

## EN BANC

[ G.R. No. 162777, August 31, 2004 ]

**FRANCISCO I. CHAVEZ, PETITIONER, VS. COMMISSION ON ELECTIONS, REPRESENTED BY ITS CHAIRMAN, BENJAMIN S. ABALOS, ESMERALDA AMORA-LADRA, IN HER CAPACITY AS ACTING DIRECTOR IV, NATIONAL CAPITAL JUDICIAL REGION, COMMISSION ON ELECTIONS, AND THE SOLICITOR GENERAL, RESPONDENTS.**

### DECISION

**AZCUNA, J.:**

In this petition for prohibition with prayer for the issuance of a writ of preliminary injunction, Francisco I. Chavez stands as a taxpayer and a citizen asking this Court to enjoin the Commission on Elections (COMELEC) from enforcing Section 32 of its Resolution No. 6520, dated January 6, 2004. The assailed provision is, as follows:

**Section 32.** All propaganda materials such as posters, streamers, stickers or paintings on walls and other materials showing the picture, image, or name of a person, and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate for public office shall be immediately removed by said candidate and radio station, print media or television station within 3 days after the effectivity of these implementing rules; otherwise, he and said radio station, print media or television station shall be presumed to have conducted premature campaigning in violation of Section 80 of the Omnibus Election Code.

Petitioner Chavez, on various dates, entered into formal agreements with certain establishments to endorse their products. On August 18, 2003, he authorized a certain Andrew So to use his name and image for 96° North, a clothing company. Petitioner also signed Endorsement Agreements with Konka International Plastics Manufacturing Corporation and another corporation involved in the amusement and video games business, G-Box. These last two agreements were entered into on October 14, 2003 and November 10, 2003, respectively. Pursuant to these agreements, three billboards were set up along the Balintawak Interchange of the North Expressway. One billboard showed petitioner promoting the plastic products of Konka International Plastics Manufacturing Corporation, and the other two showed petitioner endorsing the clothes of 96° North. One more billboard was set up along Roxas Boulevard showing petitioner promoting the game and amusement parlors of G-Box.

On December 30, 2003, however, petitioner filed his certificate of candidacy for the position of Senator under Alyansa ng Pag-asa, a tripartite alliance of three political parties: PROMDI, REPORMA, and Aksyon Demokratiko.

On January 6, 2004, respondent COMELEC issued Resolution No. 6520, which contained Section 32, the provision assailed herein. On January 21, 2004, petitioner was directed to comply with the said provision by the COMELEC's Law Department. He replied, on January 29, 2004, by requesting the COMELEC that he be informed as to how he may have violated the assailed provision. He sent another letter dated February 23, 2004, this time asking the COMELEC that he be exempted from the application of Section 32, considering that the billboards adverted to are mere product endorsements and cannot be construed as paraphernalia for premature campaigning under the rules.

The COMELEC answered petitioner's request by issuing another letter, dated February 27, 2004, wherein it ordered him to remove or cause the removal of the billboards, or to cover them from public view pending the approval of his request.

Feeling aggrieved, petitioner Chavez asks this Court that the COMELEC be enjoined from enforcing the assailed provision. He urges this Court to declare the assailed provision unconstitutional as the same is allegedly (1) a gross violation of the non-impairment clause; (2) an invalid exercise of police power; (3) in the nature of an ex-post facto law; (4) contrary to the Fair Elections Act; and (5) invalid due to overbreadth.

Is Section 32 of COMELEC Resolution No. 6520 an invalid exercise of police power? Petitioner argues that the billboards, while they exhibit his name and image, do not at all announce his candidacy for any public office nor solicit support for such candidacy from the electorate. They are, he claims, mere product endorsements and not election propaganda. Prohibiting, therefore, their exhibition to the public is not within the scope of the powers of the COMELEC, he concludes.

This Court takes a contrary view. Police power, as an inherent attribute of sovereignty, is the power to prescribe regulations to promote the health, morals, peace, education, good order, or safety, and the general welfare of the people.<sup>[1]</sup> To determine the validity of a police measure, two questions must be asked: (1) Does the interest of the public in general, as distinguished from those of a particular class, require the exercise of police power? and (2) Are the means employed reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals?

A close examination of the assailed provision reveals that its primary objectives are to prohibit premature campaigning and to level the playing field for candidates of public office, to equalize the situation between popular or rich candidates, on one hand, and lesser-known or poorer candidates, on the other, by preventing the former from enjoying undue advantage in exposure and publicity on account of their resources and popularity. The latter is a valid reason for the exercise of police power as held in *National Press Club v. COMELEC*,<sup>[2]</sup> wherein the petitioners questioned the constitutionality of Section 11(b) of Republic Act No. 6646, which prohibited the sale or donation of print space and air time "for campaigning or other political purposes," except to the COMELEC. The obvious intention of this provision is to equalize, as far as practicable, the situations of rich and poor candidates by preventing the former from enjoying the undue advantage offered by huge campaign "war chests." This Court ruled therein that this objective is of special

importance and urgency in a country which, like ours, is characterized by extreme disparity in income distribution between the economic elite and the rest of society, and by the prevalence of poverty, with so many of our population falling below the poverty line.

Moreover, petitioner cannot claim that the subject billboards are purely product endorsements and do not announce nor solicit any support for his candidacy. Under the Omnibus Election Code, "election campaign" or "partisan political activity" is defined as an act designed to promote the election or defeat of a particular candidate or candidates to a public office. Activities included under this definition are:

- (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;
- (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.<sup>[3]</sup> (underscoring ours)

It is true that when petitioner entered into the contracts or agreements to endorse certain products, he acted as a private individual and had all the right to lend his name and image to these products. However, when he filed his certificate of candidacy for Senator, the billboards featuring his name and image assumed partisan political character because the same indirectly promoted his candidacy. Therefore, the COMELEC was acting well within its scope of powers when it required petitioner to discontinue the display of the subject billboards. If the subject billboards were to be allowed, candidates for public office whose name and image are used to advertise commercial products would have more opportunity to make themselves known to the electorate, to the disadvantage of other candidates who do not have the same chance of lending their faces and names to endorse popular commercial products as image models. Similarly, an individual intending to run for public office within the next few months, could pay private corporations to use him as their image model with the intention of familiarizing the public with his name and image even before the start of the campaign period. This, without a doubt, would be a circumvention of the rule against premature campaigning:

**Sec. 80.** Election campaign or partisan political activity outside campaign period. – It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period. x x x <sup>[4]</sup>

Article IX (C) (4) of the Constitution provides:

**Sec. 4.** The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Under the abovementioned Constitutional provision, the COMELEC is expressly authorized to supervise or regulate the enjoyment or utilization of all media communication or information to ensure equal opportunity, time, and space. All these are aimed at the holding of free, orderly, honest, peaceful, and credible elections.

Neither is Section 32 of Resolution No. 6520 a gross violation of the non-impairment clause. The non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government.<sup>[5]</sup> Equal opportunity to proffer oneself for public office, without regard to the level of financial resources one may have at his disposal, is indeed of vital interest to the public. The State has the duty to enact and implement rules to safeguard this interest. Time and again, this Court has said that contracts affecting public interest contain an implied reservation of the police power as a postulate of the existing legal order. This power can be activated at anytime to change the provisions of the contract, or even abrogate it entirely, for the promotion or protection of the general welfare. Such an act will not militate against the impairment clause, which is subject to and limited by the paramount police power.<sup>[6]</sup>

Furthermore, this Court notes that the very contracts entered into by petitioner provide that the endorser's photograph and image shall be utilized in whatever form, mode and manner "in keeping with norms of decency, reasonableness, morals and law;"<sup>[7]</sup> and in whatever form, mode and manner not contrary to law and norms of decency,"<sup>[8]</sup> and "in whatever form, mode and manner in keeping with norms of decency, reasonableness, morals and law."<sup>[9]</sup>

Petitioner also claims that Section 32 of Resolution No. 6520 is in the nature of an *ex post facto* law. He urges this Court to believe that the assailed provision makes an individual criminally liable for an election offense for not removing such advertisement, even if at the time the said advertisement was exhibited, the same was clearly legal. Hence, it makes a person, whose name or image is featured in any such advertisement, liable for premature campaigning under the Omnibus Election Code.<sup>[10]</sup> A close scrutiny of this rationale, however, demonstrates its lack of persuasiveness. Section 32, although not penal in nature, defines an offense and prescribes a penalty for said offense. Laws of this nature must operate prospectively, except when they are favorable to the accused. It should be noted, however, that the offense defined in the assailed provision is not the putting up of "propaganda materials such as posters, streamers, stickers or paintings on walls