

MONDAY, MAY 22, 2000

TABLE OF CONTENTS

MOTION OF SENATOR TATAD.....	3-4
(To Defer the Reading of the Reference of Business to a Later Time)	
BILLS ON THIRD READING.....	4-81
(S. No. 1976 - Resetting the ARMM Elections to Second Monday of May 2001)	
(S. No. 1438 - Kinder Plus: The Early Years Act)	
(S. No. 2035 - City of Masbate)	
(S. No. 2036 - City of San Jose del Monte)	
(S. No. 2037 - City of Koronadal)	
(H. No. 243 - Dr. Arcadio Santos National High School, City of Parañaque)	
(H. No. 404 - Batanes General Comprehensive High School, Uyugan, Batanes)	
(H. No. 1885 - Cawagayan National High School Pinukpuk, Kalinga)	
(H. No. 1887 - Allaguia National High School Pinukpuk, Kalinga)	
(H. No. 3804 - Gov. Benjamin Leguiab Sr. Memorial National High School, Conner, Apayao)	
(H. No. 3863 - Magtoma Pangol National High School Tanudan, Kalinga)	
(H. No. 6555 - Mataguisi Comprehensive National High School, Pudtol, Apayao)	
(H. No. 397 - Candawaga National High School Rizal Palawan)	
(H. NO. 1119 - Philippine Science High School Lanao del Norte Campus)	
(H. No. 978 - Amungan National High School) Iba, Zambales)	
(H. No. 1190 - Sta. Cruz National High School Gapan, Nueva Ecija)	
(H. No. 1191 - Maruhat National High School Gapan, Nueva Ecija)	

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

Senator Tatad. Mr. President. I move that we consider Senate Bill No. 1742 as reported out under Committee Report No. 71.

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

Consideration of Senate Bill No. 1742 is now in order. With the permission of the Body, the Secretary will read only the title of the bill without prejudice to inserting in the Record the whole text thereof.

The Secretary. Senate Bill No. 1742, entitled

AN ACT LIFTING THE BAN ON ELECTION PROPAGANDA FOR
PARTIES AND CANDIDATES SEEKING NATIONAL
ELECTIVE OFFICES

Senator Tatad. Mr. President, to sponsor the measure. I ask that the Chairman of the Committee on Electoral Reforms, Suffrage and People's Participation, the honorable Sen. Raul S. Roco, be recognized.

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

SPONSORSHIP SPEECH OF SENATOR ROCO

Senator Roco. Mr. President, on behalf of the Committee on Electoral Reforms, Suffrage and People's Participation; and the Committee on Public Information and Mass Media chaired by Sen. Ramon B. Revilla, we are pleased to recommend approval of Senate Bill No. 1742, entitled

AN ACT LIFTING THE BAN ON ELECTION PROPAGANDA FOR
PARTIES AND CANDIDATES SEEKING NATIONAL
ELECTIVE OFFICES

In the interest of brevity, we will ask for a vote that this whole sponsorship speech be therefore reflected in the records as having been read. We just want to point out, Mr. President, that the sponsorship speech--this is of course if there is no objection, otherwise I will read through nine pages and it can be tedious for our colleagues--will be distributed. This is purely for sponsorship. I understand from the Majority Leader that we will not debate on this today. So it will be appropriate for us to debate on this at some other time.

The speech, Mr. President, just points out the historical antecedents of the limitations on political ads. Fundamentally, in the bill, instead of trying to modify the various prohibitions, we just deleted all the various prohibitions so it has become easier. But we then allow political advertisement subject only to truth in advertising. We do authorize Comelec to revive its powers on securing space--Comelec space or Comelec time--so that this can be equitably distributed. Essentially, those are the three sections of the bill, although we have shortened them, Mr. President, and we now ask that the nine pages which I will now submit to the Secretariat, if this meets with the unanimous consent of the Body, be reflected as having been read. I will give a copy immediately.

The following is the written sponsorship speech of Sen. Raul S. Roco:

MR. PRESIDENT:

In behalf of the Committee on Electoral Reforms, Suffrage and People's Participation and the Committee on Public Information and Mass Media, chaired by Senator Ramon B. Revilla we are pleased to recommend the approval of Senate Bill No. 1742, entitled: "Lifting the Ban on Election Propaganda For Parties and Candidates Seeking National Elective Offices"

Senate Bill No. 1742 is a substitute bill for the following measures:

Senate Bill No. 148 by Senator Sergio R. Osmeña III;
Senate Bill No. 353 by Senator Miriam Defensor Santiago;
Senate Bill No. 380 by Senator Francisco S. Tatad; Senate Bill No. 818 by Senator Renato L. Compañero Cayetano; and Senate Bill No. 886 introduced by Senator Raul S. Roco.

Legislative History

In the 1960's, elections were characterized by the total freedom to advertise. Efforts to regulate political advertising began with the passage of Republic Act No. 6132 otherwise known as "The 1971 Constitutional Convention Act," which took effect on 24 August 1970.

Section 12 of the law regulated election propaganda by requiring the Commission on Elections to construct a "Comelec billboard" that will allow each candidate for delegate in the Constitutional Convention to announce his candidacy and briefly state his qualifications and/or views on constitutional reforms as the candidate may desire.

The franchises of all radio broadcasting and television stations were amended so as to require each such station to furnish to the Commission, free of charge, during the campaign period at least one but not more than two hours of prime time at least once each week which shall be known as "Comelec time."

Outside Comelec billboards and Comelec time, candidates or other person may produce or distribute only the following forms of election propaganda such as pamphlets, leaflets, cards or other written or printed material; and handwritten or printed letters, urging voters to vote for or against any particular candidate.

The Commission was authorized to obtain free space from newspapers, magazines and periodicals, which was to be known as "Comelec Space." All other forms of election propaganda were prohibited.

Then on 2 September 1971, Congress passed Republic Act No. 6388, otherwise known as the Election Code of 1971: Unlike Republic Act No. 6182 which regulated only the elections of the delegates in the 1971 Constitutional Convention, the latter law was more comprehensive in that it applied to all elections of public officers except barrio officials and plebiscites.

The law enumerated the prohibited forms of election propaganda and regulated election propaganda through mass media. All broadcasting and television stations were required to furnish free of charge to the Commission, what was then known as "Comelec Time" which shall be used exclusively by the Commission to disseminate vital election information. The Commission was also mandated to promulgate rules and regulations regarding the sale or use of air time to insure that equal time in amount and quality is available to all candidates for the same office and to all political parties.

Under the 1973 Constitution, President Marcos promulgated Presidential Decree No. 1296, "The 1973 Election Code" which provided what constituted lawful election propaganda (Sec. 37) and the prohibited forms of election propaganda (Sec. 39).

Any newspaper or magazine advertising were required for the first time to bear the words "paid for by" followed by the true and correct name and address of the payor and by the words "printed by" followed by the true and correct name and address of the printer (Sec. 38).

The Decree did not prohibit election propaganda through mass media but merely regulated the sale of air time for political purposes (Sec. 41). Again, there were provisions

for "COMELEC Space" (Sec. 45) and "COMELEC Time" (Sec. 46).

Section 48 encouraged barangays and sanggunians to hold discussions on the qualifications, competence, programs or platforms of the candidates.

The present law is found in Batas Pambansa Blg. 881, the "Omnibus Election Code of the Philippines." Enacted on 3 December 1986, its regulatory features are found chiefly in the following sections:

Sec. 85. Prohibited forms of election propaganda:

Sec. 86. Regulation of election propaganda through mass media:

Sec. 90. Comelec space: and

Sec. 92. Comelec time.

On 5 January 1988, President Aquino signed into law Republic Act No. 6646, otherwise known as "The Electoral Reforms Law of 1987."

This law required the Commission on Elections to designate common poster areas in the strategic public places, such as markets, barangay centers and the like wherein candidates can post, display, or exhibit election propaganda to announce or further their candidacy (Sec. 10).

On the other hand, Section 11 (a) declared as unlawful to draw, paint, inscribe, write, post, display or publicly exhibit any election propaganda in any place, whether private, or public, except in the common poster areas and/or billboards provided in the immediately preceding section, at the candidate's own residence, or at the campaign headquarters of the candidate or political party.

Departing radically from the preceding statutes, the law does not only regulate political advertisements but prohibits "any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881." (Sec. 11 (b), RA 6646).

The Constitutional Challenge to RA 6646

The constitutionality of the political ad ban law was challenged in the case of *National Press Club vs. Commission on Elections*, 207 SCRA 1, 5 March 1992.

3

The Supreme Court sustained the validity of the statute. It characterized the political ad ban as "equalizing" the situations of rich and poor candidates. Section 11 (b) of Republic Act No. 6646 prohibits the sale or donation of print space and air time "for campaign or other political purposes" except to the Comelec. Furthermore, Sections 90 and 92 of the Omnibus Election Code require the Comelec to procure "Comelec space" in newspapers and "Comelec time" on radio and television stations. Furthermore, the Commission is commanded to allocate "Comelec space" and "Comelec time" on a free of charge, equal and impartial basis among all candidates within the area served by the newspaper or radio and television station involved.

Citing Article IX C, Section 9 of the Constitution, the Court ruled that the Comelec has thus been expressly authorized by the Constitution to supervise and regulate the enjoyment and utilization of the franchises or permits for the operation of media and communication, and information. It also cited Article II, Section 26 of the Constitution which provides that, "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law." It also characterized the law as a mechanism for insulating the electorate from undue invasion of their privacy.

Justice Isagani A. Cruz filed a strong dissent. Regardless of the financial disparity among the candidates, the law is unconstitutional as it constitutes censorship.

"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. 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. (at page 36)

"But the most serious objection to Section 11 (b) 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. (at page 37)

"I submit that all the channels of communication should be kept open to insure the widest dissemination of information bearing on the forthcoming elections. An uninformed electorate is not likely to be circumspect in the choice of officials who will represent them in the council of government. That they may exercise their suffrages wisely, it is important that they be apprised of the election issues, including the credentials, if any, of the various aspirants for public office. This is especially necessary now in the view of the dismaying number of mediocrities who, by an incredible aberration of ego, are relying on their money, their tinsel popularity, or their private armies to give them the plums of victory." (at pages 42-43)

As Justice Hugo Gutierrez, who also cast a dissenting vote, bluntly put it: "Section 11 (b) of R.A. 6848 will certainly achieve one result--keep the voters ignorant of who the candidates are and what they stand for" (at p. 28).

The Hearings Conducted by the Committee

During the hearings conducted by the Committee, the Commission on Elections favored tempering the provisions of the political ad ban as Section 13 of Republic Act No. 7166 fixes the aggregate amount that a candidate or registered political party may spend for election campaign. The Comelec also battled for the retention of the COMELEC Hour.

The Philippine Constitutional Association (PHILCONSA) believed that the political ad ban violates Section 4 of the Bill of Rights, especially the freedom of speech and of the press. It also posited that lifting the political ad ban helps the poor because political advertisements are cheaper than holding individual rallies for the purpose of exposing candidates. This was also the position of the National Press Club.

The Philippine Press Institute supports the lifting of the political ad ban because it assails the constitutional guarantee of press freedom.

The Kapisanan ng mga Brodkaster sa Pilipinas also favored lifting the ban on political advertisements because it deprives candidates of one of the most effective means of bringing their qualifications and programs of government to

2

the people. It also deprives the people of an effective means to be better informed about the candidates and the issues of the elections.

The Catholic Bishops Conference of the Philippines through the National Secretariat for Social Action is for the lifting of the political ad ban only for national candidates.

Salient Features of the Bill

The bill is a crystallization of all these views. It is fairly simple and straightforward. It does not enumerate what is allowable propaganda or what is prohibited. Subject only to the observance of truth in advertising, all election propaganda will be allowed. Section 1 provides:

"SECTION 1. *Lawful Election Propaganda.*--Subject only to the observance of truth in advertising, all political advertisements, whether on television, community antennae or cable television, radio, newspapers, surveys, or whatever medium shall henceforth be allowed for all political parties and for all candidates seeking national elective positions. Candidates for local elective positions may also avail of the political advertisements provided herein except for the purchase and sale of air time and print space which shall continue to be governed under the provisions of Sections 90 and 92 of the Omnibus Election Code."

Section 2 authorizes the Commission on Elections to promulgate the rules and regulations for the implementation of this Act. Violation of the rules and regulations of the Commission issued to implement this Act shall be an election offense punishable under Section 264 of the Omnibus Election Code.

Section 3 is the repealing clause. Section 85 of the Omnibus Election Code and Sections 10 and 11 of Republic Act No. 6846 are hereby repealed. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly.

Local candidates may also avail of the political advertisements provided herein except purchase and sale of air time and print time, which shall continue to be governed under the provisions of Sections 90 and 92 of the Omnibus Election Code.

Sections 90 and 92 provide:

"SEC. 90. *Comelec space.*--The Commission shall procure space in at least one newspaper of general circulation in every province or city: *Provided, however,*

That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "Comelec Space" wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated.

"SEC. 92. *Comelec time.*--The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated, equally and impartially among and within the area of coverage of all radio broadcasting and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of campaign."

The bill seeks to repeal Section 85 of the Omnibus Election Code and Sections 10 and 11 of RA 6646. In view of the importance of their repeal in connection with the thrusts of the bill, I hereby quote these sections in full:

"SEC. 85. *Prohibited forms of election propaganda.*--It shall be unlawful:

"(a) To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging voters to vote for or against any candidate unless they bear the names and addresses of the printer and payor as required in Section 84 hereof:

"(b) To erect, put up, make use of, attach, float or display any billboard, tinsplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party:

"(c) To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandanas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate:

"(d) 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 except telecasts which may be allowed as hereinafter provided: and

"(e) For any radio broadcasting or television station to sell or give free of charge air time for campaign and other political purposes except as authorized in this Code

6

under the rules and regulations promulgated by the Commission pursuant thereto.

"Any prohibited election propaganda gadget or advertisement shall be stopped, confiscated or torn down by the representative of the Commission upon specific authority of the Commission."

"SEC. 10. *Common Poster Areas.*--The Commission shall designate common poster areas in the strategic public places such as markets, barangay centers and the like wherein candidates can post, display, or exhibit election propaganda to announce or further their candidacy.

"Whenever feasible common billboards may be installed by the Commission and/or non-partisan private or civic organizations which the Commission may authorize whenever available, after due notice and hearing, in strategic areas where it may readily be seen or read, with the heaviest pedestrian and/or vehicular traffic in the city or municipality.

"The space in such common poster areas or billboards shall be allocated free of charge, if feasible, equitably and impartially among the candidates in the province, city or municipality.

"SEC. 11. *Prohibited Forms of Election Propaganda.*--In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful: (a) to draw, paint, inscribe, write, post, display or publicly exhibit any election propaganda in any place, whether private or public, except in the common poster areas and/or billboards provided in the immediately preceding section, at the candidate's own residence, or at the campaign headquarters of the candidate or political party: Provided, That such posters or election propaganda shall in no case exceed two (2) feet by three (3) feet in area: Provided, further, That at the site of and on the occasion of a public meeting or rally, streamers, not more than two (2) feet and not exceeding three (3) feet by eight (8) each may be displayed five (5) days before the date of the meeting or rally, and shall be removed within twenty-four (24) hours after said meeting or rally: and

"(b) for any newspapers, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or give for free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take

a leave of absence from his work as such during the campaign."

The repeal of the provision on the Common Poster Area implements the strong recommendations of the Commission on Elections during the hearings. It also seeks to apply the doctrine enunciated by the Supreme Court in the case of *Elo Umpar Adiong vs. Commission on Elections*, 207 SCRA 712, 31 March 1992. Here a unanimous Supreme Court ruled: "The COMELEC's prohibition on the posting of decals and stickers on 'mobile' places whether public or private except in designated areas provided for by the COMELEC itself is null and void on constitutional grounds."

For the foregoing reasons, we commend to our colleagues the early passage of Senate Bill No. 1742. In so doing, we move one step towards further ensuring "free, orderly, honest, peaceful and credible elections" as mandated by the Constitution.

Thank you.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1742

Senator Tatad. Mr. President, I would like to thank Senator Roco for his sponsorship of this particular measure. To allow the Chamber to prepare for the interpellation, I move that we suspend consideration of Senate Bill No. 1742.

The President. The consideration of Senate Bill No. 1742 is hereby suspended with the directive to the Secretary to reflect in the record the entire speech of Senator Roco as submitted, and the substance of the same should also be reflected in our *Journal* for today--

Senator Tatad. And copies be distributed immediately to the members especially the Minority Leader.

The President. --and copies of this sponsorship speech be delivered to all the members of the Chamber. With that, consideration of Senate Bill No. 1742 is hereby suspended.

MANIFESTATION OF SENATOR TATAD

(Sen. Loren Legarda-Leviste as Cosponsor of
H. No. 1119)

Senator Tatad. Mr. President, we just approved on Third Reading House Bill No. 1119 under Committee Report No. 111.