

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City
EIGHTEENTH CONGRESS
Third Regular Session
HOUSE BILL No. 10614



Introduced by
BAYAN MUNA Reps. CARLOS ISAGANI T. ZARATE,
EUFEMIA C. CULLAMAT, and FERDINAND R. GAITE

AN ACT
PROHIBITING PREMATURE CAMPAIGNING,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9369, AS AMENDED, OR
THE “AUTOMATED ELECTION SYSTEM LAW”

EXPLANATORY NOTE

Undoubtedly, early election campaigning has already started.

This comes more than two (2) months before the start of the **official campaign period** for the May 9, 2022 National and Local Elections on February 8, 2022. Gigantic billboards have lined major roads and expressways in the country featuring individual candidates and party-lists groups that can afford to pay millions for the same. Advertisements in TV, radio, and even social media of known candidates have also started flooding the airwaves.

In an electoral atmosphere when rules that supposedly uphold fair play are ineffective, poor candidates and poor party-list groups are practically withered away and left far behind from the race, by the visibility of the rich political dynasties and candidates.

Since 2009, moneyed candidates have been able to launch their electoral campaign without violating the law, even before the start of the campaign period. This practice was brought about by the promulgation of *Penera v. COMELEC*.¹

In *Penera*, the Supreme Court declared that a candidate can only be considered as such at the start of the campaign period. Hence, even if the person has already filed a Certificate of Candidacy, she or he cannot be liable for premature campaigning even before the start of the campaign period.

Section 80 of the Omnibus Election Code (OEC) states that 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 xxx.”

However, Sec. 13 of RA 9369², as amended, qualified the foregoing OEC provision on unlawful campaigning, to wit: “*any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period...*”

¹ G.R. No. 181613. November 25, 2009
² Republic Act No. 9369, amending RA 8436, January 23, 2007, An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pampansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Elections Laws, Providing Funds Therefor And For Other Purposes"

1 This practically defeated the intent of Section 80 of the OEC when it removed “candidates” from
2 the ambit of Sec. 80. This is the reason why there is no longer “premature campaigning.”

3
4 Sec. 80 clearly prohibits premature campaigning, but Justice Abad saw it necessary to further explain
5 this in his dissenting opinion in *Penera*:

6
7 “(N)o one is exempt from the ban. The mention of the word “candidate” in the first grouping, i.e., “any person,
8 whether or not a voter or candidate,” merely stresses the point that even those with direct interest in a political
9 campaign are not exempt from the ban. Consequently, even if Penera had not yet filed her certificate of candidacy,
10 Section 80 covered her because she fell in the category of “any person.”

11
12 But, the Supreme Court said that they only applied the law:

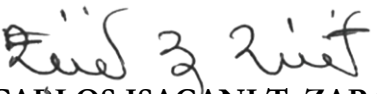
13
14 *What the law says is “any unlawful act or omission applicable to a candidate shall take effect only upon the start of*
15 *the campaign period.” The plain meaning of this provision is that the effective date when partisan political acts become*
16 *unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same*
17 *partisan political acts are lawful.*

18
19 It is Congress that has the duty to enact laws or even amend or revise a law, if necessary, to ensure
20 that it is clear, devoid of ambiguity, and, it upholds the Constitutional edict of equal protection.

21
22 This bill seeks to equalize the playing field among candidates by removing the confusion brought
23 about by the provision in the AES Law that determines when a person becomes a candidate. This
24 also brings back the effectivity of Sec. 80 of the OEC, and not only disqualifies candidates for
25 premature campaigning (Sec. 68³ of the OEC) but also criminalizes the same.

26
27 Hence, the immediate passage of this bill is earnestly sought.

28
29
30 Approved,


REP. CARLOS ISAGANI T. ZARATE
Bayan Muna Partylist


REP. FERDINAND R. GAITE
Bayan Muna Partylist


REP. EUFEMIA C. CULLAMAT
Bayan Muna Partylist

31

³ OEC, SECTION 68. Disqualifications. - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having x x x (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office; x x x

1 Republic of the Philippines
2 HOUSE OF REPRESENTATIVES
3 Quezon City

4
5 EIGHTEENTH CONGRESS
6 Third Regular Session

7
8 HOUSE BILL No. 10614
9

10 Introduced by
11 BAYAN MUNA Reps. CARLOS ISAGANI T. ZARATE,
12 EUFEMIA C. CULLAMAT, and FERDINAND R. GAITE

13
14 AN ACT
15 PROHIBITING PREMATURE CAMPAIGNING,
16 AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9369, AS AMENDED, OR
17 THE “AUTOMATED ELECTION SYSTEM LAW”
18

19
20 Be it enacted by the Senate and the House of Representatives in Congress assembled:

21
22 **Section 1. Title.** This Act shall be known as “*An Act Prohibiting Premature Campaigning, Amending for*
23 *the Purpose Republic Act No. 9369, as amended, or the Automated Election System Law of 2006.*”
24

25 **Section 2.** Sec. 13 of RA 9369, as amended, is hereby amended to read as follows:
26

27 "SEC.15. *Official Ballot.* – xxx

28
29 xxx.
30

31 For this purpose, the Commission shall set the deadline for the filing of certificate of
32 candidacy/petition of registration/manifestation to participate in the election. **ANY**
33 **PERSON SHALL BE CONSIDERED A CANDIDATE UPON THE FILING OF**
34 **HIS / HER CERTIFICATE OF CANDIDACY WITHIN THE PERIOD SET BY**
35 **THE COMMISSION:** ~~Any person who files his certificate of candidacy within this period~~
36 ~~shall only be considered as a candidate at the start of the campaign period for which he filed~~
37 ~~his certificate of candidacy:~~ *Provided,* That, unlawful acts or omissions applicable to a
38 candidate shall **TAKE EFFECT IMMEDIATELY FROM SUCH FILING OF THE**
39 **COC:** ~~effect only upon that start of the aforesaid campaign period:~~ *Provided, finally,* That any
40 person holding a public appointive office or position, including active members of the armed
41 forces, and officers, and employees in government-owned or-controlled corporations, shall
42 be considered *ipso facto* resigned from his/her office and must vacate the same at the start of
43 the day of the filing of his/her certification of candidacy.
44

45 **Section 3. Separability clause.** If any section or provision of this Act shall be declared
46 unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full
47 force and effect.
48

49 **Section 4. Repealing clause.** All laws, decrees, orders, rules and regulations and other issuance
50 inconsistent with the provisions of this Act are deemed modified, revoked or repealed accordingly.
51

52 **Section 5. Effectivity.** This Act shall take effect fifteen (15) days after its publication in a
53 newspaper of general circulation or in the Official Gazette.
54

55
56 Approved,