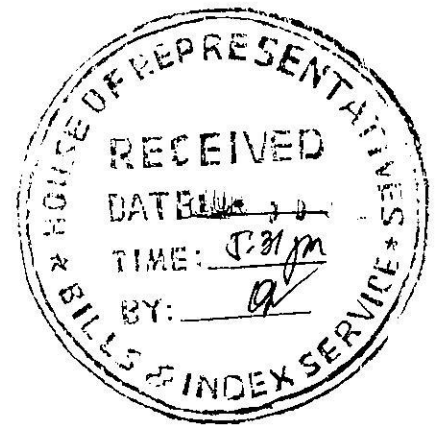


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
1st Regular Session

HOUSE BILL NO. 438



Introduced by Rep. JOHNNY PIMENTEL

EXPLANATORY NOTE

The Constitution provides that the Philippines is a democratic and a republican State. Sovereignty resides in the people and all government authority emanates from them. Under this Constitutional fiat, we operationalized it with the holding of popular and competitive elections.

With the aim to establish a systematic rule to govern elections, Batasan Pambansa Blg. 881 was enacted. Under Section 80 of the Omnibus Election Code, election campaigning and partisan political activity outside the campaign period was proscribed. It provided the repercussion of making a candidate be subject to disqualification from his candidacy or from holding office under Section 68.

However, by virtue of Section 15 of Republic Act 8436, as amended by Republic Act 9369, which provides that "unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the said campaign period," it has erased the liability of a candidate from the offense of election campaign outside the campaign period. The amendment seems to have permitted prospective candidates and candidates alike to engage in premature electioneering.

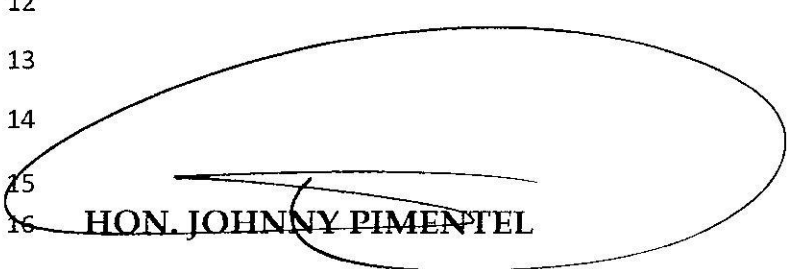
Furthermore, under the *Penera v. COMELEC* ruling in 2009, the Supreme Court has ruled that no candidate can be held liable for premature campaigning because he shall be considered a candidate only at the start of the campaign period. Also, the unlawful acts or omissions applicable to the candidate shall take effect only upon the start of such campaign period.

This setup is counterintuitive to the principles of fair play during elections in a democratic state. As remarked by the Comelec spokesperson in response to the criticisms against the constitutional commission's inaction on instances of early

1 campaigning, "premature campaigning" could not be committed since there is
2 no "official candidate" yet to speak of. A congressional act is required.

3
4 This measure seeks to correct and reconcile the provisions of the Omnibus
5 Election Code and the Republic Act. 9369 where the prohibition against early
6 campaigning and partisan political activity would be reinstituted. This also puts
7 liability against a prospective candidate who carries out premature
8 campaigning within a year before the start of the campaign period and placing
9 him under the ambit of disqualification in the Omnibus Election Code anew.

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11 The passage of this measure is earnestly sought.

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16 
HON. JOHNNY PIMENTEL

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1 **"AN ACT AMENDING SECTION 79 AND 80 OF BATAS PAMBANSA BILANG**
2 **881, OTHERWISE KNOWN AS THE OMNIBUS ELECTION CODE OF THE**
3 **PHILIPPINES, PROHIBITING THE ACTS OF PREMATURE CAMPAIGNING"**
4

5 *Be it enacted by the Senate and House of Representatives of the Philippines in*
6 *Congress assembled:*
7

8
9 SECTION 1. Section 79 of Batas Pambansa Blg. 881, also known as the
10 "Omnibus Election Code of the Philippines," is hereby amended to read as follows:

11 "Section 79. DEFINITIONS. – As used in this Code:

12 a. The term "candidate" refers to any person aspiring for or seeking
13 an elective public office, who has filed a certificate of candidacy
14 by himself or through an accredited political party, aggroupment,
15 or coalition of parties;

16 **A PERSON SHALL BE CONSIDERED AS A CANDIDATE**
17 **FROM THE MOMENT HE FILES HIS CERTIFICATE OF**
18 **CANDIDACY. ACTS CONSTITUTING PREMATURE**
19 **CAMPAIGNING ENUMERATED IN THIS CODE SHALL APPLY**
20 **TO CANDIDATES UPON THE FILING OF THEIR CERTIFICATE**
21 **OF CANDIDACY.**

22 **THE TERM "PROSPECTIVE CANDIDATE" REFERS TO ANY**
23 **PERSON ASPIRING FOR OR SEEKING AN ELECTIVE**
24 **PUBLIC OFFICE, WHETHER OR NOT HE HAS EXPLICITLY**
25 **DECLARED HIS INTENTION TO RUN AS A CANDIDATE IN**
26 **THE IMMEDIATELY PRECEDING ELECTIONS, AND**
27 **SUBSEQUENTLY FILES A CERTIFICATE OF CANDIDACY.**

28 b. The term "election campaign" or "partisan political activity"
29 refers to an act designed to promote the election or defeat of a
30 particular candidate or candidates to a public office which shall
31 include:

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

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

8 (3) Making speeches, announcements or commentaries, or
9 holding interview for or against the election of any candidate
10 for public office;

11 (4) Publishing or distributing campaign literature or materials
12 designed to support or oppose the election of any candidate; or

13 (5) Directly or indirectly soliciting votes, pledges or support for or
14 against a candidate. **PROVIDED, THAT THE ACTS**
15 **ENUMERATED IN THIS SUBSECTION SHALL EQUALLY BE**
16 **APPLICABLE TO A PROSPECTIVE CANDIDATE.**

17 The foregoing enumerated acts if performed for the purpose of
18 enhancing the chances of aspirants for nomination for candidacy
19 to a public office by a political party, aggroupment, or coalition of
20 parties shall not be considered as election campaign or partisan
21 election activity.

22 Public expressions or opinions or discussions of probably issues
23 in a forthcoming election or on attributes of or criticisms against
24 probably candidates proposed to be nominated in a forthcoming
25 political convention shall not be construed as part of any election
26 campaign or partisan political activity contemplated under this
27 Article.”

28 SEC. 2. Section 80 of BP Blg. 881 is hereby amended to read as follows:
29

30 “Section 80. Election campaign or partisan political activity
31 outside campaign period. – It shall be unlawful for any person,
32 whether a voter or candidate, **OR A PROSPECTIVE**
33 **CANDIDATE**, or for any party, or association of persons, to
34 engage in an election campaign or partisan political activity except
35 during the campaign period: Provided, that political parties may
36 hold political conventions or meetings to nominate their official
37 candidates within thirty days before the commencement of the

1 campaign period and forty-five days for President and Vice-
2 Presidential election. **PROVIDED FURTHER THAT A**
3 **CANDIDATE OR A PROSPECTIVE CANDIDATE MAY BE**
4 **HELD LIABLE UNDER THIS SECTION FOR ACTS**
5 **COMMITTED WITHIN ONE YEAR BEFORE THE**
6 **COMMENCEMENT OF THE CAMPAIGN PERIOD UPON THE**
7 **FILING OF HIS CERTIFICATE OF CANDIDACY.**
8

9 SEC. 3. *Implementing Rules and Regulation.* – The Commission on Elections
10 shall promulgate and issue the rules and regulations necessary to implement the
11 provisions of this Act.
12

13 SEC. 4. *Separability Clause.* – If any portion or provision of this Act is declared
14 unconstitutional, the same shall not affect the validity and effectivity of the other
15 provisions not affected thereby.
16

17 SEC. 5. *Repealing Clause.* - All laws, presidential decrees, letters of
18 instructions, executive orders, rules, regulations, and other issuances or parts thereof
19 which are contrary to or inconsistent with the provisions of this Act are hereby revoked,
20 repealed, amended or modified accordingly.
21

22 SEC. 6. *Effectivity Clause.* – This act shall take effect fifteen (15) days following
23 the completion of its publication in the Official Gazette or in at least one (1) newspaper
24 of general circulation.
25

Approved,