on the retention or deletion of the provision on observance of truth in advertising. This is in bracket right now. Do we delete it?

**Senator Roco.** In Section 3, that is bracketed only because we transposed it to the end. That is what I mean, Mr. President. This Section 3 was transposed; we rearranged the sentence so that it begins with the subject "*Election Propaganda*," et cetera. It was just rearranged. The bracketed—that is what I mean. By removing this already and having a clean draft for individual amendments, it simplifies the discussion.

**The President.** Just for the clarification of the Secretariat, specifically on that phrase "Subject only to the observance of truth in advertising", is that retained or not? Because there was a debate between the sponsor and Senator Barbers earlier. The point raised by Senator Barbers would imply that he would prefer retaining this phrase, and the Chair's impression was that the sponsor was amenable to its retention.

**Senator Roco.** On page 2, line 5, "OBSERVANCE OF TRUTH IN ADVERTISING."

**The President.** Yes, all right.

**Senator Roco.** So what I am suggesting, Mr. President, is, we delete already the "SURVEY", we delete already the ones in brackets so that in the period of individual amendments, we have a clean draft.

**The President.** All right. So the Secretariat will so delete already those provisions which are bracketed for purposes of the new draft.

#### SUSPENSION OF CONSIDERATION OF S. NO. 1742

Is there any objection to the suspension of consideration

of Senate Bill No. 1742? *[Silence]* There being none, consideration of Senate Bill No. 1742 is suspended.

**Senator Roco.** Thank you, Mr. President.

**Senator Sotto.** Mr. President, the Body earlier agreed to defer the reading of the Reference of Business, so may I now move that we proceed to the reading of the Reference of Business.

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

The Secretary will read the Reference of Business.

#### REFERENCE OF BUSINESS

#### MESSAGES FROM THE HOUSE OF REPRESENTATIVES

**The Acting Secretary** [Atty. Reyes].

August 17, 2000

The Honorable  
FRANKLIN M. DRILON  
President of the Senate  
Financial Center  
Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on August 16, 2000 passed House Bill No. 981, entitled

AN ACT CONVERTING THE BOTOLAN COMMUNITY HIGH SCHOOL IN THE MUNICIPALITY OF BOTOLAN, PROVINCE OF ZAMBALES INTO A NATIONAL HIGH SCHOOL TO BE KNOWN AS THE BOTOLAN NATIONAL HIGH SCHOOL AND APPROPRIATING FUNDS THEREFOR,

to which it requests the concurrence of the Senate.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO  
Secretary General

**The President.** Referred to the Committees on Education, Arts and Culture; and Finance