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[G.R. No. L-34854. November 20, 1978]

FORTUNATO R. PAMIL, *petitioner-appellant, vs.* **HONORABLE VICTORINO C. TELERON, as Judge of the Court of First Instance of Bohol, Branch III, and REV. FR. MARGARITO R. GONZAGA,** *respondents-appellees.*

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; PROBIHITION AGAINST AN ECCLESIASTIC RUNNING FOR ELECTIVE OFFICE; RULE, REPEALED BY THE 1935 CONSTITUTION. — The prohibition against an ecclesiastic running for elective office imposed by Section 2175 of the Revised Administrative Code cannot survive either because it was superseded by the 1935 Constitution or repealed. Under the present Charter, it is explicitly declared "No religious test shall be required for the exercise of civil or political rights." The challenged provision insofar as it declares ineligible ecclesiastic to any elective or appointive office, is, on its face, inconsistent with the religious freedom guaranteed by the Constitution. To so exclude them is to impose a religious test.

2. ID.; ID.; ID.; ID.; VIEW THAT SUCH PROHIBITION IS NOT TAINTED WITH CONSTITUTIONAL INFIRMITY PREVAILS. — Where there is failure to obtain the necessary eight votes needed to give binding force to the view that ecclesiastics could run for elective office, the continuing effective of Sec. 2175 of the Administrative Code imposing such prohibition must be given full force and application. While five members of the Court constitute a minority, the vote of the remaining seven does not suffice to render the challenged provision ineffective. Section 2175 of the Revised Administrative Code, as far as ecclesiastics are concerned, must be accorded respect. The presumption of validity calls for its application. Under the circumstances, *certiorari* lies. That is the conclusion arrived at by the writer of this opinion, joined by Justice Concepcion Jr., Santos, Fernandez, and Guerrero. They have no choice then but to vote for the reversal of the lower court decision and declare ineligible

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respondent Father Margarito R. Gonzaga for the office of municipal mayor. With the aforesaid five other members, led by the Chief Justice, entertaining no doubt as to his lack of eligibility, this petition for *certiorari* must be granted.

CASTRO, *C.J., concurs in the result:*

1. **STATUTORY CONSTRUCTION; STATISTICS IMPLIED REPEAL; WHEN EFFECTIVE.** — On the complementary question of implied repeal, it is a time-honored cardinal rule of legal hermeneutics that for a later provision of law to be considered as having repealed a prior provision, there must be such absolute repugnance between the two that the prior provision *must* give way. I do not discern any such repugnance.

2. **ADMINISTRATIVE LAW; PUBLIC OFFICE; INELIGIBILITY OF ECCLESIASTICS TO RUN FOR MUNICIPAL OFFICE; RULE NOT EXPRESSLY OR IMPLIEDLY REPEALED.** — Since section 2175 of the Administrative Code has not been superseded, and has been neither expressly nor impliedly repealed in so far as the absolute disqualification of ecclesiastics is concerned, it is perforce the controlling law in the case at bar. Careful note must be taken that the absolute disqualification is couched in the most compelling of negative terms, The law reads: "*In no case* shall there be *elected* or *appointed* to a municipal office ecclesiastics . . . italics supplied) Should an ecclesiastic be erroneously allowed by this Court to hold a municipal office, through the happenstance of a procedural technicality or by the mischief of circumlocution, or otherwise, then the Court would be *particeps criminis* in the negation of the unequivocal and imperious mandate of the law. The law admits of no exception; there can therefore be none. And the Court has no constitutional warrant to legislate thru any manner of exercise in semantics.

BARREDO, *J., concurs in the result:*

CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF RELIGION; APPLICATION OF "NO RELIGIOUS TEST" PROVISION ON ECCLECIASTIC RUNNING FOR ELECTIVE POSITION. — Accordingly, the only way respondent Fr. Gonzaga can legally hold to the mayorship he is occupying, is

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for Section 2175 to be declared as violative of the constitutional injunction in Section 1 (7) of the 1935 Constitution of the Philippines which was in force in 1971 that "No religious test shall be required for the exercise of civil or political rights" as contended by him. On this score, it is my considered view that there is no repugnancy at all between Section 2175, on the one hand, and the freedom of religion provision of the Old Constitution, which, incidentally, is reproduced textually in the New Charter, and the principle of separation of church and state, on the other. The "no religious test" provision is founded on the long cherished principle of separation of church and state which the framers of our 1973 Constitution opted to include as an express provision in the fundamental law by ordaining that such separation "shall be inviolable" (Art. XV, Sec. 15), not as a redundancy but in order to comprehend situations which may not be covered by the provisions on religious freedom in the Bill of Rights. (Art. IV, Sec. 8.) It simply means that no public office may be denied to any person, by reason of his religious belief, including his non-belief. Whether he believes in God or not, or, believing in God, he expresses and manifests his belief in one way or another, does not disqualify him. But when he becomes a religious or an ecclesiastic, he becomes one who does not merely belong to his church, congregation or denomination or one who entertains his own religious belief; he becomes the official minister of his church with distinct duties and responsibilities which may not always be compatible with the posture of absolute indifference and impartiality to all religious beliefs which the government and all its officials must maintain at all times, on all occasions and in every aspect of human life and individual endeavor precisely because of the separation of church and state and the full enjoyment of religious freedom by everyone. There is no known safeguard against witting or unwitting, patent or latent discrimination that a religious may lapse into when confronted with a situation where opposing religious interests maybe involved. And yet, it is in such a predicament that paramount public interest would demand that he should neither hesitate nor equivocate. Having in mind the imperfection of all human beings, I cannot believe that any religious, found in such unenviable situation would be able to successfully acquit himself from all suspicion of concealed interest in favor of his own church. What is worse, any attempt on his part to look the other way just to avoid

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such suspicion of partiality might only result in more impropriety or injustice. Indeed, as I see it, even the day of perfect and sincere ecumenism is not yet here.

MAKASIAR, *J., concurs in the result:*

1. ADMINISTRATIVE LAW; ELECTION LAW; CANDIDATES RUNNING FOR ELECTIVE OFFICE; RULE UNDER SEC. 23 OF THE ELECTION CODE; COMPATIBLE WITH SEC. 2175 OF THE REVISED ADMINISTRATIVE ORCER. — Basic is the rule that implied repeals are not favored unless there is such an irreconcilable repugnancy between the two laws that both statutes cannot stand together. It is patent that the two legal provisions are compatible with each other. Section 23 of the Election Code *does not enumerate the persons* disqualified for a public elective or appointive office; but *merely prescribes the effect of filing a certificate of candidacy* by an appointive public officer or employee or by active members of the Armed Forces of the Philippines or by an officer or employee in a government-owned or controlled corporation. Section 23 states that upon the filing of his certificate of candidacy, such appointive officer or employee or member of the Armed Forces shall "*ipso facto* cease in his office or position . . ." The obvious purpose is to prevent such candidate from taking advantage of his position to the prejudice of the opposing candidates not similarly situated. On the other hand, Section 2175 of the Revised Administrative Code provides for an absolute disqualification and enumerates the persons who are so absolutely disqualified to run for or be appointed to a municipal office which enumeration includes not only public officers but also private individuals like contractors and ecclesiastics. Section 23 of the Election Code of 1971 applies only to public officers and employees, including those in government-owned or controlled corporations and members of the Armed Forces, but not to private citizens, like contractors or ecclesiastics. Hence, a contractor who is not employed in any government office or government-owned or controlled corporation or in the Armed Forces, *need not* vacate his private employment, if any, upon his filing a certificate of candidacy. Likewise, if he were qualified in the absence of the absolute disqualifications in Section 2175 of the Revised Administrative Code, a priest or minister is not

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ipso facto divested of his position in his church the moment he files his certificate of candidacy.

2. ID.; PUBLIC OFFICE; PRIESTS OR MINISTERS OF ANY RELIGION ARE PROHIBITED FROM RUNNING FOR OR BEING APPOINTED TO A MUNICIPAL PUBLIC OFFICE. — To stress, Section 2175 of the Revised Administrative Code, does not provide for a religious test for the exercise of civil and political rights. The said section merely defines a disqualification for a public office. It prohibits priests or ministers of any religion, and the other persons specified in said Section 2175, from running for or being appointed to a municipal public office. It does not deprive such specified individuals of their political right of suffrage — to elect a public official. A citizen, who is a Catholic, Protestant, Muslim, Aglipayan or a member of the Iglesia ni Kristo, but who is not a priest or a minister of any religion, sect or denomination, can run for a municipal elective office. Section 2175 does not inquire into the religion or lack of it on the part of an ordinary citizen. If it does, all citizens would be disqualified for election or appointment to a local public office; and there would be no need to single out soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality, along with ecclesiastics. All these persons, whether priests or ministers or soldiers or contractors or employees of the national or provincial government, profess some religion or religious belief. To repeat, one is disqualified under Section 2175, not by reason of his religion or lack of it, but because of his religious profession or vocation.

3. ID.; ID.; ID.; DESIGNED TO PRESERVE THE INDESTRUCTIBLE WALL OF SEPARATION BETWEEN CHURCH AND STATE. — No doubt Section 2175 was designed to preserve the indestructible wall of separation between Church and State — the basic pillar of our democratic regime. The no-religious test clause of the Constitution only implements and supplements one's freedom to entertain views of his relations to his Creator and to preach, propagate and evangelize his religious belief. But such no-religious test does not guarantee him the right to run for or be appointed to a public office and thereafter to use such public office to compel the citizenry to conform to his religious belief, thereby to gain for his Church dominance over

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the State. A priest or minister, once elected or appointed to a municipal office, necessarily enjoys the salary pertaining to the office. This would be a direct violation of the prohibition under Section 18(2) of Article VIII of the 1973 Constitution, which was contained in paragraph 3 of Section 23 of Article VI of the 1935 Constitution. Not only public funds will be appropriated for his salary but the priest or minister thus elected or appointed as a municipal officer or employee will also directly or indirectly enjoy the use or benefit of any property of the municipality. The only exception where such appropriation of public money or property can be validly made in favor of such priest or minister is when he is assigned to the Armed Forces or to any penal institution or government orphanage or leprosarium.

4. POLITICAL LAW; SEPARATION OF CHURCH AND STATE; STRESSED.— The separation of Church and State implicit in the Bill of Rights (Sec. 1, par. 7 of Art. III of the 1935 Constitutions and Sec. 8, Article IV, 1973 Constitution), has been expressly stated and therefore stressed in Section 15 of Article XV of the 1973 Constitution, which categorically enjoins that "the separation of Church and State shall be inviolable." This basic principle which underlies the structure of our government was the sharp reaction to the historical lesson learned by mankind in general that the fusion of government and religion tends to destroy government and degrade religion (*Engel vs. Vitale*, 370 US 421) because it invariably degenerates into tyranny. The terror that was the Inquisition claimed for its victims physicist and astronomer Galileo Galilei and philosopher Giordano Bruno, among thousands of other victims.

ANTONIO, *J., concurs in the result:*

1. POLITICAL LAW; STATE; SEPARATION OF CHURCH AND STATE; INTERRELATED WITH "NO RELIGIOUS TEST" PROVISION. — The separation of State and Church clause was again incorporated in the 1935 and later in the 1973 Constitutions. Thus, the 1973 Constitution of the Philippines provides that "the separation of church and state shall be inviolable."[5] This should, therefore, be taken into consideration in ascertaining the meaning and import of Section 8 of Article IV of the Constitution, which states that "no religious test shall be required for the exercise of civil or political rights." According

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to Story, the "no religious test" clause contained in the United States Constitution was "not introduced merely for the purpose of satisfying the scruples of many respectable persons, who feel an invincible repugnance to any religious test or affirmation. It had a higher object; to cut off forever every pretence of alliance between church and state in the national government. The framers of the Constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human mind; and that tolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas, or resisted its infallibility." It is clear, therefore, that the two provisions, taken together, ensure the separation of Church from Government, while at the same time giving assurance that no man shall be discriminated against because of his religious beliefs. The interrelation of these complementary clauses was well summarized, thus: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority." Indeed, it is a matter of history that "the union of government and religion tends to destroy government and degrade religion."

2. **ADMINISTRATIVE LAW; PUBLIC OFFICE; RULE ON PROHIBITION OF ECCLESIASTIC TO RUN FOR PUBLIC, NOT BECAUSE OF RELIGIOUS BELIEF.** — The situation of private respondent is materially different. He is admittedly a member of the Clergy, being a priest of the Roman Catholic Church. It is for this reason that he is being prevented from assuming the office of municipal mayor, and not because of his religious belief. The prohibition does not impinge upon his religious freedom. He has the full and free right to entertain his religious belief, to practice his religious principle and to teach his religious doctrine, as long as he does not violate the laws of morality or the laws of the land. The separation of Church and State clause in the Constitution appears to be a recognition of the teachings of history "that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end

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that official support of the . . . Government would be placed behind the tenets of one or of all orthodoxies."

AQUINO, *J., concurs in the result:*

1. ADMINISTRATIVE LAW; PUBLIC OFFICE; INELIGIBILITY OF CLERGYMAN TO RUN FOR MUNICIPAL OFFICE; NOT IMPLIEDLY REPEALED BY SEC. 23 OF THE REVISED ELECTION CODE. — So, it cannot be concluded that section 23 of the Revised Election Code impliedly abrogated the ineligibility of priests to run for municipal mayor as provided in Section 2175. There is no irreconciliable repugnancy between Section 23 and Section 2175 insofar as ecclesiastics are concerned. Section 2175 and Section 23 are in *pari materia* with respect to soldiers in the active service. There is no incompatibility between the two sections with respect to soldiers. The disqualification in Section 2175, as regards soldiers in the active service, is compatible with their cessation as members of the armed forces when they file their certificates of candidacy, as provided for in Section 23. Soldiers can hold a municipal office if they are no longer in active service. That can be implied from Section 2175 itself. For that matter, the automatic resignation from public office, under Section 23, of public officers who file their certificates of candidacy has no connection with the disqualification in Section 2175 of ecclesiastics from holding any municipal office. That disqualification is not affected by the provision of the *ipso facto* resignation of public officers who file their certificates of candidacy because an ecclesiastic is not a public officer. The view that Section 23 impliedly repealed the disqualification of ecclesiastics from holding a municipal office is strained and far-fetched. So much for Section 23 of the Election Code of 1971. Mr. Justice Fernando, the Court's leading authority on constitutional law, tackled the question of respondent's eligibility from the constitutional viewpoint although the issue of constitutionality was not raised in the lower court. I disagree with the opinion that the provision of Section 2175 disqualifying ecclesiastics from holding a municipal office is unconstitutional. The term "ecclesiastics" refers to priests, clergymen or persons in holy orders or consecrated to the service of the church. Broadly speaking, it may include nuns.

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2. ID.; ID.; ID.; RULE NOT ABROGATED ON CONSTITUTIONAL PROVISION ON "NO RELIGIOUS TEST." — It is argued that the disqualification of priests was abrogated by section 1(7), Article III of the 1935 Constitution which provides that "no religious test shall be required for the exercise of civil or political rights." It is assumed that the disqualification is "inconsistent with the religious freedom guaranteed by the Constitution (See Sec. 8, Art. IV; Sec. 18[2], Art. VIII, and Sec. 8, Art. XII, 1973 Constitution). I disagree with that conclusion. There is no incongruency between the disqualification provision and the "no religious test" provision. The two provisions can stand together. The disqualification provision does not impair the free exercise and enjoyment or religious profession and worship. It has nothing to do with religious freedom.

3. ID.; ID.; ID.; PURPOSE. — The ecclesiastic is disqualified to run for an elective office in order to prevent his church from controlling the government. The same reason holds true with respect to soldiers in active service. They should not meddle in politics so that no segment of the army can overthrow the government. Indeed, there is no reason why a priest should hold a civil office. He should have enough work in his hands ministering to the spiritual needs of the members of his church. He can be an activist and he can champion social justice if he is not a municipal officeholder. Respondent Father Gonzaga is supposed to devote himself solely to spiritual matters and not to temporal affairs such as the administration of a municipality. The objective of the Roman Catholic Church is the salvation or redemption of souls. To attain that objective, the priest under the *Codex Juris Canonici* is invested with the threefold function of teaching, directing and sanctifying in the name of Jesus Christ. That means the governance of the faithful and the ministry of divine worship or exclusive dedication to the service of God and the sanctification of men in the manner of the priestly and Levitical orders of the Old Testament (19 Encyclopedia Britanica, 1973 Ed., pp. 465-466). To nullify the disqualification provision would be a retrogressive step. To allow clergymen to take part in political affairs is to start the process of reviving the theocracy of primitive societies and past civilizations where the priests, with his chants, incantations, hocus-pocus and abbracadabra, played a sinister role.

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4. ID.; ID.; ID.; DOES NOT MEAN DENIAL OF HIS RELIGIOUS FREEDOM OR HIS POLITICAL RIGHTS. — A priest, who is disqualified from becoming a municipal employee, is not denied any part of his religious freedom or his political rights. A priest may have the civil right to embrace the religious vocation but he does not have the constitutional right to be a municipal employee. He can choose between being a municipal employee and being a priest. He cannot be both. That arrangement is good for himself and his church and for society.

TEEHANKEE, *J., dissenting:*

1. ELECTION LAW; PERSONS INELIGIBLE OR DISQUALIFIED FROM CANDIDACY; CITED. — As the Comelec stressed in its ruling, the Election Code of 1971 as the applicable law in this case *expressly enumerates all* those declared *ineligible* or *disqualified* from candidacy or if elected, from holding office, *viz*, nuisance candidates under Section 31, those disqualified on account of having been declared by final decision of a component court or tribunal guilty of terrorism, election overspending, solicitation or receipt of prohibited contributions or violation of certain specified provisions of the Code under Section 25, or having been likewise declared disloyal to the constituted government under Section 27 or those presidential appointees who prematurely seek to run for elective office without complying with the compulsory waiting periods of 150 days (for national office) and 120 days (for any other elective office) after the termination of their tenure of office under Section 78. All other persons possessing the necessary qualifications and *not* similarly expressly declared ineligible or disqualified by the said Election Code, such as ecclesiastics like respondent or contractors for municipal public works cannot but be deemed *eligible* for public office. Thus, ecclesiastics' eligibility for *national* office has universally been conceded and has never been questioned.

2. ID.; ID.; DOES NOT INCLUDE ECCLESIASTICS. — As already stated above, appointive public office holders and active members of the Armed Forces are no longer disqualified from running for an elective office, because Section 23 of the 1971 Election Code manifestly allows them to do so and provides that they "shall *ipso facto* cease in (their) office or position

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on the date (they) file (their) certificate of candidacy." Ecclesiastics and municipal public works contractors are no longer included in the extensive enumeration of persons ineligible under the said Election Code. Under the maxim of "*Inclusio unius, exclusio alterius*" and the general rule that all persons possessed of the necessary qualifications except those *expressly disqualified* by the Election Code are eligible to run for public office, the ban against them in Section 2175 of the Revised Administrative Code must be deemed set aside under the 1971 Election Code's repealing clause.

3. ID.; ID.; **INELIGIBILITY OF ECCLESIASTICS FOR MUNICIPAL OFFICE IS INCONSISTENT WITH AND VIOLATIVE OF HIS RELIGIOUS FREEDOM.** — On the constitutional dimension given *motu proprio* to the case in the main opinion of Mr. Justice Fernando, by way of "constitutional objections to the continuing force and effectivity of Section 2175 as far as ecclesiastics are concerned," I concur with the main opinion, concurred in by five other members of the Court, *viz*, Justices Muñoz Palma, Concepcion Jr., Santos, Fernandez and Guerrero that the archaic Administrative Code provision declaring ecclesiastics ineligible for election or appointment to a municipal office is inconsistent with and violative of the religious freedom guaranteed by the 1935 Constitution and that to so bar them from office is to impose a religious test in violation of the Constitutional mandate that "No religious test shall be required for the exercise of civil or political rights." Both the 1935 Constitution (which is applicable to the case at bar) and the 1973 Constitution guarantee in practically identical terms the fullest religious freedom. To assure that there is no impediment to the fullest exercise of one's religious freedom, the Constitution prohibits that there be a state-established union and thereby decrees that there must be separation of church and state. (The 1973 Constitution redundantly stresses in its General Provisions, Article XV, Section 15 that "(T)he separation of church and state shall be inviolable."). The free exercise of one's religion and freedom of expression of religious doctrines and beliefs (*positive* as well as *negative*) and the freedom to perform religious rites and practices are guaranteed by the Constitution's mandate that "no law shall be made, . . . prohibiting the free exercise (of religion)" and that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall *forever* be allowed." In order to assure the fullest freedom

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of the individual in this regard and to prevent that the State negate or dilute religious freedom by according preference to one religious organization as against others, the Constitution finally commands that "no religious test shall be required for the exercise of civil or political rights."

MUÑOZ PALMA, *J., dissenting:*

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; LIES WHEN NECESSARY VOTES IS NOT MET TO RENDER A PROVISION OF THE LAW INEFFECTIVE. — As regards the final outcome of this case, with Justices Fernando, Concepcion Jr., Santos, Fernandez, and Guerrero who share our views on the legal issue raised in the Petition, now voting with the Chief Justice and the four other Justices *to grant the petition* because, "the vote is indecisive" for "while 5 members of the Court constitute a minority, the vote of the remaining seven does not suffice to render the challenged provision ineffective," and "under the circumstances, *certiorari* lies," and therefore the aforementioned Justices "have no choice then but to vote for the reversal of the lower court decision and declare ineligible respondent Father Margarito R. Gonzaga for the office of municipal mayor," (See 1st paragraph, p. 3 of Majority Opinion) I can only state that this reasoning surpasses my comprehension. I believe that there would have been greater fidelity to the prevailing situation had the petition for *certiorari* been denied due to the original lack of necessary votes to grant the same, a *status quo* maintained insofar as respondent Father Gonzaga is concerned, without a conclusive ruling pronounced on the legal issue as the required eight votes for purposes of rendering judgment is absent. (See Sec. 9, Judiciary Act of 1948 as amended by Art. X, Sec. 2[2] 1973 Constitution).

2. ADMINISTRATIVE LAW; PUBLIC OFFICE; INELIGIBILITY OF ECCLESIASTICS TO RUN FOR MUNICIPAL OFFICE; CONSTITUTES AN UNJUST INDICTMENT AND DISCRIMINATION AGAINST PRIEST. — I must voice my objection to the above-quoted sweeping statements which are also echoed in the other Opinions of my distinguished Colleagues, as they savor of bias, prejudice, and constitute an unjust indictment and discrimination against priests, more particularly, priest of the Roman Catholic Church. It is not for

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me to pontificate on what is or should be the true mission of priests, ministers, and nuns, the latter, according to Justice Aquino, also fall under the term "ecclesiastics," for I would leave that matter to the conscience and judgment of the person concerned and of his superiors in his church, but I will speak out in defense of a person's constitutional right not to be discriminated against, nor to be denied of equal opportunities for work or employment, or withheld of equal protection of the laws in the exercise of his civil or political rights, simply because he is garbed in a cassock or a religious habit and has taken vows of service to God and his church. One's religious vocation does not strip the individual of his rights and obligations as a citizen of his country and as a member of the community where he serves. He is part of society, and his having taken vows of poverty, humility, and love, renders him all the more concerned with humanity, more particularly, with the social and economic conditions of the people with whom he lives be they within or out of his flock. A minister of the church is therefore not to be feared of playing a "sinister role" in the handling of government affairs, rather it is the layman motivated by ambition and greed set out to enrich himself and perpetuate his person in power while the poor becomes poorer and the oppressed becomes more burdened with injustice, who is to be abhorred and shunned. The fears expressed by the Justice concerned date far back in the dark ages of history and in truth are the result of the abuses of *a few*. Now we live in different times. Concepts in government, politics, religion, and society as a whole, have undergone drastic changes with the passing of the years. The Filipino people for their part have kept faith with their goal of political independence and their love for freedom and justice side by side with their Christian religion and all other faiths which flourish in the prevailing spirit of ecumenism.

3. **POLITICAL LAW; SEPARATION OF CHURCH AND STATE; CONCEPT.** — But then it is strongly argued that the election or appointment of priests or even nuns to municipal office will be violative of the separation of church and state. I strongly believe that it is not so. As an eminent Constitutionalist puts it: what is sought to be achieved under the principle of separation of church and state is that political process is insulated from religion and religion from politics; in other words, government neutrality in religious matters. Thus, our Constitution provides that no law shall be made respecting an

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establishment of religion. Having an ecclesiastic or priest in a local government office such as that of the municipal mayor will not necessarily mean the involvement of politics in religion or *vice-versa*. Of course the religion of the man cannot be dissociated from his personality; in truth, his religion influences his conduct, his moral values, the fairness of his judgment, his outlook on social problems, etc. As stated in the *Hysong* decision, inevitably in popular government by the majority, public institutions will be tinged more or less by the religious proclivities of the majority, but in all cases where a discretion is reposed by the law, it is to be assumed in the absence of evidence to the contrary, that the public officer will perform his duty in the manner the law requires. I may add that there are legal remedies available to the citizenry against official action violative of any existing law or constitutional mandate.

APPEARANCES OF COUNSEL

Urbano H. Lagunay for petitioner.
Cristeto O. Cimagala for respondents.

D E C I S I O N

FERNANDO, *J.*:

The novel question raised in this *certiorari* proceeding concerns the eligibility of an ecclesiastic to an elective municipal position. Private respondent, Father Margarito R. Gonzaga, was, in 1971, elected to the position of municipal mayor of Alburquerque, Bohol.[1] Thereafter, he was duly proclaimed. A suit for *quo warranto* was then filed by petitioner, himself an aspirant for the office, for his disqualification[2] based on this Administrative Code provision: "In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of

[1] Petition, par. 1.

[2] *Ibid.* par. 4.

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the municipality."[3] The suit did not prosper, respondent Judge sustaining the right of Father Gonzaga to the office of municipal mayor. He ruled that such statutory ineligibility was impliedly repealed by the Election Code of 1971. The matter was then elevated to this Tribunal by petitioner. It is his contention that there was no such implied repeal, that it is still in full force and effect. Thus was the specific question raised.

There is no clear-cut answer from this Tribunal. After a lengthy and protracted deliberation, the Court is divided on the issue. Seven members of the Court are of the view that the judgment should be affirmed as the challenged provision is no longer operative either because it was superseded by the 1935 Constitution or repealed. Outside of the writer of this opinion, six other Justices are of this mind. They are Justices Teehankee, Muñoz Palma, Concepcion Jr., Santos, Fernandez, and Guerrero. For them, the overriding principle of the supremacy of the Constitution or, at the very least, the repeal of such provision bars a reversal.[4] The remaining five members of this Court, Chief Justice Castro, Justices Barredo, Makasiar, Antonio, and Aquino, on the other hand, hold the position that such a prohibition against an ecclesiastic running for elective office is not tainted with any constitutional infirmity.

The vote is thus indecisive. While five members of the Court constitute a minority, the vote of the remaining seven does not suffice to render the challenged provision ineffective. Section 2175 of the Revised Administrative Code, as far as ecclesiastics are concerned, must be accorded respect. The presumption of validity calls for its application. Under the circumstances, *certiorari* lies. That is the conclusion arrived at by the writer of this opinion, joined by Justice Concepcion Jr., Santos, Fernandez, and Guerrero. They have no choice then but to

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[3] Section 2175 of the Revised Administrative Code (1917).

[4] The doctrine of repeal was stressed in the separate opinion of Justice Teehankee, although he was likewise in agreement with the view of the other six Justices that such a ban on ecclesiastics, is not in conformity with the Constitution, a question which, according to him, however, was not squarely raised.

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vote for the reversal of the lower court decision and declare ineligible respondent Father Margarito R. Gonzaga for the office of municipal mayor. With the aforesaid five other members, led by the Chief Justice, entertaining no doubt as to his lack of eligibility, this petition for *certiorari* must be granted.

Except for the dispositive part announcing the judgment of the Court, the remainder of this opinion sets forth the reasons why there are constitutional objections to the continuing force and effectivity of Section 2175 as far as ecclesiastics are concerned.

1. The Revised Administrative Code was enacted in 1917. In the 1935 Constitution, as it is now under the present Charter, it is explicitly declared: "No religious test shall be required for the exercise of civil or political rights.[5] The principle of the paramount character of the fundamental law thus comes into play. There are previous rulings to that effect[6] The ban imposed by the Administrative Code cannot survive. So the writer of this opinion would hold.

2. This is to conform to this provision of the 1935 Charter: "All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the Congress of the Philippines, and all references in such laws to the government or officials of the Philippines shall be construed, in so far as applicable, to refer to the Government

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[5] Art. III, Sec. 1, par. 7 of the 1935 Constitution. The present provision reads as follows: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." Art. IV, Sec. 8 of the present Constitution is worded similarly.

[6] Cf. *People v. Linsañgan*, 62 Phil. 646 (1935); *De los Santos v. Mallare*, 87 Phil. 289 (1950); and *Martinez v. Morfe*, L-34022, March 24, 1972, 44 SCRA 22.

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and corresponding officials under this Constitution."[7] It was first applied in *People v. Linsañgan*,[8] decided in December, 1935, barely a month after that Constitution took effect. This Court held that Section 2718 of the Revised Administrative Code that would allow the prosecution of a person who remains delinquent in the payment of cedula tax,[9] was no longer in force. As stated by the then Justice, later Chief Justice, Abad Santos, after setting forth that the Constitution prohibits the imprisonment for debt or nonpayment of poll tax:[10] "It seems too clear to require demonstration that Section 2718 of the Revised Administrative Code is inconsistent with Section 1, clause 12, of Article III of the Constitution in that, while the former authorizes imprisonment for non-payment of the poll or cedula tax, the latter forbids it. It follows that upon the inauguration of the Government of the Commonwealth, said Section 2718 of the Revised Administrative Code became inoperative, and no judgment of conviction can be based thereon."[11]

De los Santos v. Mallare[12] came next. The President, under the Revised Administrative Code, could remove at pleasure

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[7] Art. XVI, Section 2 of the Constitution. A similar provision is now found in Article XVII, Section 7. It reads: "All existing laws not inconsistent with this Constitution shall remain operative until amended, modified, or repealed by the National Assembly."

[8] 62 Phil. 646.

[9] Article 2718 of the Revised Administrative Code reads: "A person liable to the cedula tax who remains delinquent in the payment of the same for fifteen days after June first of each year and who upon demand of the provincial treasurer fails thereafter to pay such tax as required by law shall be deemed to be guilty of a misdemeanor; and the provincial treasurer may, in his discretion, cause the delinquent to be prosecuted before the justice of the peace of the municipality in which the delinquent shall be found, and upon conviction the person so delinquent shall be sentenced to imprisonment of five days for each unpaid *cedula*."

[10] According to Art. III, Sec. 1, clause 12 of the Constitution: "No person shall be imprisoned for debt or non-payment of a poll tax." There is a reiteration of this provision in the present Constitution. CF. Art. IV, Section 13.

[11] 62 Phil. 646, 650.

[12] 87 Phil. 289 (1950).

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any of the appointive officials under the Charter of the City of Baguio.[13] Relying on such a provision, the then President Quirino removed petitioner De los Santos, who was appointed City Engineer of Baguio on July 16, 1946, and chose in his place respondent Gil R. Mallare. Why such a power could not pass the test of validity under the 1935 Constitution was pointed out by Justice Tuason thus: "So, unlike legislation that is passed in defiance of the Constitution, assertive and menacing, the questioned part of Section 2545 of the Revised Administrative Code does not need a positive declaration of nullity by the court to put it out of the way. To all intents and purposes, it is non-existent, outlawed and eliminated from the statute book by the Constitution itself by express mandate before the petitioner was appointed."[14]

Martinez v. Morfe,[15] a 1972 decision, is likewise in point. In the light of the cited provision of the 1935 Constitution, as authoritatively construed, Article 145 of the Revised Penal Code was found to be inoperative. As therein provided, the penalty of *prision correccional* is imposed on any public officer or employee who, while the Congress was in regular or special session, would arrest or search a member thereof, except in case he had committed a crime punishable by a penalty higher than *prision mayor*. This Court ruled that the Revised Penal Code extended unduly the legislative privilege of freedom from arrest as ordained in the Constitution.[16] Such a provision then

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[13] Section 2445 of the Revised Administrative Code, insofar as pertinent, reads as follows: "The President of the Philippines shall appoint, with the consent of the Commission on Appointments of the Congress of the Philippines, the mayor, the vice-mayor, and one of the other members of the city council, the members of the advisory council, the city health officer, the city engineer, the chief of police, the city treasurer, the city assessor, the city attorney, and the assistant city attorney, and he may remove at pleasure any of the said appointive officers. . . ."

[14] 87 Phil. 289, 299.

[15] L-34022, March 24, 1972, 44 SCRA 22.

[16] Art. VI, Sec. 15 of the 1935 Constitution reads: "The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their

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was contrary to and in defiance of the clear expression of the will of the Constitutional Convention of 1934 that such immunity was never intended to exempt members of a legislative body from an arrest for a criminal offense, the phrase treason, felony and breach of the peace being all-inclusive. Reference was likewise made to the prevailing American doctrine to that effect as enunciated by *Williamson v. United States.*[17]

3. It would be an unjustified departure from a settled principle of the applicable construction of the provision on what laws remain operative after 1935 if the plea of petitioner in this case were to be heeded. The challenged Administrative Code provision, certainly insofar as it declares ineligible ecclesiastics to any elective or appointive office, is, on its face, inconsistent with the religious freedom guaranteed by the Constitution. To so exclude them is to impose a religious test. *Torcaso v. Watkins,*[18] an American Supreme Court decision, has persuasive weight. What was there involved was the validity of a provision in the Maryland Constitution prescribing that "no religious test ought ever to be required as a disqualification for any office or profit or trust in this State, other than a declaration of belief in the existence of God . . ." Such a constitutional requirement was assailed as contrary to the First Amendment of the United States Constitution by an appointee to the office of notary public in Maryland, who was refused a commission as he would not declare a belief in God. He failed in the Maryland Court of Appeals but prevailed in the United States Supreme Court, which reversed the state court decision. It could not have been otherwise. As emphatically declared by Justice Black: "this Maryland religious test for public office unconstitutionally

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attendance at the sessions of the Congress, and in going to and returning from the same; and for any speech or debate therein, they shall not be questioned in any other place." The Morfe decision has been modified by the present Constitution, which its Article VIII, Sec. 9, extends the privilege of freedom from arrest to members of the National Assembly if the offense imputed to him is punishable by not more than six years imprisonment.

[17] 207 US 425 (1908).

[18] 367 US 488 (1961).

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invades the appellant's freedom of belief and religion and therefore cannot be enforced against him.[19]

The analogy appears to be obvious. In that case, it was lack of belief in God that was a disqualification. Here being an ecclesiastic and therefore professing a religious faith suffices to disqualify for a public office. There is thus an incompatibility between the Administrative Code provision relied upon by petitioner and an express constitutional mandate. It is not a valid argument against this conclusion to assert that under the Philippine Autonomy Act of 1916, there was such a prohibition against a religious test, and yet such a ban on holding a municipal position had not been nullified. It suffices to answer that no question was raised as to its validity. In *Vilar v. Paraiso*,[20] decided under the 1935 Constitution, it was assumed that there was no conflict with the fundamental law.

4. This is the first case then where this Court has to face squarely such an issue. This excerpt from the opinion of Justice Moreland in the leading case of *McGirr v. Hamilton*,[21] a 1915 decision, has a force unimpaired by the passage of time: "Relative to the theory that Act No. 1627 has stood so long and been silently acquiesced in for so great a length of time that it should not be disturbed, it may be said that the fact that certain individuals have, by ignorance or neglect, failed to claim their fundamental rights, furnishes no reason why another individual, alert to his rights and their proper enforcement, should be prevented from asserting and sustaining those rights. The fact that Smith and Jones have failed to demand their constitutional rights furnishes no basis for the refusal to consider and uphold the constitutional rights of Richard Roe. In the case of *Sadler v. Langham* (34 Ala. 311), this same question was under consideration and the court in resolving it said: 'It may be urged, that these statutes have stood, and been silently acquiesced in for so great a length of time, they should not now be disturbed. We are sensible of

[19] *Ibid*, 496.

[20] 96 Phil. 659 (1955).

[21] 30 Phil. 563.

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the force of this argument. It will be observed, however, that in Tennessee, the decision which declared the private road law unconstitutional was pronounced forty years after the enactment of the statute; and in New York, after seventy years had elapsed. It is, perhaps, never too late to re-establish constitutional rights, the observance of which had been silently neglected.'"[22] To support such a conclusion, no less than the great Chief Justice Marshall, speaking for this Court in *United States v. More*, in disposing of a contention by one of the parties as to appellate jurisdiction having been previously exercised and therefore beyond dispute was likewise relied upon. Thus: "No question was made in that case as to the jurisdiction. It passed *sub silentio*, and the court does not consider itself bound by that case."[23] So it should be in this litigation. As set forth at the outset, it is not even necessary to annul the challenged Administrative Code provision. It is merely declared inoperative by virtue of the mandate of the 1935 Constitution, similarly found in the present Charter.

5. Nonetheless, the above view failed to obtain the necessary eight votes needed to give it binding force. The attack on the continuing effectivity of Section 2175 having failed, it must be, as noted at the outset, given full force and application.

WHEREFORE, the petition for *certiorari* is granted. The judgment *a quo* is reversed and set aside. Respondent Gonzaga is hereby ordered immediately to vacate the mayoralty of the municipality of Albuquerque, Bohol, there being a failure to elect. No pronouncement as to costs.

Concepcion Jr., Santos, Fernandez, and *Guerrero, JJ.,* concur.

Castro, C.J., Barredo, Makasiar, Antonio, and *Aquino, JJ.,* concurs in the result in a separate opinion.

Teehankee and *Muñoz Palma, JJ.*, dissents in a separate opinion.

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[22] *Ibid*, 571.

[23] 3 Cranch 159, 172 (1805). Justice Moreland also cited *United States v. Sanges*, 144 US 310 (1892) and *Cross v. Burke*, 146 US 82 (1892).

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CASTRO, *C.J., concurs in the result:*

While I concur in the result, certain overriding considerations, set forth below, constrain me to dissent from the opinion penned by Justice Fernando as well as the written concurrence of Justice Teehankee and Muñoz Palma.

1.

I reject Justice Teehankee's argument that Section 2175 of the Administrative Code[1] has been repealed by Section 23 of the Election Code of 1971.[2] Nor can I accept the conclusion reached by Justice Fernando that the said provision of the Administrative Code has been superseded or rendered inoperative by the specific provisions of the 1935 and 1973 Constitutions that forbid the requirement of a religious test for the exercise of civil or political rights.

The thrust of Section 23 of the Election Code of 1971 is simple: what is the effect of the filing of certificates of candidacy by appointive, elective and other officials of the government? The said section is therefore of no relevance (except to the extent that it allows members of the Armed Forces to run for elective positions). Upon the other hand, Section 2175 of the Administrative Code treats of a disparate matter, which is the absolute disqualification of the classes of persons enumerated therein.

Nor does the proscription contained in the said Section 2175 prescribe a religious *test* for the exercise of civil or political

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[1] "In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality."

[2] "SEC. 23. *Candidate holding appointive office or position.* — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and every officer or employee in government-owned or controlled corporations, shall *ipso-facto* cease in his office or position on the date he files his certificate of candidacy: *Provided*, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred."

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rights. I have searchingly analyzed this provision, and I am unable to infer from it any requirement of a religious *test*.

On the complementary question of implied repeal, it is a time-honored cardinal rule of legal hermeneutics that for a later provision of law to be considered as having repealed a prior provision, there must be such absolute repugnance between the two that the prior provision *must* give way. I do not discern any such repugnance.

2.

Since Section 2175 of the Administrative Code has not been superseded, and has been neither expressly nor impliedly repealed in so far as the absolute disqualification of ecclesiastics is concerned, it is perforce the controlling law in the case at bar. Careful note must be taken that the absolute disqualification is couched in the most compelling of negative terms, The law reads: "*In no case* shall there be *elected* or *appointed* to a municipal office ecclesiastics . . . italics supplied)

Should an ecclesiastic be erroneously allowed by this Court to hold a municipal office, through the happenstance of a procedural technicality or by the mischief of circumlocution, or otherwise, then the Court would be *particeps criminis* in the negation of the unequivocal and imperious mandate of the law. The law admits of no exception; there can therefore be none. And the Court has no constitutional warrant to legislate thru any manner of exercise in semantics.

3.

I wish to make of record some grave misgiving about allowing ecclesiastics to be elected to governmental offices.

Our Lord Jesus Christ preached love, charity, compassion and mercy throughout His earthly existence — and these four virtues, to my mind, make up His timeless gospel. Unhappily, however, history has not infrequently been an anguished witness to religious intolerance and persecution by ecclesiastics, whether they were Catholics or Protestants.

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Adverting to my own personal experience as a practicing Catholic, I still hear, once in a great while, sermons or homilies by Catholic priests, delivered from the pulpit or from the altar, declaring that the Catholic way of life is "the way to salvation," thereby inescapably implying (without explicitly stating) that the adherents of other Christian sects and other religious faiths may be damned from birth.

It is thus entirely possible that the election of ecclesiastics to municipal offices may spawn small religious wars instead of promote the general community welfare and peace — and these religious wars could conceivably burgeon into internecine dimensions. Where then would we consign Pope John XXIII's ecumenism?

Should the majority of the mayoralties of the Philippines be someday occupied by militant Catholic ecclesiastics, is it improbable that the next development will be a determined nationwide campaign by the Catholic Church for the election of ecclesiastics to our national legislative body? And if this eventuality should come, what then of our cherished tradition of separation of Church and State? For my part, with history in perspective, the obvious logical and inevitable consequence is too frightful to contemplate.

In my view, *all* ecclesiastics — whoever they are, whatever their faiths, wherever they may be — should essentially be pastors, immersing themselves around the clock in the problems of the disadvantaged and the poor. But they cannot be effective pastors if they do not dissociate themselves completely from every and all bane of politics.

BARREDO, *J., concurs in the result*:

My vote is to grant the petition and to declare respondent Rev. Fr. Margarito R. Gonzaga disqualified under Section 2175 of the Revised Administrative Code from being mayor of Alburquerque, Bohol, which position he has assumed by virtue of his winning in the local elections held in 1971, for which reason he should be ordered to vacate the same. I would, however, limit the grounds for my vote to the considerations herein under

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stated, for it is not the danger of any form or degree of church control of state affairs that I perceive in allowing an ecclesiastic to be elected as mayor, the occurrence of such a contingency being probably quite remote now with the character of the Filipino clergy who are a far cry from the friars during the Spanish times. I just cannot imagine how a duly ordained minister of God whose sacred life mission is supposed to be to serve God and to advance and defend the interests of His church above all other interests can properly act as a government official committed to enforce state policies which may conflict with the fundamental tenets of that church.

I agree with the Chief Justice and Justice Makasiar that the trial court's ruling, following that of the Commission on Elections, to the effect that Section 2175 of the Revised Administrative Code has been repealed by Section 23 of the Election Code of 1971 is not legally correct. More than merely declaring ecclesiastics ineligible to a municipal office, the Administrative Code provisions enjoins in the most unequivocal terms their incapacity to hold such office whether by election or appointment. Indeed, the word "ineligible" in the title of the section is inappropriate. If said Election Code provision has any incompatibility with the above-mentioned Administrative Code provision, it is only by implication and only insofar as members of the Armed Forces of the Philippines are concerned, in the sense that said army men are now allowed to run for election to municipal offices provided that they shall be deemed to automatically cease in their army positions upon the filing of their respective certificates of candidacy. Section 23 does not define who are qualified to be candidates for public elective positions, nor who are disqualified. It merely states what is the effect of the filing of certificates of candidacy by those referred to therein, which do not include ecclesiastics. Thus, the inconsistency contemplated in Section 249 of the Code as productive of repealing effect does not exist in the case of Section 23 thereof *vis-a-vis* Section 2175 of the Revised Administrative Code.

Accordingly, the only way respondent Fr. Gonzaga can legally hold to the mayorship he is occupying, is for Section 2175 to

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be declared as violative of the constitutional injunction in Section 1 (7) of the 1935 Constitution of the Philippines which was in force in 1971 that "No religious test shall be required for the exercise of civil or political rights" as contended by him. On this score, it is my considered view that there is no repugnancy at all between Section 2175, on the one hand, and the freedom of religion provision of the Old Constitution, which, incidentally, is reproduced textually in the New Charter, and the principle of separation of church and state, on the other.

The "no religious test" provision is founded on the long cherished principle of separation of church and state which the framers of our 1973 Constitution opted to include as an express provision in the fundamental law by ordaining that such separation "shall be inviolable" (Art. XV, Sec. 15), not as a redundancy but in order to comprehend situations which may not be covered by the provisions on religious freedom in the Bill of Rights. (Art. IV, Sec. 8.) It simply means that no public office may be denied to any person, by reason of his religious belief, including his non-belief. Whether he believes in God or not, or, believing in God, he expresses and manifests his belief in one way or another, does not disqualify him. But when he becomes a religious or an ecclesiastic, he becomes one who does not merely belong to his church, congregation or denomination or one who entertains his own religious belief; he becomes the official minister of his church with distinct duties and responsibilities which may not always be compatible with the posture of absolute indifference and impartiality to all religious beliefs which the government and all its officials must maintain at all times, on all occasions and in every aspect of human life and individual endeavor precisely because of the separation of church and state and the full enjoyment of religious freedom by everyone. There is no known safeguard against witting or unwitting, patent or latent discrimination that a religious may lapse into when confronted with a situation where opposing religious interests maybe involved. And yet, it is in such a predicament that paramount public interest would demand that he should neither hesitate nor equivocate. Having in mind the imperfection of all human beings, I cannot believe that any

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religious, found in such unenviable situation would be able to successfully acquit himself from all suspicion of concealed interest in favor of his own church. What is worse, any attempt on his part to look the other way just to avoid such suspicion of partiality might only result in more impropriety or injustice. Indeed, as I see it, even the day of perfect and sincere ecumenism is not yet here.

It is already a matter of deep anxiety for everyone in any political unit concerned that a devout Catholic or Protestant or Muslim layman holding a public office therein may find it extremely difficult, if not impossible, to dissociate his religious thinking from his judgment or motivations as he acts in the performance of his duties. Certainly, it would be a graver problem if the official should happen to be a religious minister, since his graver responsibility to his church in the premises could imaginably outweigh in his decision process the demands of the general public interest. As a simple matter of good government principle, the possibility of such an undesirable contingency must be avoided. To my mind, it is just as objectionable for an official of the civil government to try to take part in running any religious denomination or order, as it is for a religious to involve himself in the running of the affairs of government as an official thereof. The observations of Justice Teehankee anent some religious leaders named by him who have occupied positions in the national government either as delegates to the Constitutional Conventions of 1934 and 1971 or as members of the national legislature are, I regret to say, misplaced. Apart from the fact that they were too few to decisively impress the inalienable religious principles of their respective churches on the ultimate decisions of the conventions or the legislative bodies where they sat regarding matters in which said churches were interested, one has to be utterly naive to expect that Father Kintanar, for instance, will not be guided exclusively by the doctrines and declared official position of the Roman Catholic Church related to such controversial subjects as divorce, annulment of marriages and birth control, to cite only a few. Withal, Section 2175 covers only municipal offices, for the simple reason that it is in the lowest levels of the

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government structure where the officials constantly deal directly and personally with the people that the risks of religious influences in the daily affairs of public administration can easily be exerted to the detriment of the principle of separation of church and state. My impression is that if any religious is now being allowed to hold any particular office that requires religious background and approach, it is mostly in conjunction with other officials with whom he can only act in common, such as, in the Board of Pardons and Parole, where he can exert at most only a degree of recommendatory influence and he decides nothing conclusively for the state. In any event, the spectacle of a priest and a politician being one and the same person may yet be an attempt to mix oil with water, if it would not be doing what the Scriptures do not permit: honor both God and Mammon.

Of course, a Filipino priest or a nun does not cease to be a citizen endowed with all political rights as such. I maintain, however, that the choice by any religious of the high and noble vocation of dedicating his or her life to God and His Church should, in the very nature of things and for the best interests of the community as a whole, be deemed as a virtual waiver or renunciation of the prerogative to hold a public office, for the reasons of inevitable incompatibility I have discussed earlier, and it is but logical that the law give effect to such renunciation, for the sake of both, the church and the state. As Mr. Justice Ramon C. Aquino aptly puts it, it is not his or her religious belief but the exclusivistic character of the vocation he or she has embraced that constitutes the bar to any political ambition he or she may entertain. Just as the very ideal itself of religious freedom has been held to yield to the demands of the public interest, it is not illogical, much less legally untenable, to construe the "no religious test" provision in the Constitution as not constituting a prohibition against banning an ecclesiastic from holding a municipal office due to the incompatibility between his commitment to his vocations, on one hand, and his loyalty and dedication to his public office both of which require his full and entire devotion.

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MAKASIAR, *J., concurs in the result:*

It grieves me to dissent on constitutional and legal grounds from my brilliant and learned colleagues, Justice Enrique M. Fernando, Justice Claudio Teehankee and Justice Cecilia Muñoz Palma, whose scholarly dissertations always command respect; because my discussion will be a catalogue of the dangers posed by the Church in which I was born and nurtured, like my two sons and two daughters — the Roman Catholic Church, in whose service my late lamented father wanted to be, studying as he did for the priesthood in a Catholic seminary.

I fully concur with the no less incisive opinions of Chief Justice Fred Ruiz Castro, and Justices Antonio P. Barredo, Felix Q. Antonio and Ramon C. Aquino. I only wish to add some thoughts avoiding as far as possible restating the citations in their opinions.

I

But first, we shall apply the legal scalpel to dissect Section 23 of the Election Code of 1971, which, in the opinion of the trial judge, impliedly repealed Section 2175 of the Revised Administrative Code. This issue which was not discussed extensively by Mr. Justice Fernando in his opinion, is the centerpiece of the opinion of Mr. Justice Teehankee who concurs with him.

The two alleged conflicting legal provisions are hereunder quoted:

"Sec. 23 — Candidate holding appointive office or position. — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines and every officer or employee in government-owned or controlled corporations, shall *ipso facto cease in his office or position on the date he files his certificate of candidacy: Provided,* That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred" (Election Code of 1971, italics supplied).

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"Section 2175 — Persons ineligible to municipal office. — *In no case shall there be elected or appointed to a municipal office ecclesiastics*, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality" (Revised Administrative Code, italics supplied).

Basic is the rule that implied repeals are not favored unless there is such an irreconcilable repugnancy between the two laws that both statutes cannot stand together.

It is patent that the two legal provisions are compatible with each other. Section 23 of the Election Code *does not enumerate the persons* disqualified for a public elective or appointive office; but *merely prescribes the effect of filing a certificate of candidacy* by an appointive public officer or employee or by active members of the Armed Forces of the Philippines or by an officer or employee in a government-owned or controlled corporation. Section 23 states that upon the filing of his certificate of candidacy, such appointive officer or employee or member of the Armed Forces shall "*ipso facto* cease in his office or position . . ." The obvious purpose is to prevent such candidate from taking advantage of his position to the prejudice of the opposing candidates not similarly situated.

On the other hand, Section 2175 of the Revised Administrative Code provides for an absolute disqualification and enumerates the persons who are so absolutely disqualified to run for or be appointed to a municipal office which enumeration includes not only public officers but also private individuals like contractors and ecclesiastics. Section 23 of the Election Code of 1971 applies only to public officers and employees, including those in government-owned or controlled corporations and members of the Armed Forces, but not to private citizens, like contractors or ecclesiastics. Hence, a contractor who is not employed in any government office or government-owned or controlled corporation or in the Armed Forces, *need not* vacate his private employment, if any, upon his filing a certificate of candidacy. Likewise, if he were qualified in the absence of the absolute disqualifications in Section 2175 of the Revised Administrative

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Code, a priest or minister is not *ipso facto* divested of his position in his church the moment he files his certificate of candidacy.

The fact that the Commission on Elections prior to the elections in 1971 denied petitioner's petition for the annulment of the certificate of candidacy of private respondent, is not conclusive on the Supreme Court, the final arbiter on legal questions and does not constitute *res judicata.* The COMELEC's opinion may be persuasive, but never binding on the Supreme Court. Moreover, the petition should have been dismissed as premature then, because the issue might have been rendered moot and academic should the candidate sought to be disqualified before the election closes the election. At any rate, Section 219 of the Election Code of 1971 authorizes any voter to file *quo warranto* proceedings against any local officer-elect on the ground of ineligibility within fifteen (15) days after the proclamation of his election. The adverse opinion on the part of the COMELEC prior to the election, did not bar the petition for *quo warranto* under Section 219 of the Election Code of 1971.

Moreover, unlike the 1973 Constitution, the 1973 Constitution did not vest in the COMELEC any power to decide contests relating to the election, returns and qualifications of elective officials, whether national or local. Under the 1973 Constitution the COMELEC is not conferred the power to decide contests relating to the election, returns and qualifications of municipal elective officials. However, the 1973 Constitution constitutes the COMELEC the sole judge of all contests relating to the elections, returns and qualifications of the members of the National Assembly and the elective provincial and city officials (Section 2[2], Art. XII, 1973 Constitution); but such determination by the COMELEC is still subject to review by the Supreme Court (Section 11, Art. XII, 1973 Constitution), which therefore is the ultimate arbiter of such election issues.

If the implied repeal theory were sustained, then Section 23 of the Election Code of 1971, if construed to allow ecclesiastics and other ministers of religion to run for or be appointed to a municipal office, collides with the Constitution as the same violates

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the separation of church and state expressly enjoined by Section 15 of Article XV, Section 18(2) of Article VIII, and Section 8 of Article IV of the 1973 Constitution for the reasons hereinafter stated.

II

WE shall proceed to marshal the forces with which to lay siege on the citadel erected by Mr. Justice Fernando to sustain his theory that Section 2175 of the Revised Administrative Code was abrogated by the no-religious test clause of Section 1(7) of the Bill of Rights [Art. III] of the 1935 Constitution, which is re-stated as Section 8 of the Bill of Rights (Article IV) of the 1973 Constitution.

As above stated, repeals by implication are abhorred, unless there is a clear showing of complete and total incompatibility between the two laws. And WE believe that there is no such irreconcilable repugnancy between Section 2175 of the Revised Administrative Code and the no-religious test clause of the Bill of Rights.

On the other hand, the proposition advanced by my brethren, Justices Fernando and Teehankee, clashes inevitably with the doctrine of separation of Church and State expressly prohibited by Section 15 of Article XV of the 1973 Constitution, condemned by Section 8 of the Bill of Rights (Article IV), and proscribed by Section 8 of Article XII and Section 18(2) of Article VIII of the 1973 Constitution.

Section 15 of Article XV categorically declares that:

"The separation of Church and State shall be inviolable."

Section 8 of the Bill of Rights (Article IV) reads:

"No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

Section 18(2) of Article VIII states:

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"No public money or property shall ever be appropriated, applied, paid, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary, is assigned to the armed forces, or to any penal institution or government orphanage or leprosarium."

Section 8 of Article XII commands that:

"No religious sect shall be registered as a political party, x x x."

To stress, Section 2175 of the Revised Administrative Code, does not provide for a religious test for the exercise of civil and political rights. The said section merely defines a disqualification for a public office. It prohibits priests or ministers of any religion, and the other persons specified in said Section 2175, from running for or being appointed to a municipal public office. It does not deprive such specified individuals of their political right of suffrage — to elect a public official.

A citizen, who is a Catholic, Protestant, Muslim, Aglipayan or a member of the Iglesia ni Kristo, but who is not a priest or a minister of any religion, sect or denomination, can run for a municipal elective office. Section 2175 does not inquire into the religion or lack of it on the part of an ordinary citizen. If it does, all citizens would be disqualified for election or appointment to a local public office; and there would be no need to single out soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality, along with ecclesiastics. All these persons, whether priests or ministers or soldiers or contractors or employees of the national or provincial government, profess some religion or religious belief. To repeat, one is disqualified under Section 2175, not by reason of his religion or lack of it, but because of his religious profession or vocation.

The separation of Church and State implicit in the Bill of Rights (Sec. 1, par. 7 of Art. III of the 1935 Constitutions and Sec. 8, Article IV, 1973 Constitution), has been expressly stated

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and therefore stressed in Section 15 of Article XV of the 1973 Constitution, which categorically enjoins that "the separation of Church and State shall be inviolable." This basic principle which underlies the structure of our government was the sharp reaction to the historical lesson learned by mankind in general that the fusion of government and religion tends to destroy government and degrade religion (*Engel vs. Vitale*, 370 US 421) because it invariably degenerates into tyranny. The terror that was the Inquisition claimed for its victims physicist and astronomer Galileo Galilei and philosopher Giordano Bruno, among thousands of other victims.

The view herein enunciated by Justice Fernando and Teehankee will again usher in the era of religious intolerance and oppression which characterized the Spanish regime of about 400 years in the Philippines. It will resurrect in our political life that diabolic arrangement which permits the "encroachment of Church upon the jurisdiction of the government, and the exercise of political power by the religious, in short, the union of the State and the Church — which historically spawned abuses on the part of the friars that contributed to the regressiveness, the social and political backwardness of the Filipinos during the Spanish Era" and bring about a truly theocratic state — the most dangerous form of absolutism, according to Lord Acton, that great liberal Catholic and illustrious scholar (Senator Claro M. Recto "The Evil of Religious Test in our Democracy," speech delivered before the Central Philippine University on February 19, 1960).

When a priest is allowed to run for an elective position, in the stirring language of the erudite Claro M. Recto, the same will re-establish "a tyrannical regime that engaged in the most vicious political and religious persecution against dissenters. The Church in the Philippines was responsible for the execution of Fathers Gomez, Burgos and Zamora, of Rizal and other Filipino patriots" (speech delivered on February 15, 1958 before the Supreme Council of the Ancient and Accepted Scottish Rite of Free Masonry).

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No doubt Section 2175 was designed to preserve the indestructible wall of separation between Church and State — the basic pillar of our democratic regime. The no-religious test clause of the Constitution only implements and supplements one's freedom to entertain views of his relations to his Creator and to preach, propagate and evangelize his religious belief. But such no-religious test does not guarantee him the right to run for or be appointed to a public office and thereafter to use such public office to compel the citizenry to conform to his religious belief, thereby to gain for his Church dominance over the State.

A priest or minister, once elected or appointed to a municipal office, necessarily enjoys the salary pertaining to the office. This would be a direct violation of the prohibition under Section 18(2) of Article VIII of the 1973 Constitution, which was contained in paragraph 3 of Section 23 of Article VI of the 1935 Constitution. Not only public funds will be appropriated for his salary but the priest or minister thus elected or appointed as a municipal officer or employee will also directly or indirectly enjoy the use or benefit of any property of the municipality. The only exception where such appropriation of public money or property can be validly made in favor of such priest or minister is when he is assigned to the Armed Forces or to any penal institution or government orphanage or leprosarium.

What will necessarily follow would be the Church fielding its own candidates for municipal offices all over the country even without registering as a political party. Such support by the Church, although not registered as a political party, remains a circumvention of the absolute prohibition specified in Section 8 of Article XII of the 1973 Constitution. And when the majority of the winning candidates for elective offices in the towns all over the country are supported by the Church, these officials will naturally be beholden to the Church and will utilize — covertly or overtly — their office to further the interests of the Church. When the Church achieves such political dominance, then the Church will have the power to persuade the electorate or citizenry to amend the Constitution to eliminate all the provisions on separation of Church and State, the establishment of state

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religion and the utilization of public funds or property by the Church or by any of its priests or ministers and the prohibition against the registration of a religious sect as a political party.

The history of mankind, including our own history, to which Mr. Justice Jose P. Laurel appealed in *Aglipay vs. Ruiz* (64 Phil. 201, 205), and our jurisprudence furnish the formidable evidence of the dangers that religious supremacy poses to our country and people.

Once a particular church or religion controls or is merged with the State, we shall bid goodbye to all our liberties; because all other churches, religions, sects or denominations and all other dissenters of whatever hue or persuasion, will not be tolerated.

Just recently, columnist Teodoro F. Valencia recounted in his column of August 5, 1978 that a certain "Jose B. Marabe of Davao City reports that in the town fiesta of Talalora, West Samar, barrio officials were compelled to become Aglipayans because the mayor turned Aglipayan. Those who did not obey were denied barangay aid" (*Over a Cup of Coffee, Daily Express,* August 5, 1978, p. 5).

Former Senator Claro M. Recto, the father of the 1935 Constitution, painfully narrates:

"And yet we have been witnesses to the fact in the last two elections that religious organizations, priests and nuns, bishops and archbishops descended upon the political arena, not only to urge the faithful to support their own favorite candidates for national positions, but to enjoin them from voting for certain candidates whom the hierarchy considered enemies of the church, under threat of excommunication and eternal damnation. The confessional and the pulpit have been utilized for these purposes.

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"In the elections of 1955 the hierarchy made the first try. The hierarchy gave several candidates for the Senate their imprimatur and their blessing and not only enjoined the faithful to work and vote for them but also enjoined them not to vote for candidates whom they had declared anathema. Their agents conducted the campaign first in whispers and through handbills and newspaper articles and

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caricatures in the hierarchy's own press organ, but later the confessional and, in certain areas, the pulpits became campaign platforms. Religious lay organizations, priests and nuns, schools of both sexes, took active part in the campaign. This was the church militant and the hierarchy were successful to a certain extent. They were able to elect at least two senators, although they failed to prevent the election of one they most hated, abused and maligned. Pleased and encouraged by their initial victory the hierarchy made a second try in the general elections. They put up candidates for all national offices, President, Vice-President, Senators and Representatives. They failed to elect the President, however, because the hierarchy were hopelessly divided on the Presidency, as seen in the advertisements which appeared in a section of the local press. Bishops in league with a Filipino Archbishop, were backing one candidate. Those owing fealty to a foreign diplomatic representative of the Church went all-out for another candidate. They were all one, however, in enjoining the faithful from voting for a third candidate, the same one they had fought bitterly but unsuccessfully in the preceding senatorial elections.

"Happily for the winning candidate for Vice-President, they were all united for him. Not that the other three candidates for the office were reputed enemies of the church. But one of them, orthodox in his faith and a regular observant, they disliked for having sponsored and voted for the Rizal Bill. They discarded another supposedly because of his allegedly non-too-exemplary private life. And as to a third one, an acknowledged Catholic leader, it was their belief that it would be wasting votes on him as he was never given a chance to win. The victor, being the sole candidate of the church for Vice-President, could not but win, thus justifying the name with which he was christened, the Spanish word for God-given: Diosdado. The church was also successful in electing two senators. Not that the remaining six were not Catholics, but that they were not particularly favorites.

"It is thus undeniable that while the Constitution enjoins the state from requiring any religious test for the exercise of political rights, it is the church that in practice has of late required such a test according to its own standards.

"What was the cause of this sudden political belligerence on the part of the hierarchy? Why this recent unabashed attempt to dominate the state through the ballot box? No better answer can be given except that the hierarchy must have reached a decision to implement the

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policy announced in Rome in 1948, not exactly by the Vatican, but by the official organ of a powerful religious organization reputed to be adviser to Popes, in a leading article which proclaimed the following:

> 'The Roman Catholic Church, convinced through its divine prerogatives, of being the only true church, must demand the right of freedom for herself alone, because such a right can only be possessed by truth, never by error. As to other religions, the Church will certainly never draw the sword, but she will require that by legitimate means they shall not be allowed to propagate false doctrine. Consequently, in a state where the majority of the people are Catholic, the Church will require that legal existence be denied to error, and that if religious minorities actually exist, they shall have only a *de facto* existence without opportunity to spread their beliefs . . . In some countries, Catholics will be obliged to ask full religious freedom for all, resigned at being forced to cohabitate where they alone should rightfully be allowed to live. But in doing this the Church does not renounce her thesis, which remains the most imperative of her laws, but merely adapts herself to *de facto* conditions, which must be taken into account in practical affairs. . .'

"This is the essence, not of religious freedom, but of sectarian intolerance: the church, when a minority in a given country, urges freedom of worship and co-existence along with others; but when in the majority, it denies that freedom to other faith denominations, and claims a monopoly on truth.

"Certainly this was not the view of the founders of the American Republic when they instituted the principle of religious freedom.

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"The policy announced in Rome in 1948, to which I already referred, can find no more adequate and conclusive refutation than in the following statement by Dr. John B. Bury, Regius Professor of Modern History, University of Cambridge, in his A History of Freedom of Thought:

> 'A state with an official religious but perfectly tolerant of all creeds and cults, finds that a society had arisen in its midst which is uncompromisingly hostile to all creeds but is own and which, if it had the power, would suppress all but its own. The government in self-defense decides to check the dissemination of these subversive ideas and makes the profession of that

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creed a crime, not on account of its particular tenets, but on account of the social consequences of those tenets. The members of the society cannot without violating their consciences and incurring damnation abandon their exclusive doctrine. The principle of freedom of conscience is asserted as superior to all obligations to the State, and the State, confronted by this new claim, is unable to admit it. Persecution is the result. (pp. 47-48).

'What is to happen when obedience to the law is inconsistent with obedience to an invisible master? Is it incumbent on the State to respect the conscience of the individual at all costs, or within what limits? The Christians did not attempt a solution, the general problem did not interest them. They claimed the right of freedom exclusively for themselves from a non-Christian government; and it is hardly going too far to suspect that they would have applauded the government if it had suppressed the Gnostic sects whom they hated and calumniated. In any case, when a Christian State was established, they would completely forget the principles which they had invoked. The martyrs died for conscience, but not for liberty. Today the greatest of the Churches demands freedom of conscience in the modern States which she does not control, but refuses to admit that, where she had the power, it would be incumbent on her to concede it. (pp. 49-50).

'During the two centuries in which they had been a forbidden sect the Christians had claimed toleration on the ground that religious belief is voluntary and not a thing which can be enforced. When their faith became the predominant creed and had the power of the State behind it, they abandoned this view. They embarked on the hopeful enterprise of bringing about a complete uniformity in men's opinions on the mysteries of the universe, and began a more or less definite policy of coercing thought. This policy was adopted by Emperors and Governments partly on political grounds; religious divisions, bitter as they were, seemed dangerous to the unity of the State. But the fundamental principle lay in the doctrine that salvation is to be found exclusively in the Christian Church. The profound conviction that those who did not believe in its doctrines would be damned eternally, and that God punishes theological error as if it were the most heinous of crimes, has naturally led to persecution. It was a duty to impose on men the only true

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> doctrine, seeing that their own eternal interests were at stake, and to hinder errors from spreading, heretics were more than ordinary criminals and the pains that man could inflict on them were nothing to the tortures awaiting them in hell. To rid the earth of men who, however virtuous, were through their religious errors, enemies of the Almighty, was a plain duty. Their virtues were no excuse. We must remember that according to the humane doctrine of the Christians, pagan, that is, merely human virtues were vices, and infants who died unbaptized passed the rest of time in creeping on the floor of hell. The intolerance arising from such views could not but differ in kind and intensity from anything that the world had yet witnessed.' (pp. 52-53)" [The Church and State Under the Constitution, Lawyers Journal, March 31, 1958, pp. 83-84]

Section 2175 of the Revised Administrative Code does not therefore clash with the no-religious test guarantee; because the same is indispensable to the very survival of this republic against religious intolerance and hegemony. If the 1971 Constitutional Convention was not profoundly apprehensive of the evil effects of the fusion of the Church and State, it would not have expressly reaffirmed the inviolability of such separation, as heretofore stated, in Section 15 of Article XV of the 1973 Constitution. Such deep conviction of the Filipino people was first given expression in 1899, even before the beginning of the American regime, by our ancestors who, by reason of their having been subject to the indignities generated by the union of Church and State, to insure that such oppression will no longer abide, incorporated expressly in the Malolos Constitution of the First Philippine Republic that "the state recognizes the equality of all religious worships and the *separation of the Church and State*" (Art. V, Title III, Malolos Constitution).

As a living witness to the religious tyranny during the Spanish regime, Justice Florentino Torres of this Supreme Tribunal affirmed before the Philippine Commission in 1900 the abuses of the friars (see Agoncillo and Alfonso, *A History of the Filipino People*, 1960 ed., p. 111 quoted in the dissenting opinion of Justice Antonio).

Professor Renato Constantino likewise recounts:

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"But the fundamental cause for the waning zeal and ensuing corruption of the friars was their acquisition of property.

"A letter to Governor Dasmariñas from Bishop Domingo Salazar dated March 21, 1591, recounts in passing how the religious in Mexico obtained the revocation of a royal prohibition against their owning property. The religious contended that there were too many disadvantages in having the friars live alone. They proposed the establishment of houses to be manned by at least four ecclesiastics. But this raised the problem of their support. Declaring that they did not want their missionaries to be a burden to their flock, the Dominicans and the Augustinians suggested that the best solution would be for the king to grant them some estates in the native villages so that the missionaries could become self-supporting. This proposal ran counter to a royal order that the clergy should not own lands in the Indian villages; but the religious, through Bishop Salazar himself, succeeded in persuading the king to revoke his decree.

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"The friars also bought land from the natives with the money they obtained from church fees, from trade, or from the profits gained from the produce of lands which utilized forced labor. With their prestige and power, it was easy for them to presume villagers into selling them their lands at very low prices.

"Other landholdings were acquired through the foreclosure of mortgages. The story of how friars became mortgagees often began innocuously enough. Living as they did among the people, the religious were in the best position to appreciate the possibilities of agricultural development. Seeing that the obstacle to more extensive cultivation was lack of capital, many priests entered into partnership with farmers, advancing them money for seeds, work animals and tools. The priests received half of the harvest.

"Although this arrangement favored the money lender who received a fat share without working, at least he ram the same risk as the farmer of getting little if the harvest was poor. But when the dependence on priestly capital had become more or less established the friars began to demand that their advances be regarded as loans payable at a fixed rate of interest whether the harvests were good or bad. The risks were now borne by the tillers alone, and in bad seasons they ran into debt.

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"When such debts accumulated, the friars forced the farmers to mortgage their land to them and eventually foreclosed the mortgage. The friars then obtained title to such lands and the farmer-owners were either driven away or became tenants.

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"Some friar lands were obtained through outright usurpation. With the help of corrupt surveyors and other government officials, religious corporations were able to expand their landholdings. Additional hectares of land outside original boundaries of friar property were simply gobbled up each time a new survey was undertaken. Many times, the priests just claimed pieces of land, drew maps of them, had them titled, and set themselves up as owners.

"The original native settlers who had tilled the land for years were summarily declared to be squatters. When the natives protested, they were asked for legal proofs of ownership of the land in question. More often than not, they could not show any legal document attesting to their ownership of the land. The natives did not have '*titulos reales*' since their claim to the land was based on *de facto* possession.

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"Taxes, tributes, exorbitant rents and arbitrary increases of the same, forced labor and personal services — all these intensified the hardships of natives who now had to give up a good part of their produce to their landlords. In addition, some administrators practiced other petty cruelties which caused much suffering among the people.

"In 1745, in the Jesuit ranches of Lian and Nasugbu, Batangas, for example, the people accused the religious not only of usurping the cultivated lands and the hills that belonged to them but also of refusing to allow the tenants to get wood, rattan and bamboo for their personal use unless they paid the sums charge by the friars.

"In Bulacan, villagers complained that the religious cheated them out of their lands and then cruelly proceeded to deny them the right to fish in the rivers, to cut firewood, and to other wild fruits from the forests. The friars would not even allow their carabaos to graze on the hills since the religions now claimed all these areas as their own.

"In Cavite, Manila and Bulacan, small landholders complained that since the friars, owned the land through which the rivers passed, they had to agree to the friars' terms if they wanted water for irrigation purposes.

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"Lessees of friar lands protested bitterly that their landlords raised their rents almost every year and particularly whenever they saw that through the farmers' labor the land had become more productive. In some cases, they even imposed a surtax on trees planted by the tenants. When they accepted rental payments in kind, the administrators of the friar estates arbitrarily fixed the prices of these products, naturally at lower than prevailing prices.

"Aside from institutional exploitation, exactions of a personal nature were rampant. Curates charged a bewildering number of fees for all sorts of rites, from baptism to burial. The natives paid even if it meant selling their last possessions because they had been taught that such rites were indispensable to the salvation of their souls.

"Friars made money selling rosaries, scapulars and other religious objects. They required from their flock all kinds of personal services and gifts of food for the convent table.

"Priests often administered corporal punishment, usually whippings, on natives who dared disobey their orders or disregard their caprices. Unmarried girls were compelled to report to the convent to pound rice and sweep the church floors. The large number of Filipinos today who have a priest somewhere in their family trees attests to the frequency with which the vows of celibacy were transgressed.

"Of course, the cruelty, capriciousness and frequency of abuses depended on the character of the individual priest — and there were good and bad. However, it cannot be denied that the virtually unchallenged power of the friar in most communities had a corrupting influence on most.

"The people's mounting resentment led them to commit various acts of defiance, to refuse to pay the unjust taxes imposed by friar estate administrators, and finally to resort to armed rebellion. So serious were the clerics' abuses that by 1751, the king was moved to issue a royal decree ordering local government authorities.

> 'to exercise hereafter the utmost vigilance in order that the Indians of the said villages may not be molested by the religious, and that the latter should be kept in check in the unjust acts which they may in future attempt. . .'

"But by that time such a directive could hardly be enforced. The friars had become too powerful not only because of their spiritual

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hold over both the Spanish officials and the natives, but also by virtue of their established economic power. In addition, they had become a ubiquitous presence in the local machinery of administration.

"Against the power of his friar landlord, a tenant found it impossible to prosecute his interests or have his complaints heard. A poor tenant could not afford the costs of a lawsuit, granting that he knew the first thing about litigation procedures. Besides, what chance had he against such a powerful figure as a friar? If a friar wanted a tenant evicted, the cleric could easily prevail upon a judge to issue the order, and he could as easily avail himself of government forces to execute the decision. Recalcitrant tenants were often evicted *en masse*; there were so many landless peasants to take their places, anyway.

"Exploitation, with its concomitant personal cruelties and abuses, was part and parcel of the imperative of property expansion once the friars' right to property had been recognized. Economic power enhanced political power, and political power was used time and again to expand economic power and to oppose any attempts by government to frustrate economic expansion.

"By the end of the Spanish occupation, the friar were in possession of more than 185,000 hectares or about one-fifteenth of the land under cultivation. Of this total, around 110,000 hectares were in the vicinity of Manila.

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"The early ascendancy of the Church over the State was made possible by the success with which the friars undertook, almost single-handedly, the pacification of the country.

"Since this success was due in large measure to the native's acceptance of the new religion, Spanish power in most communities rested on the influence of the religious. The prevalent opinion at that time that 'in each friar in the Philippines the king had a captain general and a whole army' is a recognition of this fact.

"Moreover, in more than half of the villages in the islands there was no other Spaniard, and therefore no other colonial authority, but the friar. This state of affairs obtained almost to the end of Spanish rule.

"Other factors contributed to friar ascendancy. The friar's knowledge of the land and of the people was invariably superior to

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that of the government functionary. The Spanish *alcaldes mayores* were dependent on the religious not only because the latter spoke the native dialects but also because the tenure of these government officials was temporary while that of the parish priest was more or less permanent.

"A more fundamental basis of the great political power of the religious was the Spanish concept of the union of Church and State. The friar was entrusted with an ever-growing number of civil duties within the community until there was no aspect of community life in which he did not have a hand.

> 'He was inspector of primary schools, and of taxation; president of the board of health, of charities, of urban taxation, of statistics, of prisons; formerly, president, but lately honorary president of the board of public works. He was a member of the provincial board and the board for partitioning crown lands. He was censor of the municipal budget, of plays, comedies, and dramas in the native language given at the fiestas. He had duties as certifier, supervisor, examiner, or counsellor of matters in regard to the correctness of *cedulas*, municipal elections, prison food, auditing of accounts, municipal council, the police force, the schools, and the drawing of lots for army service.'

"Economic power through landholding and through investments in foreign and internal trade, political power through extensive-participation in government, and spiritual control over both the native population and fellow Spaniards — all these combined to make the friar the principal figure in each community, and the Church the dominant power in the country.

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"Time and again, governors complained of the abuses of the clergy and appealed to the Spanish monarch to curtail their powers. As early as 1592, Governor Dasmariñas was already railing against friar power. He wrote:

> 'And the friars say the same thing — namely, that they will abandon their *doctrinas* (*i.e.*, Christian villages) if their power over the Indians is taken away. This power is such that the Indians recognize no other king or superior than toe father of the *doctrina*, and are more attentive to his commands than to those of the governor. Therefore the friars make use of them by the hundreds, as slaves, in their rowing, works, services,

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> and in other ways, without paying them, and whipping them as if they were highwaymen. In whatever pertains to the fathers there is no grief or pity felt for the Indians; but as for some service of your Majesty, or a public work, in which an Indian may be needed, or as for anything ordered from them, the religious are bound to gainsay it, place it on one's conscience, hinder it, or disturb everything.'

"In 1636, Governor Sebastian Hurtado de Corcuera wrote the king objecting to the increase in the number of religious in the islands. According to him, the friars had reduced the natives to virtual slavery by forcing them to sell to the religious all their rice and cloth at prices set by the latter who then monopolized the business in these items. And yet, the governor complained, when assessments of rice, cloth and wine were levied on the people by the government, these same friars objected on the ground that the natives were too poor to pay what was demanded.

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"Abuses such as the friar's excessive interference in the natives' daily life, personal insult, corporal punishment such as whipping and lashing of both men and women for the slightest offense, onerous fees for confessions and other religious rites, sexual offenses against native women, and the native virtual reduction to a slave and servant of the friar — all these were being committed as early as the second or third decade of occupation. But these wrongs were still inflicted and also accepted on an individual basis and they varied in intensity and frequency depending on the personality of each priest. Furthermore, since punishments were meted out on a variety of individual offenses, there was no common grievance strong enough to call forth united action, although there is no doubt that resentment were building up.

"But when the religious orders began to acquire property, their abuses took on a different complexion. As landlords, they became economic exploiters whose abuses threatened the economic survival of the natives. Such abuses were no longer inflicted by an individual on separate individuals. Neither were they occasional or dependent on a particular friar.

"Exploitation was basic and permanent, and enforced by an institution on groups of men constituting practically the entire community. Moreover, this kind of exploitation could not be justified

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in any way as part of the friar's religious mission. All these factors transformed isolated resentments into common and bitter grievances that erupted in revolts against the friars.

"That native disaffection with the religious orders had a profoundly material basis is proved by the fact that discontent exploded in revolts precisely in areas where friars were known to hold large tracts of agricultural land. In the provinces of Cavite, Laguna, Manila, Bulacan and Morong (now Rizal), the religious owned more than one-half of the total agricultural land. It is not mere coincidence that these provinces experienced many agrarian uprisings and became the strongholds of the Philippine Revolution.

"To summarize: the attitude of the natives to the Church in the course of its economic and political ascendancy changed from initial obedience due to awe and fear; to loyalty and subservience arising from acceptance of the Catholic religion and experience with the power of priests within the colonial hierarchy, but accompanied by personal resentments; to generalized or group hostility because of common experience with economic exploitation by the friars; and finally, to the violently anti-friar sentiments of the masses during the Revolution (see Chapters 9 and 10) which resulted in demands for their expulsion and in the rise of an indigenous Church.

"It is very clear that this transformation in the realm of consciousness was a response to a material stimulus — the transformation of the Church from a colonial accessory to the principal apparatus of colonial appropriation and exploitation" (The Philippines — A Past Revisited, 1975, pp. 66 to 80).

Again, we have to summon the prodigious intellect of that great nationalist, Claro M. Recto, himself a victim of the most vicious campaign against his candidacy in 1957 waged by the dominant Catholic church, which refused to heed the injunction of Christ, explicit from His answer to the Pharisees when they attempted to entrap Him into opposing the power of Rome, to "render unto Caesar the things that are Caesar's and unto God the things that are God's." Recto, with his keen and prophetic mind, easily discerned the dangers posed by church interference in our democratic system. In his speech delivered on February 19, 1960 on the occasion of the conferment upon him of the degree of Doctor of Humanities, *honoris causa* by the Central

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Philippine University in Iloilo City, Recto concluded his argument against the unholy alliance of Church and State, thus:

"It is to be deplored that in recent years the most numerous Church in this country, not satisfied with the hold it has on the fealty of four-fifths of the nation as no government has ever enjoyed or will enjoy here, has made use of its privileged position by demanding from candidates to public office, particularly the elective ones, certain religious tests and pledges of allegiance. The immediate purpose, of course, is to acquire through policy-making government officials, control of the public affairs and ultimately to establish here a truly theocratic state, which, according to Lord Acton, a liberal Catholic and great English scholar, is 'the most dangerous form of absolutism.'

"We have been witnessing from time to time the organization of sectarian professional groups. We already have a lawyers sectarian association, and only recently certain local physicians who, claiming to believe that they should consider religion in the practice of their profession, have grouped themselves into a sectarian association of physicians. We may well expect to see a sectarian association of apothecaries organized one of these days, and other similar ones, until there shall not be a single profession or occupation without its own sectarian association.

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"At the time the most numerous Church in this country moved onto the political stage, a young Filipino priest, reputedly an intellectual in his own religions order, made in the course of a public address at the Luneta, with the evident *placet* of the corresponding hierarchy — *qui tacet consentire videtur* — the most daring proposal that there should be a union of Church and State, with the Church assuming naturally the leadership in the unholy partnership. Such a proposal would require the appropriate amendment of the Constitution, which is most likely to happen should the most numerous Church obtain the necessary control of the legislature.

"In the last three elections the most numerous Church made its influence felt. There was a small chosen group of ambitious political upstarts — the youth elite, so to speak — who took to the field with the unmistakable blessings and patronage of their Church's hierarchy. Although this group did not carry officially its sect's banner, it was to all intents and purposes just that with no pretense at being anything else. It was identified with the Church in question

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and it received the latter's unqualified and unstinted support through pulpit and confessional and through religious schools and associations all over the country. Priests and nuns in charge of private schools were particularly aggressive in their newly found militancy. The haloed candidates of this group were presented to the electorate as the honest among the holy, and, since they carried the standard, albeit unofficial, of their Church, the implication was that, at least for the voter that belongs to it, they were the only ones fit, under bulls and encyclicals, for public office.

"The irony of all this is that while the government is enjoined by the Constitution from imposing or requiring religious test for any office, it is a religious establishment, the most numerous in the country, that is doing so. Although this religious establishment did not fare as it had expected in the last three elections, there is no doubt that its incursions into the political field should not be taken lightly. If these inroads are not curbed now, the day is not far off when we shall see the halls of congress being used to proselytize the nation and the people legislated into one religious faith. An established church, which is another name for union of Church and State, consecrated by appropriate constitutional amendment, would be the tragic result.

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"Origen, one of the early Fathers — he lived in the 3rd century — admonished that 'Christians should not take part in the government of the State, but only of the 'divine nation,' 'that is, the Church; and rightly so, because 'most people regard politics as 'worldly' and unworthy of any really holy man.' This same doctrine, according to Bertrand Russell, 'is implicit in Saint Augustine's *City of God,*' so much so that 'it led churchmen, at the time of the fall of Western Empire, to look on passively at secular disasters while they exercised their very great talents, in Church discipline, theological controversy, and the spread of monasticism.'

"Writing to a correspondent in Constantinople, Gregory the Great said: 'What pleases the most pious emperor, whatever, he commands to be done, is in his power . . . As he determines, so let him provide. What he does, if it is canonical, we will follow; but if it is not canonical, we will bear it, as far as we can without sin of our own. Rulers should not be criticized, but should only be kept alive to the danger of hell-fire if they fail to follow the advise of the church.' Pope Nicholas I of the 8th century replied to an angry letter of Emperor Michale III:

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'the day of King-Priests and Emperor-Pontiffs is past; Christianity has separated the two functions.'

"Gelasius, a pope in the fifth century, laid down the principle of separation of Church and State in the following words:

> 'x x x It may be true that before the coming of Christ, certain persons. . . existed who were at the same time priests and kings, as the holy scripture tells us Melchizedech was.
>
> 'x x x But, after the coming of Christ (who was Himself both the true king and the true priest), no emperor thereafter has assumed the title of priest, and no priest has seized a regal throne . . . He separated the kingly duties and powers from the priestly, according to the different functions and dignity proper to each. x x x The soldier of the Lord should be as little as possible entangled in secular business, and that one involved in secular affairs should not be seen occupying the leadership of the church.' (*Masters of Political Thought* by Michael B. Foster, vol. I, pp. 231-232.).

"Pope Leo XIII, in his Encyclical 'Immortal Dei' (November 1885) said:

> 'It is generally agreed that the Founder of the Church, Jesus Christ, wished that the spiritual power to be distinct from the civil, and each to be free and unhampered in doing its own work, not forgetting, however, that it is expedient for both, and in the interest of everybody, that there be a harmonious relationship.'

"x x x x x x x x x.

"Reichersberg, another famous churchman of the twelfth century, who supported the Pope in the Investiture controversy, said:

> 'Just as the emperors sometimes arrogated to themselves functions belonging to the priesthood and the church; so they (the priests) on the other hand imagine that their priesthood confers on them also an imperial, or more than imperial power . . . What then will have become of those two swords of the Gospel, if the apostle of Christ shall be all, or if the Emperor shall be all? If either the Empire or the priesthood shall be robbed of its strength and dignity, it will be as though you were to take one of the two great luminaries from the sky.' (*Id.*, p. 235.)

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"Don Luigi Sturzo, a distinguished Catholic Italian scholar, speaking of the separate functions of Church and State, says: 'Every attempt to overstep such limits, from either side, has violated the laws of nature and those of revelation.' (*Church and State*, vol. I, p. 28).

"Lord Acton in his 'Political Philosophy,' pp. 43-44, remarked:

> 'If a Church is united with the State the essential condition of freedom vanishes. It becomes officialized. And those who govern the Church are tempted to divert its influence to their own purposes. Similarly, the support of the Church dangerously increases the authority of the State, by giving a religious sanction to the behests of the State. This increases the danger of depositism.

"Under the terms of the Lateran Treaty with Italy, which was concluded in 1929, the Holy See not only agreed that Catholic organizations would abstain from politics, but it declared that 'it wishes to remain, and it will remain extraneous to all temporal disputes between nations and to all international congresses convoked for the settlement of such disputes unless the contending parties make a concordant appeal to its mission of peace; nevertheless it reserves the right in every case to exercise its moral and spiritual power.'

"In the 'Report on Church and State' (Message and Decisions of Oxford [1957] on Church, Community, and State, pp. 27-30), it was declared that 'The Church as the trustee of God's redeeming Gospel and the States as the guarantor of order, justice, and civil liberty, have distinct functions in regard to society. The Church's concern is to witness to men of the realities which outlast change because they are founded on the eternal Will of God. The concern of the State is to provide men with justice, order, and security in a world of sin and change. As it is the aim of the Church to create a community founded on divine love, it cannot do its work by coercion, nor must it compromise the standards embodied in God's commandments by surrender to the necessities of the day. The State, on the other hand, has the duty of maintaining public order, and therefore, must use coercion and accept the limits of the practicable.'

"x x x x x x x x x."

To allow an ecclesiastic to head the executive department of a municipality is to permit the erosion of the principle of

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separation of Church and State and thus open the floodgates for the violation of the cherished liberty of religion which the constitutional provision seeks to enforce and protect. For it requires no in-depth analysis to realize the disastrous consequence of the contrary situation — allowing ecclesiastics to run for a local position. Can there be an assurance that the decisions of such ecclesiastic, in the exercise of his power and authority vested in him by reason of his local position will be clothed with impartiality? Or is not the probability that his decision as well as discretion be tainted with his religious prejudice, very strong? For considering the objectives of his priestly vocation, is it not incumbent upon him to color all his actuations with the teachings and doctrines of his sect or denomination? Is there an assurance that in the appointment to appointive municipal positions the religious affiliation of the competing applicants will not play the decisive factor? If the ecclesiastic elected to a municipal office of mayor is a Catholic, would the chances of an heretic, an Aglipayan, a Protestant or an Iglesia ni Kristo adherent be as equal as those of a Catholic?

Pursued further, in the solemnization of marriage, how would he resolve the conflict between civil laws and his religion? Will he conduct the same under the tenets of his religion or under the commands of civil laws? Will he be willing to solemnize the marriage of applicants who both do not belong to his sect? Will he be imposing the requirement, assuming that he is a Catholic, that the non-Catholic party should agree that the children of the union shall be brought up according to the Catholic dogma? Where the applicants are first cousins, will he be willing to solemnize the marriage, considering that under civil law, the same is prohibited; but under Catholic rules, the same is allowed? Where obedience to the law of the State is inconsistent with obedience to the law of his Church, how will he act? Such questions could be asked also of the municipal officials who are ministers of other religions or sects.

Again, in the exercise of his preliminary investigation authority, how would he decide cases under investigation where the crimes involved are violations of Article 132 (Interruption of religious

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worship) and Article 133 (Offending the religious feelings)? Will not his religious convictions and prejudices color his actuations?

Also, in the matter of permits for the use of public places for religious purposes, how would he treat applications filed by atheists or by religious sects other than his? Could there be an assurance of strict impartiality?

What alarms me more, however, is the effect of the majority opinion — allowing ecclesiastics to run for a public office in the local government — on the present posture of the Churches in the present political situation. For I entertain very strongly the fear that with such ban lifted, it will not be too long from today that every municipality in the country will be headed by a priest or minister. And the result of such a situation need not be emphasized any further. Recto had expressed it in no uncertain terms.

Recto ventured to foretell in the same speech earlier quoted:

"x x x in the light of the events of the recent past, unless the hierarchy of the most numerous Church withdraws definitely and completely from the field of its newly found activities, the nation will eventually find itself sucked into the maelstrom of a religio-political war with the said Church on one side and on the other a powerful alliance not only among those who belong to other religious denominations, but also a sizable portion of its faithful who, because of nationalism or civil libertarianism, would refuse to follow their spiritual leaders in such a purely mundane crusade. It is irrelevant whether the numerous church or its allied opponents emerge victorious in such a battle, for the outcome will be the same as in the ones between Hildebrand and Henry IV and their respective successors, and between the thirteenth-century popes and the Hohenstaufen: 'the usual outcome.' in the words of Toynbee, 'of all wars that are fought to the bitter end: the nominal victor succeeded in dealing the death-blow to his victim at the cost of sustaining fatal injuries himself; and the real victors over both belligerents were the neutral *tertii gaudentes*.' In our case, the *tertii gaudentes*, the happy onlookers, if I may be allowed to translate these Latin words freely, would be the enemies of our nation and people, the real beneficiaries of such a tremendous national misfortune."

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Finally, the majority opinion will precipitate small religious wars in every town. We have seen in cases decided by this Court how the religious fanatics have persecuted religious sects in some towns giving rise to bloody episodes or public disturbances.

It would seem that any human activity touching on the religious beliefs and sentiments of the people easily agitate their emotions, prejudices and passions, causing even the ordinarily reasonable and educated among them to act intolerantly.

Indeed, in one case that reached this Court, Mr. Justice Jose P. Laurel, alarmed by the bigotry of a Roman Catholic priest so obvious from his actuations, articulated in his dissenting opinion the following thoughts:

"Why, may I ask, should the mere act of passing of the corpse or funeral cortege in or through a private property be characterized as notoriously offensive to the feelings of any religion or its adherents or followers?

"The Lord gave, and the Lord hath taken away; blessed be the name of the Lord (Job, 1.21).

"In this case, the Lord has recalled the life of one of His creatures; and it must be His wish that the remains shall have the right of way that they may be buried 'somewhere, in desolate wind-swept space, in twilight land, in no man's land but in everybody's land.'

"Rather than too many religions that will make us hate one another because of religious prejudices and intolerance, may I express the hope that we may grasp and imbibe the one fundamental of all religions that should make us love one another.'" (*People vs. Baes,* 68 Phil. 203 [1939]).

In the aforesaid case of Baes, a Roman Catholic priest attempted to prevent a funeral held in accordance with rites of the sect "Church of Christ" from passing through the Catholic churchyard fronting the Roman Catholic Church of Lumban, Laguna. Having failed allegedly because the accused used force and violence, the priest filed a complaint against the former for violation of Article 133 of the Revised Penal Code, which, however, was dismissed by the lower court upon motion of the fiscal on the ground that the acts alleged in the complaint did

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not constitute the offense against religious feelings. The intolerant priest however had his day before this Court which, on appeal, ruled otherwise, declaring that the offense to religious feelings, under the factual circumstances of the case, must be judged according to the feelings of the Catholics and not those of other faiths. Justice Jose P. Laurel, joined by Justice Imperial, strongly dissented from the aforesaid conclusion of the majority of the Court, stating that:

"x x x As I see it, the only act which is alleged to have offended the religious 'feelings of the faithful' here is that of passing by the defendants through the 'atrio' of the church under the circumstances mentioned. I make no reference to the alleged trespass committed by the defendants or the threats imputed to them because these acts constitute different offenses (Arts. 280, 281 and 282-285) and do not fall within the purview of Article 133 of the Revised Penal Code. I believe that an act, in order to be considered as notoriously offensive to the religious feelings, must be one directed against religious practice or dogma or ritual for the purpose of ridicule; the offender, for instance, mocks, scoffs at or attempts to damage an object of religious veneration; it must be abusive, insulting and obnoxious (Viada, *Commentaries al Codigo Penal*, 707, 708, vide also Pacheco, *Codigo Penal*, p. 259).

"Why, may I ask, should the mere act of passing of the corpse or funeral cortege in or through a private property be characterized as notoriously offensive to the feelings of any religion or of its adherents or followers?

"The Lord gave, and the Lord hath taken away; blessed be the name of the Lord (Job. 1.21).

"In this case, the Lord has recalled the life of one of His creatures; and it must be His wish that the remains shall have the right of way that they may be buried 'somewhere, in desolate, wind-swept space, in twilight land, in no man's land but in everybody's land.'

"Rather than too many religions that will make us hate one another because of religious prejudices and intolerance, may I express the hope that we may grasp and imbibe the one fundamental of all religions that should make us love one another.'

"It must decline to accept the statement made in the majority opinion that '*whether or not the act complained of is offensive to*

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the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholics and not those of other faithful ones, for it is possible that certain acts may offend the feelings of those who profess a certain religion while not otherwise offensive to the feelings of those professing another faith.' (italics is mine). I express the opinion that the offense to religious feelings should not be made to depend upon the more or less broad or narrow conception of any given particular religion, but should he gauged having in view the nature of the acts committed and after scrutiny of all the facts and circumstances which should be viewed through the mirror of an unbiased judicial criterion. Otherwise, the gravity or leniency of the offense would hinge on the subjective characterization of the act from the point of view of a given religious denomination or sect, and in such a case, the application of the law would be partial and arbitrary, withal, dangerous, especially in a country said to be 'once the scene of religious intolerance and persecution' (*Aglipay vs. Ruiz,* 35 Off. Gaz. 2164)" [pp. 208-210].

In *United States vs. Dacquel* (36 Phil. 781 [1917]), accused barrio lieutenant halted and attacked, with the help of three men, some of the Roman Catholic inhabitants of the barrio of Sococ in the Province of Ilocos Sur who were then having a religious procession without the barrio lieutenant's consent or authorization which seemed to have angered him. He was convicted of grave physical injuries inflicted by him during that incident upon a participant, a nine-year old girl.

The case of *Balcorta* (25 Phil. 273 [1913]) reveals that an Aglipayan, who, uninvited, entered a private house, where services of the Methodist Episcopal Church were being conducted by 10 to 20 persons and who then threatened the assemblage with a club, thereby interrupting the divine service, was found guilty under Article 571 of the old Penal Code (similar to Art. 133, Revised Penal Code).

Again, in *Fiscal vs. Dollete* (56 O.G. 2371 [1958]), its factual circumstances reveal that the complaint filed by the chief of police alleged that while devotees of the Iglesia ni Kristo were holding a religious ceremony in a certain house in Dinalupihan, the accused stopped in front thereof, made unnecessary noise,

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and shouted derogatory words against the Iglesia ni Kristo and its members, and even stoned the house.

Ignacio vs. Ela (99 Phil. 347 [1956]) arose because of the act of the mayor of Sta. Cruz, Zambales, in permitting the members of the Jehovah's Witnesses to hold their meeting at the northwestern part of the plaza only, instead of at the kiosk in the public plaza. The actuation of the mayor was pursuant to a policy he adopted even before the request made by the members of the Jehovah's Witnesses, it appearing that the public plaza, particularly the kiosk, is located at a short distance from the Roman Catholic Church, causing some concern, because of the proximity, on the part of the authorities; hence, to avoid disturbance of peace and order, or the happening of untoward incidents, they deemed necessary to prohibit the use of that kiosk by any religious denomination as a place of meeting of its members, especially so, that in the instant case, the tenets of petitioners' congregation are derogatory to those of the Roman Catholic Church. The respondent mayor was sustained by this Court, with four members of the Court dissenting.

The case of *U.S. vs. Apurado, et al.* (7 Phil. 422 [1907]) shows that while the municipal council of San Carlos, Occidental Negros was in session, some 500 residents of the town assembled near the municipal building. Upon the opening of the session a large number of those assembled about the building crowded into the council chamber and demanded the dismissal from office of the municipal treasurer, the secretary and the chief of police, and the substitution in their places of new officials. The council acceded to their wishes and drew up a formal document setting out the reasons for its action, which was signed by the councilors present and by several leaders of the crowd. It appears that the movement had its origin in religious differences between residents of the municipality. The petitioners believed that the officials above-named should not continue to hold office because of their outspoken allegiance to one of the factions into which the town was at that time divided. (This Court reversed the decision of the trial court convicting them of sedition).

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In *People vs. Reyes, et al.* (CA-G.R. No. 13633-R, July 27, 1955), the accused Reyes, who was the chief of police of the town of San Esteban, Ilocos Sur, ordered his policemen to stop Minister Sanidad of the Iglesia ni Kristo, which was then holding a meeting at the public plaza, from continuing with his sermon when the latter attacked in the course of his sermon the Catholic and Aglipayan churches, as well as the women of San Esteban, Ilocos Sur. Accused were convicted of violation of Art. 131 of the Revised Penal Code.

Again, in *People vs. Migallos* (CA-G. R. No. 13619, August 5, 1955) wherein the accused was convicted by the Court of First Instance and Court of Appeals of the offense defined under Art. 133 of the Revised Penal Code, the facts show that Minister Tagoylo of the Iglesia ni Kristo sect was stoned by the accused while the former was preaching or spreading his belief on a public road before a crowd of around 500 persons.

People vs. Mandoriao (CA-G.R. No. 12114, February 25, 1955, 51 O.G. 4619) started with a rally organized by the Iglesia ni Kristo, attended by about 300 people, 50 of whom belonged to the said sect, at a public park in Baguio City. One of the ministers of the sect expounded on a topic asserting that Christ was not God but an ordinary man, causing the crowd to become unruly, whereupon, appellant went up the stage and grabbed the microphone challenging the minister to a debate. (The lower court convicted appellant of violation of Art. 133 of the Revised Penal Code but the Court of Appeals acquitted him).

In *People vs. Gesulga* (1 C. A. Rep. 103), appellant, a protestant preacher of the Seventh Day Adventist, was found guilty by the lower court of offending religious feelings. The Court of Appeals reversed the conviction. The facts show that some Catholic elements in Leyte conducted a *barangay*, similar to the rosary, which continued with a procession outside. The procession with big attendance had to pass along the barrio road in the middle of which a Protestant meeting was being held under a permit issued by the municipal mayor. On account of said meeting, the procession could not pass through. Those attending the procession requested from, but were denied passage

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by, the appellant who was then speaking at the meeting (in the course of which he uttered words notoriously offensive to the feelings of the Catholic faithful). The processional participants who were singing Ave Maria in high pitch, took another road, while others passed under the nearby houses. When the procession was about 10 meters from the meeting place, appellant temporarily stopped talking and resumed his talks after the procession had passed.

In the case of *People vs. Tengson* [(CA) 67 O.G. 1552], the criminal act complained of was the performance by the appellant of burial rites inside the Roman Catholic Cemetery in accordance with the rules and practices of the sect called "Christ is the Answer." There was a permit for the burial in question. Convicted by the lower court, appellant was acquitted on appeal.

In sum, if the disqualification prescribed in Section 2175 of the Revised Administrative Code were nullified, three basic constitutional guarantees would thus be violated — Section 8 of Article IV, Section 18(2) of Article VIII, and Section 15 of Article XV of the 1973 Constitution.

The newly elected Head of the Catholic church, Pope John Paul I, upon his installation on September 1, 1978, enjoined his Catholic flock to strictly adhere to the Jeffersonian concept of separation of Church and State.

In its editorial of September 6, 1978, the Times Journal (p. 4) commented on the aforesaid Papal pronouncement:

"Scholars the world over hailed the statement of Pope John Paul I affirming the separation of church and state as 'of historic importance.' Some even detected in it a hint of Thomas Jefferson, the American founding father who worked the concept into the U.S. Constitution.

"To Filipinos steeped in this constitutional tradition, the Pope's remarks on this point in his address before a group of diplomats are very significant. This is especially true in the face of the over-zealousness of some members of the clergy whose activities in the name of social action tend to endanger national security.

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"While it could be said that the provision in the Philippine Constitution on the separation of church and state has traces of strong Jeffersonian influence upon the framers of the fundamental charter, the sad experience of the Filipinos at the hands of the meddling friars during three centuries of Spanish occupation made them more sensitive to and acutely aware of the concept. The rejection of a state-supported church during the Philippine Revolution only served to enhance this theory.

"The Pope said the roles of government and church were of 'two orders, each with its own mission and competence' of a 'unique' and 'special character.'

"The church's responsibilities 'do not interfere with purely temporal, technical apolitical affairs, which are matters for . . . governments,' he said.

"Significant, too, are the comments on the papal statement by such religious leaders as Rev. Paul Boyle, head of the Passionist Fathers. 'The Pope,' according to Boyle, 'not only states it as a principle, but as a desirable one.'

"'What we have here,' according to Rev. Donald Campton, a Jesuit official and one-time editor of the national Catholic weekly, *America* 'is not just a statement but a pledge that both on the national and international levels, we don't want a state church.'

"With the concept strongly reiterated and the lines once again clearly drawn, it is to be hoped that we should not forget, rendering unto Caesar what is Caesar's and to God what is God's. The Pope has made his pledge, let no member of the Church make mockery of it."

Another Filipino historian, Carlos Quirino, writing about Jesuit educated Ambassador Leon Ma. Guerrero, author of the prize-winning "The First Filipino," a biography of Rizal, characterized the Spanish friar as "the most dangerous of man — one combining great power with a sense of devotion to his mission — . . . He, then, became the great antagonist of the first Filipino, Jose Rizal."

A significant fact seems to indicate a dangerous attempt on the part of the Catholic hierarchy in the Philippines to subvert the laws of the Republic, if not the Republic itself. For several years now, the ecclesiastical tribunal has been annulling marriages,

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despite the fact that such marriages can no longer be annulled under our laws. Even marriages of spouses with children had been nullified. It should be emphasized that the power to annul marriages in the Philippines is vested only in the courts established by the State, and not in ecclesiastical tribunals. The grounds for annulment of marriages *void ab initio* or merely voidable, are expressly enumerated in the Civil Code.

In a newspaper interview, the executive vice official of the Metropolitan Matrimonial Tribunal of the Archdiocese of Manila, in re-affirming the position of the Catholic Church that it is annulling only marriages which are considered *void ab initio* under the rules of the Church, would not specify the canonical grounds for annulment of marriages considered void from the very beginning by the Church, stating merely that they are "varied and diverse . . . all of them are qualified terms with specific meanings very different from the layman's understanding" (Times Journal, *Modern Living*, p. 1, Oct. 3, 1978). This answer is evasive. Such evasion is compounded by the fact that such annulments by the Church are not published in any Catholic organ to enable the public to know the facts of each case and the reasons for annulling the marriage, unlike the cases decided by the civil courts.

However, Father Mario Nepomuceno, a Jesuit marriage counselor, stated before the Interim Batasang Pambansa committee conducting hearings on the divorce bills, that the Philippine Catholic church has in fact annulled many marriages on the grounds of "moral incompatibility" or emotional immaturity on the part of one or both spouses (Daily Express, pp. 1-2, Nov. 7, 1978). This ground finds its counterpart in Nevada and Mexico, where "quickie" divorces are the fashion. The spouses, Mr. and Mrs. Jose M. Meily, both stated in their column "Husband and Wife" that the Catholic Church annuls marriages on the ground of lack of full or sufficient consent on the part of the spouses, which consent may be impaired by ignorance, no intention to cohabit, lack of consciousness at the time of the marriage either caused by drugs or alcohol, error, simulation of consent, conditional consent, force and/or fear, and lack of due discretion (Philippine Panorama, p. 56, Nov. 12, 1978). Except for force

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and fear, all the other qualifications as to the existence of full consent are not found in our civil laws.

The statement of Cardinal Sin that the State should not interfere with Church rulings on marriages solemnized in church is a defiance of the law and the authority of the Republic of the Philippines; because it implies that the rules of the Church on the validity or nullity of marriages solemnized in church shall prevail over the laws of the State on the subject (see "Bulletin Today," pp. 1 & 12, Oct. 5, 1978). This statement of Cardinal Sin belies his affirmation that the Church does not interfere with or defy civil laws but respects them (see "Bulletin Today," *supra*).

There is need of emphasizing that marriage is a social institution — not just a mere contractual relation — whose sanctity is recognized and protected by the State, and is not a matter within the exclusive jurisdiction of the Church. The solidarity of the Filipino family and sanctity of the marital bond are the primary concern of the State, perhaps even more than they are of the Catholic church, as the family unit constitutes the strength of the nation. The Church tribunals in annulling marriages, is usurping the power of the courts established by the State. Even the authority of the priests and ministers to solemnize marriages is granted by State law, without which no priest or minister of any religion or church or sect or denomination can legally solemnize marriages. If the right of the Catholic church to annul marriages or to declare marital unions as void *ab initio* under its rules were conceded, then there is no reason to deny the same right to the ministers of the Protestant church and other religious sect or denomination.

The annulment by the Church does not render the spouses exempt from possible prosecution for bigamy, adultery or concubinage, should they contract a second marriage or have carnal knowledge of, or cohabit with persons other than their legitimate spouses of the first marriage which remains lawful in the eyes of the laws validly promulgated by the State.

If the Church tribunal believes that the marital union is a nullity from the very beginning under the civil laws, then the

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Church should advise the parties to go to the civil courts. But the Church should not arrogate unto itself State authority and the jurisdiction of the courts created by the State.

To stress, in our country, there is only one sovereign, the Republic of the Philippines, and not the Roman Catholic Church or any other church. Only the sovereign, the Republic of the Philippines, can validly promulgate laws to govern all the inhabitants of the Philippines, whether citizens or aliens, including laws concerning marriages, persons and family relations. And only the courts established by the sovereign, the Republic of the Philippines, can apply, interpret and enforce such laws. The exercise by the Catholic church in promulgating rules governing marriages and defining the grounds for annulment of the same, as well as establishing ecclesiastical tribunals to annul marriages or to declare marriages void *ab initio*, is a usurpation of the sovereign power of the State.

While any Church or religious sect or denomination has the right to exist independent of the Constitution and the laws of the country, such Church or religious sect or denomination shall obey the Constitution and the laws of the State where it exists and operates. The Church or any religious sect or denomination can invoke the protection of the State whenever its existence and the persons of its heads, priests, ministers and properties are imperilled or violated. But the Church or religious sect or denomination has no legal or ecclesiastical power to subvert the State and its laws. No Church or any religious sect or denomination can repeal or modify the provisions of the laws validly promulgated by the State.

If the Church believes that the existing laws on annulment of marriages need to be amended, it should suggest such amendments; but it should not enact or promulgate such proposed amendments.

The good Cardinal Jaime L. Sin would do well to heed Christ's reminder (which he repeated at the Fourth Annual National Prayer Breakfast at the Manila Hotel on November 30, 1978) to His disciples that His Kingdom is not of this world.

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And all authorities of the Roman Catholic Church should likewise harken to the injunction of the supreme Pontiff, Pope John Paul II, who on Friday, November 24, 1978, told the monks, friars and other religious that their duty is to lead a poor and obedient life rather than be engaged in "social and political radicalism" (Times Journal, page 1, November 25, 1978).

I therefore vote to grant the petition and to reverse the decision of the trial court.

ANTONIO, *J., concurs in the result:*

I concur in the judgment, but dissent from the views expressed by Mr. Justice Fernando. In resolving the issues in the case at bar, the main opinion failed to consider Section 15 of Article XV of the Constitution. This provision, which ordains the inviolability of the separation of Church and State, appears more relevant to the case at bar, if we consider the constitutional guarantee of religious freedom in its historical setting. It must be recalled that during the period of Spanish colonial domination, the union of Church and State in the Philippines was maintained and protected. As observed by one writer:

"The Friar at this period was the full embodiment of Spanish colonial domination. He was *de facto* a colonial civil administrator and a defender of the sovereignty of the King of Spain over the subject *Indio* in most provincial towns. Simultaneously he was *de jure*, by operation of the *Patronato Real*, the rightful parish priest of the same towns constituted as parishes.

"Since he was the only Spaniard in residence in most Philippine towns he was not only a salaried government official; he was entrusted with purely civil functions. Thus, for instance, he drew up the tribute list of his parish, the list, namely, of those *Indios* subject to the poll tax and to statute labor. He was the director of the local elementary school. He supervised the election of local officials whose confirmation in office by the colonial government depended entirely upon his recommendation. He attended, and often presided at the meetings of the town council, whose ordinances had to be approved by him. Roads, bridges and other public works were maintained under his orders and vigilance. He was the judge and guardian of public morals.

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"The Friar, therefore, was the promoter, defender, and protector of Spanish rule in the Philippines. ***.[1]

It is a historical fact that this arrangement spawned abuses on the part of the friars. According to two noted historians, "one of the most unwelcome characteristics of Spanish colonization was the encroachment of the church upon the jurisdiction of the government, and the exercise of political power by the religious. In the central government, representatives of the church or of the religious orders sat in the highest councils. The friars were heavily represented in the powerful Permanent Commission on Censorship, created in 1856, which had jurisdiction over 'the press and the introduction of books in the archipelago, according to rules approved by both the civil and ecclesiastical authorities.' In the towns the masses were subject to the will of the parish priest, who dominated the local officials. Indeed, in the towns, the friars and priests became integrated into the machinery of government: they 'had become the government.' Thus, there was no effective system of checks and balances which could curb abuses."[2] Said historians further noted that:

"Justice Florentino Torres testified, also before the Philippine Commission in 1900, that the friars were so powerful that they could intervene directly in the election of municipal officials, and could obtain the transfer, suspension, or even removal from office of civil officials, from the highest to the lowest, including the governor-general. According to him, whoever was suspected by the friars to be a 'filibuster', no matter how worthy or upright, '. . . became the object of all manner of governmental action, of military proceedings, and of the cruelest outrages and vexations, because against him who was accused of being a filibuster all manner of ill treatment, imprisonment, deportation, and even assassination was permitted.'"[3]

Father Jose Burgos attributed the regressiveness of the Filipinos in his "Manifiesto" in the newspaper "La Verdad" to

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[1] Ambrosio M. Manaligod, STD. "*Gregorio Aglipay Hero or Villain*" (1977), pp. 25-26.

[2] Agoncillo and Alfonso. "*A Short History of the Filipino People*" (1960), pp. 110-111.

[3] *Ibid.*, p. 111.

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the efforts of the friars to keep the poor *Indios* in ignorance and rusticity, and this constituted a constant obstacle to the progress and advancement of the Filipinos. In "El Filibusterismo," Jose Rizal blamed the tyranny and abuses of the friars and Spanish officials, and especially their suppression of free ideas, as the cause of the social and political backwardness of the Filipinos.

It is in the anguish of their historical experience that the Filipinos sought a ban on the intervention of the ecclesiastics in the management of government. Thus, the framers of the Constitution of the First Philippine Republic (Malolos Constitution) of 1899 deemed it necessary to prevent interference with, and domination of, the government by the ecclesiastics by providing, in Article 5, Title III thereof, for the "separation of the Church and the State."[4] Even before the establishment of the American colonial rule, there was, therefore, this prevailing clamor of the Filipinos to erect a wall between the Church and the State. In the instructions of President McKinley to the Philippine Commission which laid out the policies of the United States in establishing a government in the Philippines, he stated that "the separation of State and Church shall be real, entire and absolute."

The separation of State and Church clause was again incorporated in the 1935 and later in the 1973 Constitutions. Thus, the 1973 Constitution of the Philippines provides that "the separation of church and state shall be inviolable."[5] This should, therefore, be taken into consideration in ascertaining the meaning and import of Section 8 of Article IV of the Constitution, which states that "no religious test shall be required for the exercise of civil or political rights."[6] According to Story, the "no religious test" clause contained in the United States Constitution was "not introduced merely for the purpose of satisfying the scruples of many respectable persons, who feel

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[4] Article 5. — The state recognizes the equality of all religious worships and the separation of the Church and the State.

[5] Article XV, Section 15.

[6] Article IV, Section 8.

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an invincible repugnance to any religious test or affirmation. It had a higher object; to cut off forever every pretence of alliance between church and state in the national government. The framers of the Constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human mind; and that tolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas, or resisted its infallibility."[7]

It is clear, therefore, that the two provisions, taken together, ensure the separation of Church from Government, while at the same time giving assurance that no man shall be discriminated against because of his religious beliefs. The interrelation of these complementary clauses was well summarized, thus: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."[8] Indeed, it is a matter of history that "the union of government and religion tends to destroy government and degrade religion."[9]

It was partly to ensure that no particular religious sect shall ever again obtain a dominant hold over civil government that Section 2175 of the Revised Administrative Code was incorporated in our laws. Thus it provides that "in no case shall there be elected or appointed to a municipal office ecclesiastics. . . . . This Court applied this prohibition in a case decided on March 14, 1955, or after the adoption of the 1935 Constitution. Thus, *Vilar v. Paraiso*,[10] the Court ruled that a minister of the United

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[7] Story, "Commentaries on the Constitution of the United States." Vol. II, p. 648.

[8] *Watson v. Jones*, 13 Wall. 679, 730, cited in *Everson v. Board of Education*, 168 ALR, 1404.

[9] *Engel v. Vitale*, 370 U.S. 421; 82 S. Ct. 1261; 8 L. ed. 2d 601 (1962).

[10] 96 Phil. 659, promulgated on March 14, 1955.

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Church of Christ was ineligible to assume the office of municipal mayor.

In its American setting, the separation of Church and State clause is justified "by the necessity for keeping the state out of the affairs of the church, lest the church be subordinated to the state; in Jeffersonian terms its function is to keep the church out of the business of government, lest the government be subordinated to the church. Limited powers of government were not instituted to expand the realm of power of religious organizations, but rather in favor of freedom of actions and thought by the people."[11]

It is, therefore, obvious that on the basis of its history and constitutional purpose, the aforecited provisions of the Constitution furnish neither warrant nor justification for the holding in the main opinion that Section 2175 of the Revised Administrative Code, insofar as it includes ecclesiastics, is inconsistent with the "religious freedom guaranteed in the Constitution."

In *Torcaso v. Watkins,*[12] which is accorded persuasive weight in the majority opinion, there was no showing that Torcaso was an ecclesiastic, or a minister or officer of any religious sect. As a matter of fact, he was refused a commission to serve as notary public because he would not declare his belief in God, as required by Article 37 of the Maryland Constitution. The Supreme Court properly held that the requirement is a religious test and "unconstitutionally invades the appellant's freedom of belief and religion and therefore cannot be enforced against him."

On the other hand, the situation of private respondent is materially different. He is admittedly a member of the Clergy, being a priest of the Roman Catholic Church. It is for this reason that he is being prevented from assuming the office of municipal mayor, and not because of his religious belief. The prohibition does not impinge upon his religious freedom. He

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[11] Philip B. Kurland. "Of Church and State and the Supreme Court," 1965 Selected Essays on Constitutional Law, pp. 701-702.

[12] 367 U.S. 488. 6 L. ed. 2d 982.

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has the full and free right to entertain his religious belief, to practice his religious principle and to teach his religious doctrine, as long as he does not violate the laws of morality or the laws of the land. The separation of Church and State clause in the Constitution appears to be a recognition of the teachings of history "that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the . . . Government would be placed behind the tenets of one or of all orthodoxies."[13]

The intent of the constitutional provision is the vital part, the essence of the law. The clear purpose of the framers of the Constitution and the understanding of the people when they approve it, when ascertained, must be enforced. Indeed, in construing provisions of the Constitution, the proper course is to start out and follow the true intent of its framers and to adopt that construction which harmonizes best with the context and promotes in the fullest manner the realization of the constitutional purpose.

I likewise take exception to the view expressed in the majority opinion that the supremacy of the Constitution supplies the answer to the issue of the eligibility of a member of the clergy to an elective municipal position. The application of Article XVI, Section 2 of the 1935 Constitution, with its counterpart in Article XVII, Section 7 of the 1973 Constitution, concerning laws inconsistent with the Constitution, is inaccurate. Article 2175 of the Revised Administrative Code, in including ecclesiastics within the ambit of the prohibition, is not inconsistent with the explicit provision of the 1935 Constitution that "(n)o religious test shall be required for the exercise of civil or political rights."[14] The absence of inconsistency may be seen from the fact that the prohibition against "religious tests" was not original to the 1935 constitution.

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[13] Gunther and Dowling, "*Cases and Materials on Constitutional law*" (1960 Ed.), p. 1368.

[14] Article III, Section 1, paragraph 7, reproduced in Article IV, Section 8 of the 1973 Constitution.

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It was expressly provided in the Jones Law[15] that "no religious test shall be required for the exercise of civil or political rights" (Section 3). At the time of the passage of the Jones Law, the original Administrative Code (Act 2657) was already in force, having been enacted in February 1916. In order to harmonize the Code with the Jones Law, the Code was amended in October 1916, with the passage of Act 2711. The revision was made expressly "for the purpose of *adapting it to the Jones Law* and the Reorganization Act.[16] Notwithstanding such stated purpose of the amendment, the prohibition against the election of ecclesiastics to municipal offices, originally embodied in Section 2121[17] of Act 2657, was retained. This is a clear indication that it is not repugnant to the "no religious test" doctrine which, as aforestated, was already expressly provided for in the Jones Law.

Considering that Section 2175 of the Revised Administrative Code, which "cut off forever every pretence of any alliance between church and state," is in conformity with Section 15 of Article XV of the Constitution, which ordains that "the separation of church and state *shall be inviolable*," it cannot, therefore, be said that such statute, in including ecclesiastics among those ineligible to municipal office, is violative of the fundamental law.

I concur in the view incisively discussed by Chief Justice Castro that Section 2175 of the Revised Administrative Code has not been repealed or superseded by any other legislation and, therefore, is the controlling law in the case before Us.

Since we cannot negate the clear and unequivocal intendment of the law, I therefore concur in the judgment granting the *certiorari*.

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[15] Act of Congress of August 29, 1916.

[16] Act 2711, "An Act Amending the Administrative Code." Italics supplied.

[17] "SEC. 2121. *Persons ineligible to municipal office* — In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or Insular funds, or contractors for public works of the municipality."

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AQUINO, *J., concurs in the result:*

Reverend Father Margarito R. Gonzaga was elected in 1971 as mayor of Alburquerque, Bohol. Fortunato R. Pamil, his opponent, filed a *quo warranto* proceeding against him. Pamil invoked Section 2175 of the Revised Administrative Code of 1917 which disqualifies clergymen from holding a municipal office in the following peremptory terms:

"SEC. 2175. *Persons ineligible to municipal office.* — In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or National funds, or contractors for public works of the municipality."

Father Gonzaga interposed the defense that section 2175 was impliedly repealed by Section 23 of the Election Code of 1971 which provides:

"SEC. 23. *Candidate holding appointive office or position.* — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines and every officer or employee in government-owned or controlled corporations, shall *ipso-facto* cease in his office or position on the date he files his certificate of candidacy: *Provided*, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred."

It may be noted that Section 2175 disqualifies from holding a municipal office soldiers in active service as well as priests. The fact that Section 32 of the Election Code of 1971 allows active members of the Armed Forces of the Philippines to run for municipal mayor may give the impression that Section 2175 was impliedly repealed by Section 23. The lower court was of that opinion. It denied the petition for *quo warranto.* Pamil appealed by means of *certiorari* under Republic Act No. 5440.

I am of the opinion that the appeal is meritorious. The lower court erred in dismissing the petition for *quo warranto.* A soldier in the active service may run for mayor because under Section 23 he *ipso facto* ceases to be an army man from the time he files his certificate of candidacy.

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In contrast, a priest continues to be a priest notwithstanding his filing of a certificate of candidacy for municipal mayor.

So, it cannot be concluded that Section 23 of the Revised Election Code impliedly abrogated the ineligibility of priests to run for municipal mayor as provided in Section 2175. There is no irreconciliable repugnancy between Section 23 and Section 2175 insofar as ecclesiastics are concerned.

Section 2175 and Section 23 are in *pari materia* with respect to soldiers in the active service. There is no incompatibility between the two sections with respect to soldiers. The disqualification in Section 2175, as regards soldiers in the active service, is compatible with their cessation as members of the armed forces when they file their certificates of candidacy, as provided for in Section 23. Soldiers can hold a municipal office if they are no longer in active service. That can be implied from Section 2175 itself.

For that matter, the automatic resignation from public office, under Section 23, of public officers who file their certificates of candidacy has no connection with the disqualification in Section 2175 of ecclesiastics from holding any municipal office, That disqualification is not affected by the provision of the *ipso facto* resignation of public officers who file their certificates of candidacy because an ecclesiastic is not a public officer.

The view that Section 23 impliedly repealed the disqualification of ecclesiastics from holding a municipal office is strained and far-fetched.

So much for Section 23 of the Election Code of 1971. Mr. Justice Fernando, the Court's leading authority on constitutional law, tackled the question of respondent's eligibility from the constitutional viewpoint although the issue of constitutionality was not raised in the lower court. I disagree with the opinion that the provision of Section 2175 disqualifying ecclesiastics from holding a municipal office is unconstitutional.

The term "ecclesiastics" refers to priests, clergymen or persons in holy orders or consecrated to the service of the church. Broadly speaking, it may include nuns.

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Conformably with Section 2175, an ordained minister of the United Church of Christ was held to be ineligible to hold the office of municipal mayor. His election to that office was nullified in a *quo warranto* proceeding (*Vilar vs. Paraiso*, 96 Phil. 659).

It is argued that the disqualification of priests was abrogated by section 1(7), Article III of the 1935 Constitution which provides that "no religious test shall be required for the exercise of civil or political rights." It is assumed that the disqualification is "inconsistent with the religious freedom guaranteed by the Constitution (See Sec. 8, Art. IV; Sec. 18[2], Art. VIII, and Sec. 8, Art. XII, 1973 Constitution).

I disagree with that conclusion. There is no incongruency between the disqualification provision and the "no religious test" provision. The two provisions can stand together. The disqualification provision does not impair the free exercise and enjoyment or religious profession and worship. It has nothing to do with religious freedom.

The disqualification of priests from holding a municipal office is an application of the mandate for the separation of church and state (Sec. 15, Art. XV, 1973 Constitution; Art 5 Malolos Constitution) which is based on Christ's admonition. "Render, therefore, unto Caesar the things that are Caesar's and to God the things that are God's."

It should be borne in mind that the disqualification in section 2175 is a reproduction of Section 15 of Act No. 82 of the Philippine Commission which was passed on January 31, 1901. The Commission established that disqualification in spite of the "no religious test" provision found in Article VI of the Federal Constitution. The constitutionality of that disqualification had not been assailed up to 1971 when the instant case arose.

The disqualification of priests from holding municipal offices is a consequence of the experience of our forefathers during the Spanish regime when the intervention of the local curate in municipal affairs resulted in oppression, abuses, misery, immorality and stagnation. The revolution against Spain was partly an uprising against the friars whose predominance in

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the country's affairs was characterized by Plaridel as the *soberania monacal.*

There is a chapter in Rizal's *Noli Me Tangere* entitled *Los Soberanos* (The Rulers), wherein the author answers the question: "*Quienes eran los caciques del pueblo*?." He noted that the town of San Diego was not ruled by Don Rafael Ibarra, the richest landowner, nor by Capitan Tiago, the moneylender, nor by the *gobernardorcillo*, nor by God. It was ruled by the curate and the *alferez*. Rizal described the two rulers as follows:

"San Diego was a kind of Rome: not the Rome of the time when the cunning Romulus laid out its walls with a plow, nor of the later time when, bathed in its own and others' blood, it dictated laws to the world — no, it was a Rome of our own times with the difference that in place of marble monuments and coloseums it had its monuments of *sawali* and its cockpit of nipa. The curate was the Pope in the Vatican; the alferez of the Civil Guard, the King of Italy on the Quirinal: all, it must be understood, on a scale of nipa and bamboo. Here, as there, continual quarreling, went on, since each wished to be the master and considered the other an intruder x x x *Estos son los soberanos del pueblo de San Diego.*"

The flagitious thralldom, which the friars imposed on the Filipinos, was an aspect of the malignant social cancer that Rizal and the propagandists exposed and combated in their writings.

The ecclesiastic is disqualified to run for an elective office in order to prevent his church from controlling the government. The same reason holds true with respect to soldiers in active service. They should not meddle in politics so that no segment of the army can overthrow the government.

Indeed, there is no reason why a priest should hold a civil office. He should have enough work in his hands ministering to the spiritual needs of the members of his church. He can be an activist and he can champion social justice if he is not a municipal officeholder.

Respondent Father Gonzaga is supposed to devote himself solely to spiritual matters and not to temporal affairs such as

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the administration of a municipality. The objective of the Roman Catholic Church is the salvation or redemption of souls. To attain that objective, the priest under the *Codex Juris Canonici* is invested with the threefold function of teaching, directing and sanctifying in the name of Jesus Christ. That means the governance of the faithful and the ministry of divine worship or exclusive dedication to the service of God and the sanctification of men in the manner of the priestly and Levitical orders of the Old Testament (19 Encyclopedia Britanica, 1973 Ed., pp. 465-466).

To nullify the disqualification provision would be a retrogressive step. To allow clergymen to take part in political affairs is to start the process of reviving the theocracy of primitive societies and past civilizations where the priests, with his chants, incantations, hocus-pocus and abbracadabra, played a sinister role.

These observations are based on historical facts. I have no ingrained bias or prejudice against priests. There are, and there have been good and saintly clergymen like the late Father George J. Wilmann, S. J. Philippine Deputy of the Knights of Columbus. Religion plays an important role in enforcing the moral code and promoting order and morality in society.

Rizal and the reformers would have labored in vain and would be betrayed if the priest becomes a politician. He would be debased and his church would be degraded. The evils arising from his intervention in municipal affairs would out weight the advantages, if any.

A priest, who is disqualified from becoming a municipal employee, is not denied any part of his religious freedom or his political rights. A priest may have the civil right to embrace the religious vocation but he does not have the constitutional right to be a municipal employee. He can choose between being a municipal employee and being a priest. He cannot be both. That arrangement is good for himself and his church and for society.

On the other hand, the statutory provision that only laymen can hold municipal offices or that clergymen are disqualified to become municipal officials is compatible with the "no religious test" provision of the 1935 Constitution which is also found in

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Section 8, Article IV of the 1973 Constitution and in Section 3 of the Jones Law. They are compatible because they refer to different things.

The "no religious test" provision means that a person or citizen may exercise civil right (like the right to acquire property) or a political right (the right to vote or hold office, for instances without being required to belong to a certain church or to hold particular religious beliefs (See *Miller vs. El Paso County,* 146, S. W. 2nd 1027, 67 C.J.S. 128, note 48; 46 C. J. 939, note 44).

Thus, a constitutional provision prescribing that certain public officers shall be Protestants requires a religious test (*Hale vs. Everett,* 53 N.H. 9, 67 C.J.S. 129, note 51; 46 C. J. 939, note 47. See *State vs. Wilmington City Council*, 3 Del. 294, 67 C.J.S. 129, note 52).

And, a state constitutional provision requiring as a condition for appointment as a notary public that a person should declare his belief in the existence of God or should not be an atheist or an agnostic, requires a religious test and is, therefore, contrary to the Federal Constitution. That constitutional provision implements the historically discredited policy of "probing religious beliefs by test oaths or limiting public offices to persons who have, or perhaps more properly profess to have, a belief in some particular kind of religious concepts." (*Torcaso vs. Watkins*, 367 U. S. 488, 494, 6 L. Ed. 2nd 982, 987).

The historical background of the "no religious test" provision clearly shows that it is consistent with the disqualification of all clergymen from holding public office and that it cannot be invoked to invalidate the statutory provision on disqualification.

The "no religious test" provision is a reaction against the Test Acts which once upon a time were enforced in England, Scotland and Ireland. The Test Acts provided that only those who professed the established religion were eligible for public office. Those laws discriminated against recusants or Roman Catholics and nonconformists.

In England the religious test was first embodied in the Corporation Act of 1661. It provided that all members of town

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corporations, in addition to taking the oaths of allegiance and subscribing to a declaration against the Solemn League and Covenant, should, within one year before election, receive the sacrament of the Lord's Supper according to the rites of the Church of England. Later, the requirement was extended to all public offices. The English Test Act of 1678 provided that all peers and members of the House of Commons should make a declaration against transubstantiation, invocation of saints, and the sacrifice of the mass. During the later part of the nineteenth century the Test Acts were abrogated.

In Scotland, the Test Act made profession of the reformed faith a condition of public office. In Ireland, the principle of using the sacrament as a test was adopted. Oaths of allegiance and declarations against Roman Catholic beliefs and practices were exacted. Later, the tests were abolished in the two countries (21 Encyclopedia Britannica, 1973 Ed., 883-4).

To require that a person should be a Protestant in order to be eligible to public office is different from disqualifying all clergymen from holding municipal positions. The requirement as to religious belief does violence to religious freedom, but the disqualification, which indiscriminately applies to all persons regardless of religious persuasion, does not invade an ecclesiastic's religious belief. He is disqualified not because of his religion but because of his religious vocation.

Consequently, Section 2175 can coexist, as it has coexisted for several decades, with the "no religious test" constitutional provision. It is not unconstitutional. It strengthens the constitutional provision for the separation of church and state.

I vote for the reversal of the lower court's decision and the nullification of Father Gonzaga's election as municipal mayor of Alburquerque, Bohol.

TEEHANKEE, *J., dissenting:*

I dissent from the judgment reversing and setting aside respondent judge's appealed resolution of March 4, 1972 which dismissed herein petitioner's petition below of *quo warranto*

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for disqualification of respondent as the duly elected and qualified mayor of Alburquerque, Bohol in the 1971 elections due to his being allegedly ineligible therefor as an ecclesiastic and instead entering a new judgment ordering him to vacate he said office on the ground of "there being a failure to elect."

I. I hold on the *sole* issue joined by the parties in the court below and in this Court on appeal that the archaic Revised Administrative Code provision barring ecclesiastics *inter alia* from election or reappointment to a municipal office has been repealed by the provisions of the Election Code of 1971, as correctly ruled earlier by the Commission on Elections (in denying a separate petition filed by the same petitioner for annulment of respondent's certificate of candidacy) and by respondent judge in the case at bar.

The *sole* issue joined in the case at bar by the parties is on the purely legal question of whether Section 2175 of the Revised Administrative Code which bars from election or appointment to a municipal office "ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or national funds, or contractors for public works of the municipality" is still in force or has been repealed by the provisions of the Election Code of 1971, particularly Section 23[1] thereof which *allows* "every person holding a public appointive office or position, including active members of the Armed Forces" to run for any public elective office but provides for their cessation in office *ipso facto* on the date they file their certificate of candidacy and excludes ecclesiastics and municipal public works contractors from those declared ineligible or disqualified from running for an elective office.

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[1] The cited section provides: "SEC. 23. Candidate holding appointive office or position. — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines and every officer or employee in government-owned or controlled corporations, shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy: *Provided*, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred." (R.A. No. 6388).

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This is incontrovertible from the record.

Respondent judge's pre-trial order of January 25, 1972 defining the sole issue of law as joined and submitted by the parties expressly records that.

"The parties agreed during this pre-trial conference that the question of whether or not respondent resigned from the Catholic hierarchy as a priest is immaterial to the issues raised in the instant case and for that reason they are ready to submit the instant case for resolution by the Court purely on question of law, that is, whether or not the provisions of the Election Code of 1971 supersedes and revokes the provisions of the Revised Administrative Code which prohibits ecclesiastics from running for municipal elective position."[2]

and gave the parties ten days to file their respective memoranda, and declared the case submitted for resolution upon expiration of the period.

Petitioner's sole assignment of error in his appellant's brief at bar is "(T)hat the court *a quo* erred in ruling that Section 2175 of the Revised Administrative Code is revoked or superseded by the provisions of Republic Act No. 6388, otherwise known as the Election Code of 1971."[3] And his only argument in support thereof — insofar as is relevant to this Court's judgment — was as follows:

"The repealing clause of the Election Code of 1971 does not mention the Revised Administrative Code or Section 2175 thereof as among those expressly repealed. In the absence of inconsistency with any of the provisions of the Election Code, Sec. 2175 is neither repealed, expressly or impliedly, nor revoked or superseded by any existing law, and therefore must continue to stand in full force and effect.

"It is the intent of Congress to retain prohibitions of ecclesiastics from holding municipal office in order to maintain inviolate the great principle underlying the Philippine Constitution, that is — THE

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[2] *Rollo*, at page 66.

[3] Petitioner-appellant's brief, at pages 4-5.

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COMPLETE SEPARATION OF THE CHURCH AND STATE. The preservation of this principle is precisely the moving spirit of the legislature in passing Sec. 2175 of the Revised Administrative Code and in EXCLUDING ecclesiastics from the enumeration of persons in Sec. 23 of the Election Code of 1971. To allow ecclesiastics to run for a municipal office means an absolute abandonment of this principle.

"For a number of cases, the Supreme Court has disqualified ecclesiastics from assuming a municipal office. In an identical case of *Pedro Villar vs. Gaudencio Paraiso*, No. L-8014, March 14, 1955; 96 Phil. 659, the Supreme Court disqualified respondent Gaudencio Paraiso, then a minister of the United Church of Christ, from the office of Mayor of Rizal, Nueva Ecija, for being an ecclesiastic and therefore ineligible to hold a municipal office."[4]

Now, prior to the filing of the case below, petitioner (who was the incumbent mayor of Alburquerque, Bohol) had before the 1971 elections filed a petition with the Commission on Elections[5] for the annulment of the certificate of candidacy as an independent candidate (Liberal Party guest candidate) for the elective position of mayor of the municipality of Alburquerque, Bohol of his lone opponent, herein respondent Reverend Margarito R. Gonzaga, Catholic parish priest of the municipality of Jagna, Bohol on the ground of the latter's being barred from election to said office as an ecclesiastic.

The Comelec unanimously denied the petition, ruling that respondent was eligible for the office since Section 2175 of the Revised Administrative Code had been repealed by force of the Election Code of 1971 which in "Section 249 (thereof) expressly repeals R.A. No. 180, R.A. No. 3588 and all other laws, executive orders, rules and regulations, or parts thereof, *inconsistent* with the Code."[6]

The Comelec ruled that soldiers in active service and persons receiving salaries or compensation from provincial or national

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[4] *Idem*, at pages 11-12, italics copied.

[5] Composed then of Jaime N. Ferrer, chairman and Lino M. Patajo and Jose M. Mendoza, members.

[6] *Rollo*, at page 29.

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funds "are obviously now allowed to run for a public elective office because under Sec. 23 of the Election Code of 1971 'every person holding a public appointive office or position, including active members of the Armed Forces' shall *ipso facto* cease in their office or position on the date they file their certificates of candidacy. This implies that they are no longer disqualified from running for an elective office."

The Comelec further ruled that as to the two remaining categories formerly banned under the Revised Administrative Code, "ecclesiastics and contractors for public works of the municipality are allowed to run for municipal elective offices under the maxim, '*Inclusio unius est exclusio alterius,*' they being not included in the enumeration of persons ineligible under the New Election Code. The rule is that *all* persons possessing the necessary qualifications, *except those expressly disqualified by the election code,* are eligible to run for public office."

Respondent judge, expressing agreement with the Comelec ruling in that case, held that respondent is not disqualified nor ineligible to hold the position of mayor of Alburquerque to which he had been duly elected and proclaimed. Respondent judge prescinded from the fact that respondent had resigned his position as parish priest of another town, Jagna, and his resignation accepted on September 7, 1971 by the Bishop of Tagbilaran and that his authority to solemnize marriages had at his request of September 7, 1971 been cancelled on October 22, 1971 by Director of the National Library Serafin D. Quiason,[7] all before the November, 1971 elections (unlike in *Vilar vs. Paraiso*[8] wherein this Court upheld the trial court's refusal to give credence to the "supposed resignation" of therein respondent as a minister of his church). He bypassed also the well-taken procedural question that petitioner not having appealed the adverse Comelec ruling in the earlier case to this Court was bound thereby as the *law of the case* and could no longer bring this second action on the same question after his defeat in the elections.

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[7] Exhibits A, A-1, B and B-1, *Rollo*, pp. 46-47.

[8] 96 Phil. 659 (1955).

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In my view, the Comelec ruling and respondent court's resolution agreeing therewith stand on solid ground. As the Comelec stressed in its ruling, the Election Code of 1971 as the applicable law in this case *expressly enumerates all* those declared *ineligible* or *disqualified* from candidacy or if elected, from holding office, *viz*, nuisance candidates under Section 31, those disqualified on account of having been declared by final decision of a component court or tribunal guilty of terrorism, election overspending, solicitation or receipt of prohibited contributions or violation of certain specified provisions of the Code under Section 25, or having been likewise declared disloyal to the constituted government under Section 27 or those presidential appointees who prematurely seek to run for elective office without complying with the compulsory waiting periods of 150 days (for national office) and 120 days (for any other elective office) after the termination of their tenure of office under Section 78. All other persons possessing the necessary qualifications and *not* similarly expressly declared ineligible or disqualified by the said Election Code, such as ecclesiastics like respondent or contractors for municipal public works cannot but be deemed *eligible* for public office. Thus, ecclesiastics' eligibility for *national* office has universally been conceded and has never been questioned.

As already stated above, appointive public office holders and active members of the Armed Forces are no longer disqualified from running for an elective office, because Section 23 of the 1971 Election Code manifestly allows them to do so and provides that they "shall *ipso facto* cease in (their) office or position on the date (they) file (their) certificate of candidacy." Ecclesiastics and municipal public works contractors are no longer included in the extensive enumeration of persons ineligible under the said Election Code. Under the maxim of "*Inclusio unius, exclusio alterius*" and the general rule that all persons possessed of the necessary qualifications except those *expressly disqualified* by the Election Code are eligible to run for public office, the ban against them in Section 2175 of the Revised Administrative Code must be deemed set aside under the 1971 Election Code's repealing clause.

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The wisdom or desirability of the elimination of such prohibitions are of course beyond the province and jurisdiction of the courts. Aside from such prohibition being at war with the Constitutional injunction that "no religious test shall be required for the exercise of civil or political rights," the legislators must have considered that there was no longer any rhyme or reason for the archaic ban against ecclesiastics' election to a *municipal* office when there is no such ban against their running for *national* office and after all, *vox populi est vox Dei.* As to the lifting of the ban against municipal public works contractors, suffice it to state that there are other laws, *e.g.* the Anti-Graft and Corrupt Practices Act which if properly enforced should provide more than adequate safeguards for the public interests.

There is no gainsaying that the Election Code of 1971 is a subsequent comprehensive legislation governing elections and candidates for public office and its enactment, under the established rules of statutory construction, "(as) a code upon a given subject matter contemplates a systematic and complete body of law designed to function within the bounds of its expressed limitations as the sole regulatory law upon the subject to which it relates, x x x. The enactment of a code operates to repeal all prior laws upon the same subject matter where, because of its comprehensiveness, it inferentially purports to be a complete treatment of the subject matter. x x x."[9]

The repeal of the ban is further made manifest in the light of the 250 sections of the 1971 Election Code since "(T)he intent to repeal all former laws upon the subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with the subject. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject."[10]

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[9] 1 Sutherland *Statutory Construction*, pp. 479-481.

[10] *Idem*, at pp. 475-477.

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As a pure *question of law*, on the sole issue joined by the parties, therefore, I hold that the ban in Section 2175 of the Revised Administrative Code against the election of ecclesiastics (and the three other categories therein mentioned) to a municipal office has been repealed by the provisions of the Election Code of 1971, which nowhere in its all-embracing and comprehensive text mentions ecclesiastics (as well as the three other categories in the aforesaid Administrative Code provision) as among those ineligible or disqualified to run for public office (national or local).

II. On the constitutional dimension given *motu proprio* to the case in the main opinion of Mr. Justice Fernando, by way of "constitutional objections to the continuing force and effectivity of Section 2175 as far as ecclesiastics are concerned,"[11] I concur with the main opinion, concurred in by five other members of the Court, *viz*, Justices Muñoz Palma, Concepcion Jr., Santos, Fernandez and Guerrero that the archaic Administrative Code provision declaring ecclesiastics ineligible for election or appointment to a municipal office is inconsistent with and violative of the religious freedom guaranteed by the 1935 Constitution[12] and that to so bar them from office is to impose a religious test in violation of the Constitutional mandate that "No religious test shall be required for the exercise of civil or political rights."

Both the 1935 Constitution (which is applicable to the case at bar) and the 1973 Constitution guarantee in practically identical terms the fullest religious freedom. To assure that there is no impediment to the fullest exercise of one's religious freedom, the Constitution prohibits that there be a state-established union and thereby decrees that there must be separation of church and state. (The 1973 Constitution redundantly stresses in its General Provisions, Article XV, Section 15 that "(T)he separation of church and state shall be inviolable."). The free exercise of

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[11] Main opinion, at page 3. See also page 2 thereof on the "specific question" raised.

[12] Provided in Article III, Section 1, par. 7 of the 1935 Constitution's Bill of Rights and substantially reproduced in Article IV, Section 8 of the 1973 Constitution's Bill of Rights.

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one's religion and freedom of expression of religious doctrines and beliefs (*positive* as well as *negative*) and the freedom to perform religious rites and practices are guaranteed by the Constitution's mandate that "no law shall be made, . . . prohibiting the free exercise (of religion)" and that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall *forever* be allowed." In order to assure the fullest freedom of the individual in this regard and to prevent that the State negate or dilute religious freedom by according preference to one religious organization as against others, the Constitution finally commands that "no religious test shall be required for the exercise of civil or political rights."

It is conceded that the no-religious test clause constitutionally bars the state from disqualifying a *non*-believer, an atheist or an agnostic from voting or being voted for a public office for it is tantamount to a religious test and compelling them to profess a belief in God *and* a religion. By the same token, the same clause is equally applicable to those at the opposite end, let us call them the full believers who in their love of God and their fellowmen have taken up the ministry of their church or the robe of the priest: to disqualify them from being voted for and elected to a municipal office (under the questioned Administrative Code provision) is to exact a religious test for the exercise of their political rights for it amounts to compelling them to shed off their religious ministry or robe for the exercise of their political right to run for public office.

Stated in modern context, the Satanist is concededly not disqualified under the questioned Administrative Code provision from election to municipal office. To enforce the same statute's disqualification against ecclesiastics is to wrongfully invade the ecclesiastic's freedom of belief and religion and to impose upon him a religious test in flagrant violation of the Constitution. In contrast to the Satanist who is not subjected to a religious test and disqualified for his picking up Satan's robe against God, the ecclesiastic is disqualified for professing the profoundent religious belief in God and wearing His cross on his lapel — he is to be barred simply because he is an ecclesiastic.

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I hold, therefore, that aside from the strictly legal question presented by the parties and correctly resolved by the Comelec in the earlier case and by the lower court in the case at bar; to wit, that the ban in Section 2175 of the Revised Administrative Code against the election of ecclesiastics (among others) to a municipal office has been repealed by the 1971 Election Code, it is also correct to declare by way of *obiter dictum* (since it has not been raised or placed in issue in the case at bar) as the main opinion principally holds, that this archaic provision of the Administrative Code of 1917 must also be deemed as no longer operative by force of the constitutional mandate that all laws inconsistent with and violative of the Constitution shall cease to be in force.[13]

The main thrust of the five separate concurrences for upholding the questioned ban of ecclesiastics from public (municipal office) is the fear of "religious intolerance and persecution by ecclesiastics" and the "oppression, abuses, misery, immorality and stagnation" wreaked by the friars during the Spanish regime. But it is not appreciated therein that this was due to the union of the State and the Church then — a situation that has long ceased since before the turn of the century and is now categorically proscribed by the Constitution.

As His Eminence, Jaime L. Cardinal Sin, recently observed:

"Union of the Church and the State invariably ends in the Church being absorbed, manipulated or dominated by the State, or in the State being dominated by the Church. Usually, it is the former eventuality that takes place, for the Church possesses no armed or coercive power comparable to what the State has.

"At the beginning of her history, the Church invested the kings of recently converted countries with the office and title of Protectors of the Church. This was all right so long as the kings were good and holy men, like St. Stephen of Hungary, or at least reasonable decent men, like Charlemagne of France, but saintly and decent men are often succeeded by scoundrels, and the protectors — in the wry

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[13] Art. XVI. Section 2 of the 1935 Constitution and Art. XVII. Section 7 of the 1973 Constitution.

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observation of the King of Siam — wound up 'protecting the Church out of everything that she possessed.'

"When, in some rare instances, it is the Church that dominates the State, the result is what we know as clericalism.

"Both alternatives, it is obvious, are undesirable. When the Church is dominated by the State, she becomes a tool for the furtherance of wordly aims. And when the State is dominated by the Church, then the Church tends to get confused as to her nature, identity, role and mission. The Church, after all, is a supernatural society. Consequently, she is weakened when she places her reliance on temporal power and resources rather than on the grace of Almighty God.

Clericalism provokes the natural reaction of separation, by which is meant the isolation and strict confinement of the Church to the sacristy. It is like placing the Church under house arrest."[14]

Historians have noted that with the imposition of the separation of state and church by the American regime, "(T)he Catholic Church, however, derived under the principle of separation of Church and State positive benefits and advantages. Her freedom was greatly enhanced. She was no longer subject to the various forms of supervision and control imposed upon her during the Spanish regime. She was freed from government intervention in the making of appointments to positions in the ecclesiastical system, in the creation of parishes and in the establishment of institutions of religious character."[15]

The Spanish era of "religious intolerance and oppression" and the new era of separation of state and church easily led to the passage of the ban against ecclesiastics. There was deep prejudice and resentment against the Spanish friars which rubbed off on the Filipino Catholic parish priests. Catholics and the new religious groups of Aglipayans and Protestants were reported to have harbored great mistrust of each other and fear that one group would very likely use political power as an instrument for religious domination over the others.

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[14] Separation, Not Isolation: address of Cardinal Sin on November 11, 1978 before the Integrated Bar of the Philippines, Manila Chapter II.

[15] Founders of Freedom, p. 180.

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But it cannot be denied that the situation has radically changed since then. Specially after Vatican II in 1965, the spirit of ecumenism, mutual respect, and cooperation have marked the relations between Catholics, Protestants, Aglipayans, *Iglesia ni Kristos* and other religious denominations.

For Catholics, the Vatican synod declared: "that the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of the individuals or of social groups and of any human power, in such wise that in matters religious no one is to be forced to act in a manner contrary to his own beliefs. Nor is anyone to be restrained from acting in accordance with his own beliefs, whether privately or publicly, whether alone or in association with others, within limits."[16]

Vatican II also declared that "Cooperation among all Christians vividly expresses that bond which already unites them . . . It should contribute to a just appreciation of the dignity of the human person, the promotion of the blessings of peace, the application of Gospel principles to social life, the advancement of the arts and sciences in a Christian spirit. Christians should also work together in the use of every possible means to relieve the afflictions of our times, such as famine and natural disasters, illiteracy and poverty, lack of housing and the unequal distribution of wealth. Through such cooperation, all believers in Christ are able to learn easily how they can understand each other better and esteem each other more, and how the road to the unity of Christians may be made smooth."[17]

If the friars *then* grabbed the so-called friar lands through oppressive exploitation of the masses, the priests of *today* have taken up the cudgels for the masses and are at the forefront of their struggle for social justice and a just society.

The days are long gone when the priest is supposed to confine himself to the sacristy and devote himself solely to spiritual,

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[16] Vatican II, Declaration of *Religious Freedom*, 2.

[17] Vatican II, *Decree on Ecumenism*, 12.

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not temporal, matters. Where the State fails or falters, the priest must needs help minister to this temporal power has resulted from their adjusting themselves to the realities and imperatives of the present day world.

As already indicated above, it is to be noted that the only statutory prohibition was to ban ecclesiastics from appointment or election to *municipal* office. There is no ban whatsoever against their election to or holding of *national* office, which by its nature and scope is politically more significant and powerful compared to a local office.

The national experience with ecclesiastics who have been elected to *national* offices has shown that contrary to the unfounded fears of religious prejudice and narrow-mindedness expressed in some of the concurring opinions, they have discharged their task with great competence and honor, since there is basically no incompatibility between their religious and lay offices, as witness the elections and participation of Msgr. Gregorio Aglipay as delegate to the Malolos Congress of 1898, Minister Enrique Sobrepeña and Philippine Independent Church Bishop Servando Castro as delegates to the 1934-1935 Constitutional Convention, Frs. Pacifico Ortiz and Jorge Kintanar and three other priests as delegates to the 1971 Constitutional Convention, and again Fr. Jorge Kintanar as member of the current Interim Batasang Pambansa.

As far as *local* offices are concerned, the best proof of the Filipino ecclesiastic's capacity to discharge his political office competently and with detachment from his religious ministry or priesthood is the very case of respondent Fr. Gonzaga, who as far as the record shows has efficiently discharged the role of mayor of Alburquerque since his assumption of office on January 1, 1972 up to the present to the satisfaction of his constituents and without any complaints. The question of whether a priest or cleric should exercise his political right of seeking public office, national or local, is after all best left to the decision of his church and his own judgment. After all, it is to be presumed that no responsible person would seek public office knowing that his ecclesiastical duties would be a hindrance to his rendering

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just and efficient public service. Here, respondent after his decision to run for election in his hometown of Alburquerque, duly resigned his position of parish priest in another town, that of Jagna, Bohol long before the holding of the election. The main thing is that the Constitutional mandate of no religious test for the exercise of one's civil or political rights must be respected. The ecclesiastic is free to seek public office and place his personal merits and qualifications for public service before the electorate who in the ultimate analysis will pass judgment upon him. Father Jose Burgos of the famed *Gomburza* martyrs took up in his manifesto of 1864 the battle of the native clergy against the Spanish friars who had found their parishes to be lucrative positions and refused to give them up to the Filipino seculars who were increasing in number and improving in caliber. He boldly accused the friars of "enrichment, greed and immorality" and they marked him as their greatest enemy.

As the historians now assess it, "Indeed, whether or not Father Burgos meant it, his manifesto of 1864 galvanized and fused the scattered and isolated areas of discontent in the land, so that Filipino nationalism which had its birth pangs in Mactan finally emerged full-grown . . . The travail of the Filipino clergy served to galvanize Filipino nationalism, existing since Lapulapu in unintegrated and undeveloped form from Tuguegarao to Taglibi, from Sulu to Sarrat and Sagada. As in Spain itself, nationalism in the Philippines needed an infusion of liberalism before it could acquire content and direction. And, perhaps without meaning to do so, it was the peculiar contribution of the *Filipino clergy*, much *respected* and most *influential* among the *people*, to give substance and meaning to their fellow Filipinos' love of freedom and country."[18]

Thus, "the dispute between secular and regular clergy over the parishes . . . became a nationalist movement, which joined forces with the lay reformists who had come into the open . . ." and "(T)he new movement blew like a wind of change through every level and layer of society except the impregnable ranks

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[18] Vicente Albano Pacis: *Founders of Freedom*, pages 69-70.

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of the friars. Then, suddenly, it became a whirlwind that sucked three pious secular priests into its vortex. For the Cavite Mutiny of 1872 exploded and they were accused of complicity, court-martialed and garroted."[19]

It was our national hero, Dr. Jose Rizal, who "captured the historic galvanizing mission which the martyr priests accomplished for their people and country, as well as the cruelty and inhumanity of the revenge in the guise of justice inflicted upon them, when in 1891 he dedicated his second novel *El Filibusterismo* [Subversion][20] to the three martyr priests in the following words: ['The Church, by refusing to unfrock you, has put in doubt the crime charged against you; the Government by enshrouding your trial in mystery and pardoning your co-accused has implied that some mistake was committed when your fate was decided; and the whole of the Philippines in paying homage to your memory and calling you martyrs totally rejects your guilt.']"[21]

It would indeed be an ironic twist of history if the martyrdom of Frs. Burgos, Gomez and Zamora in the defense of freedom and the dignity and rights of the Filipino clergy which galvanized Filipino nationalism and eventually overthrew the Spanish regime were to be set at naught and the Filipino ecclesiastics were to remain banned from seeking public office to serve their fellowmen, because the spectre of the friars who abused and maltreated the people continues to haunt us and we would now visit their sins upon our own clergy.

III. The disposition of the case and judgment granting *quo warranto* — notwithstanding that there stand *seven* votes for affirming respondent judge's dismissal of the *quo warranto,*

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[19] *Idem*, page 72, citing Schumacher and Cushner: *Burgos and the Cavite Mutiny* (1969).

[20] Title in English.

[21] Founders of Freedom, page 77. Quotation in brackets from Dr. Rizal is the English translation of Leon Ma. Guerrero, inserted in lieu of the translation in *Op. cit.*

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namely, Justices Fernando, Teehankee, Muñoz Palma, Concepcion Jr., Santos, Fernandez and Guerrero, on the ground that the questioned provision barring ecclesiastics from municipal office has been superseded and rendered inoperative by the no-religious test clause of the Constitution and by the Election Code of 1971 and only *five* votes for upholding as in full force and effect the questioned ban on ecclesiastics, namely, the Chief Justice and Justices Barredo, Makasiar, Antonio and Aquino is contrary to the Rule of Court providing that where the Court in banc is equally divided in opinion and no decision by eight Justices is reached (as required by Article X, Section 2 [2] of the 1973 Constitution for the pronouncement of a judgment) the appealed judgment or order shall stand affirmed. Since the lower court dismissed the *quo warranto* petition and allowed respondent to remain in office, such dismissal should *stand affirmed*, rather than the judgment now rendered granting the *quo warranto* petition and ordering respondent to vacate the office.

As stated in the main opinion, seven Justices are for affirmance of the appealed judgment "as the challenged provision is no longer operative either because it was superseded by the 1935 Constitution or repealed" while five Justices hold that "such a prohibition against an ecclesiastic running for elective office is not tainted with any constitutional infirmity."[22] The writer of the main opinion, however, joined by four others [namely, Justices Concepcion Jr., Santos, Fernandez and Guerrero] invoke the legal principle that "the presumption of validity [of a law] calls for its application" and therefore have voted with the minority of five [namely, the Chief Justice and Justices Barredo, Makasiar, Antonio and Aquino] to reverse and set aside the judgment *a quo* and to order that "respondent Gonzaga . . . immediately vacate the mayoralty of the municipality of Alburquerque, Bohol, there being a failure to elect."[23]

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[22] At page 2, main opinion.

[23] At page 9, main opinion.

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As a preliminary observation, it should be noted that the judgment or dispositive portion of the main opinion ordering respondent Gonzaga to vacate his office "there being a failure to elect," is not correct, since said respondent was duly elected and proclaimed after his candidacy and qualification for the office had been precisely upheld before the holding of the 1971 elections by the Commission on Elections which dismissed the same herein petitioner's petition with it to annul respondent's certificate of candidacy, on exactly the same ground as here, based on Section 2175 of the Administrative Code, which *dismissal* was *not* appealed by petitioner and is therefore the law of the case.

Be that as it may, the question confronting the Court is what is the applicable law in a case like this where there is an inconclusive or indecisive vote of seven to five for affirming the appealed judgment?

To begin with, the applicable law is *not* the Constitutional provision which requires a qualified vote of at least *ten members* of this Court to declare unconstitutional a law, treaty or executive agreement.[24] In such constitutional cases, failure to reach the qualified vote of ten members results in a declaration that the constitutionality of the questioned law is deemed upheld. Concededly, the present action is *not* one to declare unconstitutional the questioned provision banning ecclesiastics from municipal office. The action was filed by petitioner precisely invoking the law's ban in order to disqualify respondent. The lower court merely sided with the Comelec's ruling in an earlier case filed by petitioner for the same purpose of disqualifying respondent, and dismissed the case below upholding respondent's defense that the law had been repealed by the 1971 Election Code. This was the *sole* issue both before the lower court and this Court.

As shown hereinabove, the *sole* issue joined by the parties in the court below and in this Court on appeal was whether or not the questioned provision banning ecclesiastics from municipal

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[24] Article X, Section 2(2), 1973 Constitution.

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office has been repealed or not by the 1971 Election Code. Concededly, a minimum of *eight votes* as required by the Constitution for the pronouncement of a judgment is needed to declare that the same has been repealed under *this* sole issue, or superseded or rendered inoperative by virtue of the 1935 Constitutional provisions guaranteeing freedom of religion and prohibiting religious tests for the exercise of civil and political rights under the *supplementary* issue of repeal by force of the Constitution raised *motu proprio* in the main opinion.[25]

The applicable law, then, in non-constitutional cases such as that at bar is found in Rule 56, section 11 of the Rules of Court, which was designed specifically to cover such cases where the necessary majority of a minimum eight votes "for the pronouncement of a judgment"[26] cannot be had and provides that the appealed judgment shall stand affirmed.

The appealed judgment in the case at bar dismissing the *quo warranto* action must stand affirmed under the cited Rule, which provides that:

"SEC. 11. *Procedure if opinion is equally divided.* — Where the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on re-hearing no decision is reached, the action shall be dismissed if originally commenced in the court; in *appealed* cases, the *judgment or order appealed* from shall *stand affirmed;* and on all incidental matters, the petition or motion shall be denied." (Rule 56)

As restated in Moran's Comments, "(I)n *appealed* cases, the above provision states that the judgment or order appealed from shall *stand affirmed.* This refers to *civil* cases, the rule in criminal cases being that provided by Section 3 of Rule 125, which states that in such cases the judgment of conviction of the lower court shall be reversed and the defendant acquitted. If the judgment appealed from declares a law or a treaty

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[25] *Supra*, at page 7 et seq.

[26] *Idem*, in relation to section 9, Judiciary Act of 1948 (R.A. No. 296, as amended).

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unconstitutional, or imposes death penalty and the concurrence of at least eight [now ten] Justices cannot be had, the Supreme Court shall so declare, and in such case the validity or constitutionality of the act or treaty involved shall be deemed upheld, or the penalty next lower to death shall be imposed."[27]

Apparently, the five members of the Court headed by the writer of the main opinion found themselves in a conflict between the principle of presumption of validity of a law which normally calls for its implementation by the executive department — until declared invalid by the courts and their view that the challenged legal provision barring ecclesiastics from municipal office is no longer operative either because it has been superseded by the Constitution or repealed by the 1971 Election Code. In such case, it is submitted with all due respect that they erred in joining votes with the minority of five opining to the contrary, for the cited Rule expressly provides that in such a case of a split Court with neither side obtaining the necessary number of votes for the pronouncement of a judgment upholding their conflicting views, the appealed judgment shall stand affirmed.

For the appealed judgment to stand affirmed does *not* mean that "the Court would be *particeps criminis* in the negation of the unequivocal and imperious mandate of the law."[28] It would simply be the *law of the case*, because of the inconclusive vote. It is just the same as if petitioner had *not* appealed or if his appeal had been dismissed for failure to prosecute the same.

If the lower court had ruled in favor of petitioner and respondent were the appellant, the appealed judgment (against respondent in this example) would stand affirmed, despite the seven votes in his favor. But the vote would be inconclusive just the same. The issue of whether or not the challenged law is deemed superseded by the Constitution or repealed by the 1971 Election Code would have to be left for another case and another time.

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[27] Moran's Rules of Court, 1970 Ed., p. 555; italics and note in brackets supplied.

[28] Chief Justice's opinion, at page 3.

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Put in another way, even assuming that the lower court erred in adjudging that the questioned law has been repealed, under the cited and applicable Rule, this Court would need *8* votes to overturn such judgment, just as it would need the *same* number of votes for this Court to overturn the judgment if it had been the other way around. This is the necessary consequence in cases where this Court cannot arrive at a majority one way or the other.

The same situation has happened more frequently in appeals from criminal convictions by the lower courts wherein the applicable rule is the *reverse*, with Rule 125, Section 3 providing that where the necessary majority of eight votes for affirming the judgment of conviction or acquitting the accused cannot be had, "the judgment of *conviction* of the lower court shall be *reversed* and the defendant acquitted."[29]

The provisions of the Penal Code and Statutes are generally absolute provisions against the commission of the criminal acts therein defined. But the failure of the Court to obtain the necessary majority of *eight votes* (in *non-capital* cases) for the *pronouncement* of a *judgment* affirming the *conviction* (and resulting in the acquittal of the accused) does not connote in any manner that this Court has thereby become a *particeps criminis* in the violation of the criminal law. Neither does it mean that the Court has thereby rendered the penal statute void or ineffectual with the accused's acquittal in the specific criminal case. To cite an example, in the case of *Ramirez vs. Court of Appeals*, 71 SCRA 231 (June 10, 1976), the accused was therein acquitted of the crime of *falsification* on a 4 to 5 vote (out of 11 Justices with 2 abstentions), but it cannot be said that the prevailing opinion thereby obliterated the crime of

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[29] The philosophical basis of the rule is that "(I)f the vote of the individual members of the appellate court affords a measure of the relative weight of the evidence of guilt, then an equally divided court must be construed to mean a reasonable doubt which must, in the accepted principles of criminal procedure, be resolved in favor of the accused." (4 Moran's Rules of Court, 1970 ed., p. 388).

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falsification under Art. 172 of the Revised Penal Code simply because of the alleged repeal of CB Circular 20 by CB Circular 133 which served as the main reason for dividing the Court in the case.

If the majority were to follow the same approach in these criminal cases where there is a similar division of the Court as to whether a particular penal statute or provision has been repealed or rendered inoperative and the necessary majority cannot be had, as in the cited case of *Ramirez, supra* — then even those who vote for acquittal (as those who voted for declaring the questioned law inoperative) must cross over and join those voting *contrarily* for affirmance of conviction in order to uphold the principle applied herein by the majority that "the presumption of validity [of a law] calls for its application" — in violation of the cited Rules governing a divided Court s failure to reach the necessary majority.

In closing, it should be borne in mind that petitioner's action to disqualify respondent and to be proclaimed as Alburquerque, Bohol mayor in his stead is an exercise in futility because (a) the office's term has long expired and (b) more importantly, even if the term may be deemed as not having expired, this Court has consistently held that a petitioner in such disqualification proceedings cannot be proclaimed as elected to the office (in lieu of a disqualified respondent) which is the only thing that petitioner has vainly sought herein — to be proclaimed and seated as mayor vice the respondent who defeated him in the election. As held in *Vilar vs. Paraiso, supra*:[30] "(A)s to the question whether, respondent being ineligible, petitioner can be declared elected, having obtained second place in the elections, our answer is simple: this Court has already declared that this cannot be done in the absence of an express provision authorizing such declaration. Our law not only does not contain any such provision but apparently seems to prohibit it."

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[30] See fn. 8.

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MUÑOZ PALMA, *J., dissenting*:

I concur fully with the separate Opinion of Justice Claudio Teehankee on all the points discussed therein.

As regards the final outcome of this case, with Justices Fernando, Concepcion Jr., Santos, Fernandez, and Guerrero who share our views on the legal issue raised in the Petition, now voting with the Chief Justice and the four other Justices *to grant the petition* because, "the vote is indecisive" for "while 5 members of the Court constitute a minority, the vote of the remaining seven does not suffice to render the challenged provision ineffective," and "under the circumstances, *certiorari* lies," and therefore the aforementioned Justices "have no choice then but to vote for the reversal of the lower court decision and declare ineligible respondent Father Margarito R. Gonzaga for the office of municipal mayor," (See 1st paragraph, p. 3 of Majority Opinion) I can only state that this reasoning surpasses my comprehension.

I believe that there would have been greater fidelity to the prevailing situation had the petition for *certiorari* been denied due to the original lack of necessary votes to grant the same, a *status quo* maintained insofar as respondent Father Gonzaga is concerned, without a conclusive ruling pronounced on the legal issue as the required eight votes for purposes of rendering judgment is absent. (See Sec. 9, Judiciary Act of 1948 as amended by Art. X, Sec. 2[2] 1973 Constitution).

As explained in detail in the separate Opinion of Justice Teehankee, the denial of the Petition for Review would be in consonance with Sec. 11, Rules 56, Rules of Court.

I now submit the following observations on the matter of the disqualification of an ecclesiastic to run for a municipal elective office.

The minority view asserts that Section 2175 of the Administrative Code which declares ecclesiastics among others ineligible for election or appointment to a municipal office, does not violate any provision of the Constitution and that in fact it

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strengthens the constitutional provision on the separation of Church and State. Justice Ramon Aquino particularly states: "to allow clergymen to take part in political affairs is to start the process of reviving the theocracy of primitive societies, and past civilizations where the priests, with his chants, incantations, hocus-pocus and abracadabra played sinister role," and "Rizal and the reformers would have labored in vain and would be betrayed if the priest becomes a politician." (pp. 3, 4, 6 of Opinion)

I must voice my objection to the above-quoted sweeping statements which are also echoed in the other Opinions of my distinguished Colleagues, as they savor of bias, prejudice, and constitute an unjust indictment and discrimination against priests, more particularly, priest of the Roman Catholic Church.

It is not for me to pontificate on what is or should be the true mission of priests, ministers, and nuns, the latter, according to Justice Aquino, also fall under the term "ecclesiastics," for I would leave that matter to the conscience and judgment of the person concerned and of his superiors in his church, but I will speak out in defense of a person's constitutional right *not* to be discriminated against, nor to be denied of equal opportunities for work or employment, or withheld of equal protection of the laws in the exercise of his civil or political rights, simply because he is garbed in a cassock or a religious habit and has taken vows of service to God and his church.

One's religious vocation does not strip the individual of his rights and obligations as a citizen of his country and as a member of the community where he serves. He is part of society, and his having taken vows of poverty, humility, and love, renders him all the more concerned with humanity, more particularly, with the social and economic conditions of the people with whom he lives be they within or out of his flock. A minister of the church is therefore not to be feared of playing a "sinister role" in the handling of government affairs, rather it is the layman motivated by ambition and greed set out to enrich himself and perpetuate his person in power while the poor becomes poorer

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and the oppressed becomes more burdened with injustice, who is to be abhorred and shunned.

The fears expressed by the Justice concerned date far back in the dark ages of history and in truth are the result of the abuses of *a few*. Now we live in different times. Concepts in government, politics, religion, and society as a whole, have undergone drastic changes with the passing of the years. The Filipino people for their part have kept faith with their goal of political independence and their love for freedom and justice side by side with their Christian religion and all other faiths which flourish in the prevailing spirit of ecumenism.

The present role of the Roman Catholic Church was clearly expressed by Pope John XXIII in his encyclical "*Mater et Magistra*" thus:

"2. Christianity is the meeting point of earth and heaven. It lays claim to the whole man, body and soul, intellect and will, inducing him to raise his mind above the changing conditions of this earthly existence and reach upward for the eternal life of heaven, where one day he will find his unfailing happiness and peace.

"3. Hence, though the Church's first care must be for souls, how she can sanctify them and make them share in the gifts of heaven, *she concerns herself too with the exigencies of man's daily life, with his livelihood and education, and his general, temporal welfare and prosperity.*

"x x x x x x x x x

"180. Moreover, in becoming as it were the lifeblood of these people, the Church is not, nor does she consider herself to be, a foreign body in their midst. Her presence brings about the rebirth, the resurrection, of each individual in Christ; and the man who is reborn and rises again in Christ never feels himself constrained from without. He feels himself free in the very depth of his being, and freely raised up to God. And thus he affirms and develops that side of his nature which is noblest and best." (The Social Teaching of Pope John XXIII, p. 5; italics supplied)

The above may well be the objective of all religions.

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What then have we to fear or guard against a minister of the church if ever the reins of local government are placed in his hands? As one writer says: "When one gives himself wholly to God, the noblest and best in his nature emerges; spontaneously he is generous, noble, kind and compassionate; he will have the courage that comes from disinterested love, and having these qualities, he will become a powerful influence for good." And so, rather than a tool of evil, an ecclesiastic or a priest will be an effective instrument of good in the community.

Of much interest, and I would give it much weight, is an 1894 decision of the Supreme Court of Pennsylvania, United States of America, a country which jealously guards the enforcement of the principle of separation of *Church and State. In Hysong, et al. v. School District of Gallitzin Borough, et al.*, the action was to restrain the school directors of the District from permitting sectarian teaching in the common schools and from employing as teachers sisters of the Order of St. Joseph, a religious society of the Roman Catholic Church. The court of common pleas dismissed the action and dissolved a preliminary injunction previously issued. An appeal was made to the State Supreme Court and the latter dismissed the appeal and affirmed the order or decree. Said the Court through Justice John Dean:

"x x x x x x x x x

"Unquestionably, those women are Catholics, strict adherents of that faith, believing fully in its distinctive creed and doctrine. But this does not disqualify them. *Our Constitution negates any assertion of incapacity or ineligibility to office because of religious belief.* Article 1 of the bill of rights declares: "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; . . . no human authority can in any case whatever control or interfere with the rights of conscience. *If, by law, any man or woman can be excluded from public employment because he or she is a Catholic,* that is a palpable *violation of the spirit of the Constitution, for there can be, in a democracy, no higher penalty imposed upon one holding to a particular religious belief than perpetual exclusion from public station because of it. Men may disqualify themselves by crime, but the state no longer disqualifies*

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because of religious belief. We cannot now, even if we wanted to, in view of our law, both fundamental and statutory, *go back a century or two, to a darker age,* and establish a religious test as a qualification for office." (30 Atl. Rep. pp. 482-483, italics supplied)

But then it is strongly argued that the election or appointment of priests or even nuns to municipal office will be violative of the separation of church and state. I strongly believe that it is not so. As an eminent Constitutionalist puts it: what is sought to be achieved under the principle of separation of church and state is that political process is insulated from religion and religion from politics; in other words, government neutrality in religious matters.[1] Thus, our Constitution provides that no law shall be made respecting an establishment of religion.

Having an ecclesiastic or priest in a local government office such as that of the municipal mayor will not necessarily mean the involvement of politics in religion or *vice-versa*. Of course the religion of the man cannot be dissociated from his personality; in truth, his religion influences his conduct, his moral values, the fairness of his judgment, his outlook on social problems, etc. As stated in the *Hysong* decision, inevitably in popular government by the majority, public institutions will be tinged more or less by the religious proclivities of the majority, but in all cases where a discretion is reposed by the law, it is to be assumed in the absence of evidence to the contrary, that the public officer will perform his duty in the manner the law requires. I may add that there are legal remedies available to the citizenry against official action violative of any existing law or constitutional mandate.

WHEREFORE, I vote to deny this Petition for review and to affirm the decision of respondent Judge.

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[1] Bernas, S.J., *Constitutional Rights and Duties*, Vol. 1, 1974 Ed., p. 147.