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The Pitfalls of Presidential Endorsements

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Mga Boss, noong una akong nangampanya, kapag nag-iikot ako sa Tarlac, noong ako'y tumakbo bilang congressman, napakaraming mga lugar na parang walang iniusad mula noong dekada sisenta, noong panahon pang gobernador ang tatay ko. 'Kako, nasaan ang asenso? Bakit ganito? Ito po yata ang epektong tinatawag na tradisyonal na pulitika: May mga ginawang pakay ang panatilihing naghihikahos ang mga kababayan natin, para sila ang maging takbuhan - mula pagkain, pagpapagamot, hanggang sa kasal, binyag, o lamay. Ito naman po ang utang na loob na sisingilin nila pagdating ng halalan, upang ipagpatuloy ang paghihirap ng nakararami, at pagyaman ng kakaunti.

Kaya nga po, sa susunod na eleksiyon, sino ba ang dapat suportahan? 'Yun po bang magpapatuloy ng Daang Matuwid at babalisa sistema ng padrino, o 'yung naghahanap ng paraang bumalik tayo sa siklong korupsiyon at kahirapan? Suriin po natin ang mga na gawang kandidato; mas maganda pa nga po kung mahaba-habaang karanasang basehan ng pagsusuri, dahil doon natin makikita ang maraming ebidensiya ng pagiging tapat at mahusay niyang kabalikat sa Daang Matuwid. Malinaw po kung sino sa mga pag pipilian ang tunay at karapat-dapat nating maging susunod na pinuno. At kung mababa man ang kanyang mga numero sa ngayon, ibig sabihin kailangan pa nating paghusayan ang pagpapakilala sa kanya. Tinatawag na naman po tayo ng patunayan na "The Filipino is worth fighting for." Alam po nating lahat: Ang tunay na mahalaga, kailangang paghirapan, kailangang ipaglaban.

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Mga Boss, idinudulog ko po sa inyo ngayon: Sa akin pong opinyon, ang nagpakita nang gilas at ng integridad, ang hinog at handang-handang magpatuloy ng Daang Matuwid: walang iba kundi si Mar Roxas.[2]

And so that was how President Benigno S. Aquino III "anointed" Department of Interior and Local Governments (DILG) Secretary Manuel A. RoxasII ("Mar") as his candidate in the 2016 Presidential elections, at the Kalayaan Hall, Club Filipino, San Juan City last Friday, July 31, 2015.

There is no question that the Presidential announcement was political in nature. It was made in a gathering of elected and appointed officials in government, as well as coalition of political parties among the traditional parties and the party-lists organizations aligned with the Daang Matuwid political agenda:

> Nandito tayo sa Kalayaan Hall ng Club Filipino, isang pribadong lugar na naging bahaging napakaraming mahahalagang pangyayari sa ating kasaysayan. Dito po, nanumpa ang aking ina, upang simula na ng ating pagkakamit ng pangakong EDSA. Sa mga matagal na nating kasama sa Daang Matuwid, maaalala rin ninyong dito ko unang binigkas: Puwede na muling mangarap ang Pilipino. Ngayon naman po, nandito tayo kasama ang Partido Liberal, pati ang mga iba pang mga grupo tulad ng KOMPRE, People Power Volunteers for Reform, Change Politics Movement, Urban Poor Alliance; mga party list tulad ng Akbayan, YACAP, Angkla - dahan-dahanin natin itong parting ito, baka may magalit na naman na hindi nabanggit. CoopNatco, Ateacher, ABS - 'yung party list po ah - at Append, pati na nga mga kaibigang kasaping NUP at NPC na mga nandito rin po sa araw na ito. Pati 'yung isa sa iniidolo nating si Mayor Hagedorn na nandito rin, na matagal nang kasama saTuwid na Daan.[3]

The endorsement speech was delivered before a crowd of mostly government officials, and covered by the major broadcast media. The venue was reportedly hosted and reserved by a political party. Its self-evident purpose is unmistakably to generate support and vote for Secretary Roxas in the 2016 Presidential elections. A political writer captured why Presidential endorsement is coveted by

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[2] Full Text: 'Walang iba kundi si Mar' Rappler (published august 1, 2015 at 9:04 p.m. and updated same date at 9:10 p.m.)

[3] Id.

the contenders to the highest office of the land in this singular statement in his article:

Moreover, it could lead to what has been the unwritten rule in Philippine politics- the mobilization of the state machinery to support the President's chosen candidate.[4]

Interestingly, the post-Marcos political history attests to this practice of the incumbent President's endorsement of what she or he considers the worthy successor to the Presidential seat of power- an unbroken practice since President Corazon "Cory" C. Aquino up to her son, President Aquino III. Of course, in October 2003, President Gloria Macapagal-Arroyo anointed herself as the candidate in the 2004 Presidential elections, after breaking her vow not to run in a public statement in December 2002.

The only exception to this political practice was President Joseph "Erap" E. Estrada, who could not endorse publicly with all the powers and the prerogatives of the Office of the President his bosom friend, Fernando Poe Jr. ("FPJ"), in the 2004 presidential elections as he was by then already languishing in his detention house in Tanay, Rizal. He was indicted for plunder after he was considered to have "constructively resigned" from the Presidency on January 20, 2001.[5]

Questions on the constitutionality and legality of a Presidential endorsement are therefore legitimate issues that may be raised not only by the aspirants to the position, but also by lesser mortals like the taxpayers and the voters. After all, we the lesser mortals would ultimately bear the costs of the Presidential

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[4]Lustre,Jr., Philip M. *"Mar Roxas: Game Changer"*, Rappler (published July 30, 1915, at 9:39 pm, and updated July 31,2015, 6:56 am)

[5]In the peculiar case of *Estrada vs. Desierto*, the Supreme Court thru then Associate Justice Reynato S. Puno introduced the concept of "constructive resignation" basing it from the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue, specifically the fact that the entire government bureaucracy has already withdrawn support and recognition of then President Estrada's leadership. The Supreme Court considered his leaving the Office of the President and his press statement (1) acknowledging the oath-taking of Pres. Arroyo albeit with reservation about its legality (2) emphasizing that he was leaving the Palace to begin the healing process of the nation (3) expressing gratitude to the people (4) assuring them that he will shirk from any future challenge that may come ahead in the same service of the country (5) calling on his supporters to join him in his promotion of nation reconciliation and solidarity, in deciding that "his presidency is now in the past tense". (G.R. No. 14670-15, March 2, 2001 with the companion case *Estrada v. Gloria Macapagal Arroyo*, G.R. No. L-146738, March 2, 2001)

endorsement. Undoubtedly, these are compelling issues that need public transparency and discourse given that public funds and government resources including manpower and equipment like vehicles, planes, vessels, or helicopters may be utilized in the crystallization of the Presidential endorsement into a political reality.

Specifically, we ask: how much of the time of the President and his Cabinet, and what resources of their respective offices and departments, will be devoted to the campaign of the anointed ostensibly in the pursuit of the Daang Matuwid political agenda, in the 2016 national elections? Should the Commission on Audit (COA) conduct special pre-audit and raise anticipatory "red flags" to all government offices including the Office of the President in view of the partisan political activities in the pursuit of the Presidential endorsement? Should the Commission on Elections (COMELEC) as the independent constitutional body that oversees the conduct of elections provide guidelines for these offices to observe and follow? Should the Office of the Ombudsman *motu proprio* field its personnel to police the government machinery, into following the guidelines of these two independent offices?

This article is therefore but a modest attempt to contribute to the public discourse on Presidential endorsements, with the end in view of illuminating both those in power and the public on the constitutional and legal issues provoked by a highly partisan political act of a sitting President in anticipation of the 2016 national elections.

Constitutional Parameters

There is no direct constitutional prohibition on the incumbent President's endorsement of his chosen candidate for the President (and Vice-President) in the Presidential elections. However, the incumbent President should be reminded of his oath of office under Article VII, Section 5 of the Constitution: "[I] do solemnly swear that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God."

As succinctly capsulized in his oath of office, the President, his act of endorsement as well as the activities of his men and women in government

President Macapagal-Arroyo, while admitting the infamous phone call, did not do a Nixon. But she was subsequently placed under hospital detention at the Veterans Memorial Hospital for a plunder case by the present administration.

As her father was the principal casualty of GMA's political resources in government in the 2004 elections, understandably, FPJ's daughter Senator Grace Poe-Llamanzares has filed Senate Resolution No. 679 (Omnibus Review of the Electoral Code) calling for a review of the country's laws to prevent another hi-tech *"Hello Garci"* scandal.

What is clear from the *"Hello Garci"* experience however is that as in the Watergate scandal, the Office of the President, with the President herself, was involved in what may be the worst political anomaly in the history of Philippine elections. This is clearly a betrayal of the President's oath of office, and of the public trust reposed upon her.

Partisan political activities may be boldly pursued by a sitting President (and even his Cabinet). He may take comfort, whether correctly or not, from the traditional doctrine of Presidential immunity from suit. However, jurisprudence clarifies that this doctrine can never be a shield to cover crimes, much less electoral fraud or offenses.The President may enjoy immunity while in office, but his Cabinet does not. While criminal cases may be postponed until he leaves office, he can still be held accountable for his acts committed while in office as his immunity, not being granted expressly in the Constitution, is only attached to the sovereign immunity of the State, [10] and only in furtherance of legitimate discharge of his official duties and functions.[11]As will be further discussed in this article, presidential appointees holding political offices may participate in partisan political activities notwithstanding the constitutional prohibition that: "[N]o officer or employee in the civil service shall engage, directly or indirectly, in any partisan political activity."[12]

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[10]*Joseph Ejercito Estrada v. AnianoDesierto et al.* Decisionin G.R. No. 14670-15, March 2, 2001 with the companion case *Joseph Ejercito Estrada v. Gloria Macapagal Arroyo*, G.R. No. L-146738, March 2, 2001, and Resolution dated April 3, 2001, 353 SCRA 452; Agabin, P. A., *Unconstitutional Essays*, (University of the Philippine Press and UP College of Law: 1996), pp. 199-225.

[11]*Republic of the Philippines v. Hon. Edilberto Sandoval*, G.R. No. 84607, March 19, 1993 220 SCRA 124

[12]Const., Article IX (B), Section 2 (4)

should all be measured and calibrated by the standards set by the Constitution, including those on public accountability.[6]

In the United States, President Richard M. Nixon had to resign on August 9, 1974 to avert further political annihilation as he was found obstructing justice when his political lieutenants were implicated and subsequently indicted in the break-in of the Democratic National Convention Headquarters offices for the 1972 Presidential elections at the Watergate Hotel.The said resignation followed the Watergate Scandal and his setback in the US Supreme Court in *US v. Richard Nixon*,[7] where the President's claim of executive privilege over the Watergate tapes was rejected by the said Court. The tapes that broke the President of the United States in 1974 revealed that the resources of the Office of the President were used in partisan political activities that were criminal in nature.

In the Philippines, we have the *"Hello Garci"* discs (or tapes as others like to call them) that metamorphosed into two versions care of the Office of the Press Secretary,[8] where we were all shocked to know that the sitting President, Gloria Macapagal-Arroyo ("GMA") who was then likewise running for President against FPJ, called a Commissioner of the Commission on Elections about the status of the then ongoing poll count in the 2004 Presidential elections. We have yet to see the *denoument* of the Watergate Scandal-Philippine style. Those responsible for the political crimes against FPJ are still out there enjoying their freedom and have yet to be held accountable,[9] although the beneficiary,

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[6]Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Const. Article XI, ACCOUNTABILITY OF PUBLIC OFFICERS)

[7]418 US 683 (1974)

[8] In a press conference held on June 10, 2005, then Secretary Ignacio Bunye presented two conflicting discs or tapes, with one saying that the person on the other line was a certain Gary, a political lieutenant, while the other saying that it was Commissioner Virgilio O. Garcillano of the COMELEC .

[9]Commissioner Garcillano was reportedly indicted by the Ombudsman, not for the electoral offenses in the "Hello Garci" scandal but for perjury for falsely testifying under oath and presenting fake passport in congressional hearings in 2005. (GMA News Online, March 18, 2014, at 5:44 pm)

In *Aytona v. Castillo,*[13] the Supreme Court in invalidating the midnight appointments made by President Garcia discussed the role of an outgoing administration, thus:

> But it is common sense to believe that after the proclamation of the election of President Macapagal, his was no more than a "care-taker" administration. He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which he ought to know, would embarrass or obstruct the policies of his successor. The time for debate had passed; the electorate had spoken. **It was not for him to use powers as incumbent President to continue the political warfare that had ended or to avail himself of presidential prerogatives to serve partisan purposes**...

Would the *Aytona* pronouncement be applicable to the activities of the President prior to the national elections, which may extend to appointments to government offices, especially independent constitutional bodies like the Commission on Elections, Commission on Audit and Civil Service Commission, or removal from offices of presidential appointees without any fixed term of office, without being considered partisan political activities?

Parameters under the Election Laws

(a) Partisan Political Activities

The Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881) defines the term "election campaign or "partisan political activity" as referring to "... acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office, which shall include:

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

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

[13]G.R. No. L- 19313, January 19, 1962, 4 SCRA 1

3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

5. Directly or indirectly soliciting votes, pledges or support for or against a candidate."(Section 79 (b), Article X, Omnibus Election Code)

However, the law further clarified that:

> "The foregoing enumerated acts if performed for the purpose of enhancing the chances of **aspirants for nomination for candidacy to a public office by a political party,**aggroupment, or coalition of parties shall **not** be considered as election campaign or partisan election activity.
>
> Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against **probable candidates** proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article." (*Id.*; bold face supplied)

Arguably, the Presidential anointment of Secretary Roxas at the Kalayaan Hall may fall under these last two sentences of Section 79(b), Article X of the Omnibus Election Code. It can be said that the secretary is only an aspirant seeking the nomination of his party, of which he is the party President on leave, or at the very least, one of the probable candidates. Hence, the statements of the President extolling Secretary Roxas shall not be considered a partisan political activity. As will be further discussed below, Secretary Roxas can not be considered a candidate given that as of the Presidential endorsement last Friday, the period for the filing of the certificate of candidacy for the President has not yet arrived.

However, a contrary argument that the endorsement by the President was a partisan political activity may be raised in that insofar as the groups, especially

the Liberal Party, and the officials present in that gathering are concerned, there are no other aspirants for nomination for candidacy to the President. Indeed, Secretary Roxas himself accepted the endorsement or so-called challenge, and made his vow to pursue the *Daang Matuwid* political agenda. In fact, there are pronouncements by the Liberal Party officers[14] that a national convention will no longer be held as only one party member, Secretary Roxas, has declared his intention to run for President. Indeed, President Aquino III would not have endorsed Secretary Roxas had the latter still entertained doubt as to his candidacy.

(b) Candidacy as an essential requirement

Section 79(b), Article X of the Omnibus Election Code speaks of a **candidate** or his **candidacy**, for any act to be measured as a partisan political activity. A "candidate" refers to "any person aspiring for or seeking an elective public office, **who has filed a certificate of candidacy** by himself or through a political party, aggroupment or coalition of political parties."[15] Thus, in order for acts to constitute partisan political activities, there must already be a candidate. In other words, if said acts were done to better the chances of any person intending to run for office but such person has not yet filed his certificate of candidacy, then these acts are not to be considered as partisan political activities.

The Supreme Court, in *Penera v. COMELEC,* [16] held that the essential requirement of a person as a candidate i.e. after the filing of a certificate of candidacy, must be present before certain activities can be considered to be unlawful partisan political activities:

> **It is a basic principle of law that any act is lawful unless expressly declared unlawful by law**. This is especially true to expression or speech, which Congress cannot outlaw except on very narrow grounds involving clear, present and imminent danger to the State. The mere fact that the law does not declare an act unlawful ***ipso facto*** means that the act is lawful. Thus, there is no need for Congress to declare in Section 15 of RA 8436, as amended by RA 9369, that political partisan activities before

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[14]Cupin, Bea. *Drilon:No LP Convention; 'Roxas running for President'*. Rappler (Published and updated on June 17, 2015, 6:10 pm)

[15] Section 79(a), Omnibus Election Code; bold face supplied

[16]G.R. No. 181613, November 25, 2009 605 SCRA 574

> the start of the campaign period are lawful. It is sufficient for Congress to state that "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period.**" The only inescapable and logical result is that the same acts, if done before the start of the campaign period, are lawful.
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> In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight – any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. In ruling that Penera is liable for premature campaigning for partisan political acts before the start of the campaigning, the assailed Decision ignores the clear and express provision of the law.
>
> The Decision rationalizes that a candidate who commits premature campaigning can be disqualified or prosecuted only after the start of the campaign period. This is not what the law says. What the law says is "**any unlawful act or omission applicable to a candidate shall take effect only upon the start of the campaign period.**" The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful."

Obviously, the law and understandably the jurisprudence that interpreted it may tend to emasculate the constitutional prescription for free, orderly, honest, peaceful and credible elections.[17] The excuse that the certificate of candidacy has not yet been filed is a license to violate almost all the prohibitions and restrictions on partisan political activities, prior to the campaign period.

(c) Dichotomized treatment of Appointive and Elective Officials

Elective and appointive officials in the government are treated differently when it concerns partisan political activities. The Supreme Court thru then Chief

[17] Const., Art. IX (c), Section 2 (4)

Justice Reynato S. Puno in *Quinto v. COMELEC*[18] upheld the validity of Section 4(a) of Resolution 8678 of the COMELEC, **in a resolution on a motion for reconsideration,** reasoning that:

> Section 4(a) of COMELEC Resolution 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter, *viz.*:
>
> **Incumbent Appointive Official.**- Under Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.
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> **Incumbent Elected Official.**- Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election Act, which repealed Section 67 of the Omnibus Election Code and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running, an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In fine, an elected official may run for another position without forfeiting his seat.
>
> These laws and regulations implement Section 2(4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign.
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> The intention to impose a strict limitation on the participation of civil service officers and employees in partisan political campaigns is unmistakable. The exchange between Commissioner Quesada and Commissioner Foz during the deliberations of the Constitutional Commission is instructive:

[18]G.R. 189698, February 22, 2010; end notes deleted

MS. QUESADA.

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Secondly, I would like to address the issue here as provided in Section 1 (4), line 12, and I quote: "No officer or employee in the civil service shall engage, directly or indirectly, in any partisan political activity." This is almost the same provision as in the 1973 Constitution. However, **we in the government service have actually experienced how this provision has been violated by the direct or indirect partisan political activities of many government officials.**

So, is the Committee willing to include certain clauses that would make this provision more strict, and which would deter its violation?

MR. FOZ. *Madam President, the existing Civil Service Law and the implementing rules on the matter are more than exhaustive enough to really prevent officers and employees in the public service from engaging in any form of partisan political activity.* ***But the problem really lies in implementation because, if the head of a ministry, and even the superior officers of offices and agencies of government will themselves violate the constitutional injunction against partisan political activity, then no string of words that we may add to what is now here in this draft will really implement the constitutional intent against partisan political activity.*** xxx (italics supplied)

To emphasize its importance, this constitutional ban on civil service officers and employees is presently reflected and implemented by a number of statutes. Section 46(b)(26), Chapter 7 and Section 55, Chapter 8 - both of Subtitle A, Title I, Book V of the Administrative Code of 1987 - respectively provide in relevant part:

Section 44. Discipline: General Provisions:

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(b) The following shall be grounds for disciplinary action:

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(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office.

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Section 55. Political Activity. -- No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of his candidates for public office whom he supports: Provided, **That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.**

Section 261(i) of Batas PambansaBlg. 881 (the Omnibus Election Code) further makes intervention by civil service officers and employees in partisan political activities an election offense, *viz.:*

SECTION 261. Prohibited Acts. -- The following shall be guilty of an election offense:

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(i) Intervention of public officers and employees. -- Any officer or employee in the civil service, **except those holding political offices**; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, barangay self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.

The intent of both Congress and the framers of our Constitution to limit the participation of civil service officers and employees in partisan political activities is too plain to be mistaken.

But Section 2(4), Article IX-B of the 1987 Constitution and the implementing statutes apply only to civil servants holding **apolitical** offices. Stated differently, **the constitutional ban does not cover elected officials**, notwithstanding the fact that "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." This is because elected public officials, by the very nature of their office, engage in partisan political activities almost all year round, even outside of the campaign period. Political partisanship is the inevitable essence of a political office, elective positions included.

The prohibition notwithstanding, civil service officers and employees are allowed to vote, as well as express their views on political issues, or mention the names of certain candidates for public office whom they support. This is crystal clear from the deliberations of the Constitutional Commission, *viz.*:

> MS. AQUINO: Mr. Presiding Officer, my proposed amendment is on page 2, Section 1, subparagraph 4, lines 13 and 14. On line 13, between the words "any" and "partisan," add the phrase ELECTIONEERING AND OTHER; and on line 14, delete the word "activity" and in lieu thereof substitute the word CAMPAIGN.
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> May I be allowed to explain my proposed amendment?
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> THE PRESIDING OFFICER (Mr. Treñas): Commissioner Aquino may proceed.
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> MS. AQUINO: The draft as presented by the Committee deleted the phrase "except to vote" which was adopted in both the 1935 and 1973 Constitutions. The phrase "except to vote" was not intended as a guarantee to the right to vote but as a qualification of the general prohibition against taking part in elections.

> Voting is a partisan political activity. Unless it is explicitly provided for as an exception to this prohibition, it will amount to disenfranchisement. We know that suffrage, although plenary, is not an unconditional right. In other words, the Legislature can always pass a statute which can withhold from any class the right to vote in an election, if public interest so required. I would only like to reinstate the qualification by specifying the prohibited acts so that those who may want to vote but who are likewise prohibited from participating in partisan political campaigns or electioneering may vote.
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> MR. FOZ: There is really no quarrel over this point, but please understand that *there was no intention on the part of the Committee to disenfranchise any government official or employee. The elimination of the last clause of this provision was precisely intended to protect the members of the civil service in the sense that they are not being deprived of the freedom of expression in a political contest. The last phrase or clause might have given the impression that a government employee or worker has no right whatsoever in an election campaign except to vote, which is not the case. They are still free to express their views although the intention is not really to allow them to take part actively in a political campaign.*

As noted by the Supreme Court in *Quinto*, the political reality on the ground has constrained the framers of the 1987 Constitution to recognize the pervasive partisan political activities of elected officials or appointees holding political offices in the government, and unfortunately, excuse them from the prohibition under the Article IX (B), Section 2 (4) of the Constitution.In this same case, the Supreme Court recognized the "evils" that the incumbent elective officials may utilize the resources of their present offices for partisan political activities:

> To start with, the equal protection clause does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. The test developed by jurisprudence here and yonder is that of reasonableness, which has four requisites:

(1) The classification rests on substantial distinctions;

(2) It is germane to the purposes of the law;

(3) It is not limited to existing conditions only; and

(4) It applies equally to all members of the same class.

Our assailed Decision readily acknowledged that these deemed-resigned provisions satisfy the first, third and fourth requisites of reasonableness. It, however, proffers the dubious conclusion that the differential treatment of appointive officials vis-à-vis elected officials is not germane to the purpose of the law, because "whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain,"*viz.*:

> ... For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their [Certificates of Candidacy] for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign.

Sad to state, this conclusion conveniently ignores the long-standing rule that to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may proceed "one step at a time." In addressing a societal concern, it must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded. Nevertheless, as long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment. We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class. Stated differently, the fact that a legislative classification, by itself, is under inclusive will not render it

unconstitutionally arbitrary or invidious. There is no constitutional requirement that regulation must reach each and every class to which it might be applied; that the Legislature must be held rigidly to the choice of regulating all or none.

Thus, any person who poses an equal protection challenge must convincingly show that the law creates a classification that is "palpably arbitrary or capricious." He must refute *all* possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment, such that the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable." In the case at bar, the petitioners failed - and in fact did not even attempt - to discharge this heavy burden. Our assailed Decision was likewise silent as a sphinx on this point even while we submitted the following thesis:

> ... [I]t is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment.

In the instant case, is there a rational justification for excluding elected officials from the operation of the deemed resigned provisions? I submit that there is.

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Considering that elected officials are put in office by their constituents **for a definite term**, it may justifiably be said that they were excluded from the ambit of the deemed resigned provisions in utmost respect for the mandate of the sovereign will. In other words, complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned.

The dichotomized treatment of appointive and elective officials is therefore germane to the purposes of the law. For the law was

> **made not merely to preserve the integrity, efficiency, and discipline of the public service; the Legislature, whose wisdom is outside the rubric of judicial scrutiny, also thought it wise to balance this with the competing, yet equally compelling, interest of deferring to the sovereign will.** (emphasis in the original)

In fine, the assailed Decision would have us "equalize the playing field" by invalidating provisions of law that seek to restrain the evils from running riot. Under the pretext of equal protection, it would favor a situation in which the evils are unconfined and vagrant, existing at the behest of both appointive and elected officials, over another in which a significant portion thereof is contained. The absurdity of that position is self-evident, to say the least.

The concern, voiced by our esteemed colleague, Mr. Justice Nachura, in his dissent, that elected officials (vis-à-vis appointive officials) have greater political clout over the electorate, is indeed a matter worth exploring - but **not** by this Court. Suffice it to say that the remedy lies with the Legislature. It is the Legislature that is given the authority, under our constitutional system, to balance competing interests and thereafter make policy choices responsive to the exigencies of the times. It is certainly within the Legislature's power to make the deemed-resigned provisions applicable to elected officials, should it later decide that the evils sought to be prevented are of such frequency and magnitude as to tilt the balance in favor of expanding the class. This Court cannot and should not arrogate unto itself the power to ascertain and impose on the people the best state of affairs from a public policy standpoint.

The *Quinto* decision accentuated the sad state of the law as it exempts the appointive officials holding political offices from the prohibitions governing the apolitical civil service. The reasoning of the Court anchored on the sovereign will in the case of elected officials, therefore justifying that the distinction is germane to the purpose of the law, does **not** apply however to the appointive officials holding political offices who do not have any sovereign mandate. They are appointed because of their political affiliations with the ruling party. They are in fact the privileged few in the government as they do not follow the career civil service or executive service system in their entry, unlike the apolitical or career civil servants. Their entry to the government is their political affiliations, not necessarily their merits and qualifications.

The Revised Administrative Code (Book V, Title 1, Sub-title A, Chapter 2, Section 9) does not also define the appointive officials holding political offices, albeit it defines the Non-Career Service as inclusive of the personal and confidential staff of the elective officials, Cabinet Secretaries and officers with Cabinet rank where these officials may fit in. The Civil Service Commission can therefore publish and inform the public, most especially the Commission on Elections, the officers and employees holding political offices. The COMELEC can in turn monitor their acts or omissions in office during the election period. Both these constitutional bodies have rule-making powers to carry out these tasks.

Use of public funds and other government resources-an election offense

On the question of whether or not the President may utilize public funds or other government resources for partisan political activities in the pursuit of his endorsement, the Omnibus Election Code (Section 261 (o)) is clear that it is an election offense:

> (o) Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. - Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the government or by its divisions, sub-divisions, agencies or instrumentalities, including government owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, including government-owned or controlled corporations, or by the armed forces of the Philippines for any election campaign or any partisan political activity.

This provision does not qualify whether the person is a government official or employee, or not; or whether he holds an appointive political office or elective office, or not. All persons are covered. The vanguard in ensuring the integrity of public funds and other government resources is the Commission on Audit.[19] It

[19] Const., Article IX (D), Section 2(1)

can therefore conduct anticipatory or special pre-audit exercises during the next nine (9) months to monitor the unlawful use of public funds and government resources for partisan political activities of government offices, starting from the ones considered as political offices.

Summation

In sum, the Presidential endorsement of Secretary Roxas for President in the 2016 national elections places the entire government bureaucracy at the critical risk of partisan political activities for the unwritten rule is, as one political writer has put it, "the mobilization of the state machinery to support the President's chosen candidate". At the very least, it invites a plethora of challenges based on constitutional and legal grounds when such an endorsement is operationalized. Batas PambansaBlg 881 otherwise known as the Omnibus Election Code was approved on December 3, 1985, or almost 30 years ago; hence, its antiquity alone militates against its efficacy and efficiency in modern day elections. The Supreme Court in *Quinto* has bared the political reality of the possible misuse and abuse of public offices in elections, especially those it classified but failed to define as "political offices", and the difficulties in preventing them. The *"Hello Garci"* scandal is too recent to forget, barely just a presidential election before 2010 when President Aquino III was elected into office. The President must therefore realize the pitfalls of his endorsement at this very early stage in anticipation of his eventual exit from the Palace. If not addressed, his anointment may lead to an electoral process marred by fraudulent use of government resources - a legacy that he can not leave for the country to remember him in ignominy. Only he as the Chief Executive and Commander-in Chief can insulate the Government from the corrosive effects of partisan political activities and fraud in the electoral process in the interest of transparency and public accountability. The vigilance and proactive participation of the independent constitutional commissions are likewise urgently demanded under these circumstances.

We must always keep in mind the lessons of the past, for to borrow the popular quote of Spanish philosopher George Santayana: "[T]hose who do no remember the past are condemned to repeat it."

Makati City, August 3, 2015