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SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Santos, JJ.,* concur.

Abad Santos, J., took no part.

EN BANC

[G.R. No. 52245. January 22, 1980]

PATRICIO DUMLAO, ROMEO B. IGOT, and ALFREDO SALAPANTAN, JR., *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; LIMITED TO THE DETERMINATION OF ACTUAL CASES AND CONTROVERSIES.— It is basic that the power of judicial review is limited to the determination of actual cases and controversies. Petitioner Dumlao assails the constitutionality of the first paragraph of section 4 of Batas Pambansa Blg. 52, quoted earlier, as being contrary to the equal protection clause guaranteed by the Constitution, and seeks to prohibit respondent COMELEC from implementing said provision. Yet, Dumlao has not been adversely affected by the application of that provision. No petition seeking Dumlao's disqualification has been filed before the COMELEC. There is no ruling of that constitutional body on the matter, which this Court is being asked to review on *Certiorari.* His is a question posed in the abstract, a hypothetical issue, and in effect, a petition for an advisory opinion from this Court to be "rendered without the benefit of a detailed factual record."

2. ID.; ID.; ID.; THE PERSON WHO IMPUGNS THE VALIDITY OF A STATUTE MUST HAVE A PERSONAL AND SUBSTANTIAL

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INTEREST IN THE CASE.— The long-standing rule has been that "the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement" (*People vs. Vera, supra*). In the case of petitioners Igot and Salapantan, it was only during the hearing, not in their Petition, that Igot is said to be a candidate for Councilor. Even then, it cannot be denied that neither one has been convicted nor charged with acts of disloyalty to the State, nor disqualified from being candidates for local elective positions. Neither one of them has been alleged to have been adversely affected by the operation of the statutory provisions they assail as unconstitutional. Theirs is a generalized grievance. They have no personal nor substantial interest at stake. In the absence of any litigate interest, they can claim no *locus standi* in seeking judicial redress.

3. **ID.; ID.; ID.; THE CONSTITUTIONALITY OF THE ACT OF THE LEGISLATURE WILL NOT BE DETERMINED BY COURTS UNLESS THE QUESTION IS PROPERLY RAISED IN APPROPRIATE CASES.**— Again upon the authority of *People vs. Vera*, "it is a well-settled ruled that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised an presented in appropriate cases and is necessary to a determination of the case; *i.e.*, the issue of constitutionality must be the very *lis mota* presented."

4. **ID.; ELECTION LAWS; LOCAL ELECTIVE OFFICIALS; A 65-YEAR OLD LOCAL ELECTIVE OFFICIAL WHO HAS RETIRED FROM A LOCAL ELECTIVE POSITION IS DISQUALIFIED FROM RUNNING FOR THE SAME OFFICE FROM WHICH HE HAD RETIRED; RATIONALE.**— Retirement from government service may or may not be a reasonable disqualification for elective local officials. For one thing, there can also be retirees from government service at ages, say below 65. It may neither be reasonable to disqualify retirees, aged 65, for a 65-year old retiree could be a good local official just like one, aged 65, who is not a retiree. *But,* in the case of a 65-year old elective local official, who has retired from a provincial, city or municipal office, there is reason to disqualify him from running for the *same* office from which he had retired, as provided for in the challenged provision. The need for new blood assumes

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relevance. The tiredness of the retiree for government work is present, and what is emphatically significant is that the retired employee has already declared himself tired an unavailable for the same government work, but, which, by virtue of a change of mind, he would like to assume again. It is for the very reason that inequality will neither result from the application of the challenged provision. Just as that provision does not deny equal protection, neither does it permit such denial (see *People vs. Vera*, 65 Phil. 56 [1933]). Persons similarly situated are similarly treated.

5. **ID.; ID.; ID.; DISQUALIFICATION OF A CANDIDATE TO RUN FOR A PUBLIC OFFICE ON THE GROUND THAT CHARGES HAVE BEEN FILED AGAINST HIM IS VIOLATIVE OF THE CONSTITUTION.**— In so far as the petition of Igot and Salapantan are concerned, the second paragraph of section 4 of Batas Pambansa Blg. 52, quoted in full earlier, and which they challenged, may be divided in two parts. The first provides: "*a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact. . . .*" It is the opinion of the majority that for failure of petitioners Igot and Salapantan to satisfy the procedural requisites, we find no necessity at this stage to pass upon the validity of the aforequoted provision. The situation is different, however, with respect to the second part of the provision, which reads as follows: "xxx *the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact.*" ... The challenged proviso contravenes the constitutional presumption of innocence, as a candidate is disqualified from running from public office on the ground alone that charges have been filed against him before a civil or military tribunal. It condemns before one is fully heard. In ultimate effect, except as to the degree of proof, no distinction is made between a person convicted of acts of disloyalty and one against whom charges have been filed for such acts, as both of them would be ineligible to run for public office. A person disqualified to run for public office on the ground that charges have been filed against him is virtually placed in the same category as a person already convicted of a crime with the penalty of arresto, which carries with it the accessory penalty of suspension of the right to hold office during the term of the sentence (Art. 44, Revised Penal Code).

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FERNANDO, *J.*, *concurring opinion:*

CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; NOT VIOLATED IN CASE AT BAR.— If, however, the provision in question is susceptible to the reproach that it amounts to a denial of equal protection, then his plea for nullification should be accorded a sympathetic response. As the opinion of the Court makes a clear, such imputation is not deserving of credence. The classification cannot be stigmatized as lacking in rationality. It is germane to the subject. Age, as well as the fact of retirement and the receipt of retirement benefits are factors that can enter into any legislative determination of what disqualifications to impose. As was pointed out in *J.M. Tuason and Co., Inc. v. Land Tenure Administration*: "It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest." It cannot be denied that others similarly fall under the same ban. It was not directed at petitioner solely. The most that can be said is that he falls within the proscribed class.

TEEHANKEE, *J.*, *separate opinion:*

1. POLITICAL LAW; ELECTION LAWS; LOCAL ELECTIVE OFFICIALS; DISQUALIFYING A 65-YEAR OLD WHO HAS RETIRED FROM A LOCAL ELECTIVE POSITION FROM RUNNING FOR THE SAME OFFICE HE PREVIOUSLY HELD IS ARBITRARY; CASE AT BAR.— To specially and peculiarly ban a 65-year old previously retired elective local official from running for the *same* elective office (of governor, in this case) previously held by him and from which he has retired is arbitrary, oppressive and unreasonable. Persons similarly situated are not similarly treated, *e.g.* a retired vice-governor, mayor or councilor of 65 is entitled to run for governor (because the disqualification

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is for the retiree of 65 to run for the same *elective* office from which he retired) but petitioner is barred from doing so (although he may run for any other lesser office). Both are 65 and are retirees, yet one is barred from running for the office of governor. ... The classification is patently arbitrary and unreasonable and is not based on substantial distinction which make for real differences that would justify the special disqualification of petitioner, which, it is claimed, "is based on a presumption that elective local officials who have retired and are of advanced age cannot discharge the functions of the office they seek as those who are differently situated." Such presumption is sheer conjecture. The mere fact that a candidate is less than 65 or has "young or new blood" does not mean that he would be more efficient, effective and competent than a mature 65-year old like petitioner who has had experience on the job and who was observed at the hearing to appear to be most physically fit.

2. **CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; VIOLATED IN CASE AT BAR.—** Age has simply just never been a yardstick for qualification or disqualification. At the most, a minimum age to hold public office has been required as a qualification to insure a modicum of maturity (now reduced to 21 years in the present *batas*), but no maximum age has ever been imposed as a disqualification for *elective* public office since the right and will of the people to elect the candidate of their choice for any elective office, no matter his age, has always been recognized as supreme. The disqualification in question therefore is grossly violative of the equal protection clause which mandates that all persons subjected to legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The guarantee is meant to proscribe undue favor and individual or class privilege on the one hand and hostile discrimination and the oppression of inequality on the other. The questioned provision should therefore at the least be declared invalid in its application insofar as it would disqualify petitioner from running for the office of governor of his province.

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APPEARANCES OF COUNSEL

Raul M. Gonzales for petitioners.
Office of the Solicitor General for respondent.

DECISION

MELENCIO-HERRERA, *J.*:

This is a Petition for Prohibition with Preliminary Injunction and/or Restraining Order filed by petitioners, in their own behalf and all others allegedly similarly situated, seeking to enjoin respondent Commission on Elections (COMELEC) from implementing certain provisions of Batas Pambansa Blg. 51, 52, and 53 for being unconstitutional.

The Petition alleges that petitioner, Patricio Dumlao, is a former Governor of Nueva Vizcaya, who has filed his certificate of candidacy for said position of Governor in the forthcoming elections of January 30, 1980. Petitioner, Romeo B. Igot, is a taxpayer, a qualified voter and a member of the Bar who, as such, has taken his oath to support the Constitution and obey the laws of the land. Petitioner, Alfredo Salapantan, Jr., is also a taxpayer, a qualified voter, and a resident of San Miguel, Iloilo.

Petitioner Dumlao specifically questions the constitutionality of Section 4 of Batas Pambansa Blg. 52 as discriminatory and contrary to the equal protection and due process guarantees of the Constitution. Said Section 4 provides:

"Sec. 4. Special Disqualification. — *In addition* to violation of Section 10 of Art. XII-C of the Constitution and disqualification mentioned in existing laws, which are hereby declared as disqualification for any of the elective officials enumerated in Section 1 hereof.

any retired elective provincial, city or municipal official who has received payment of the retirement benefits to which he is entitled under the law and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected,

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shall not be qualified to run for the same elective local office from which he has retired." (Paragraphing and italics supplied)

Petitioner Dumlao alleges that the aforecited provision is directed insidiously against him, and that the classification provided therein is based on "purely arbitrary grounds and, therefore, class legislation."

For their part, petitioners Igot and Salapantan, Jr. assail the validity of the following statutory provisions:

"Sec. 7. Term of office. — Unless sooner removed for cause, all local elective officials hereinabove mentioned shall hold office for a term of six (6) years, which shall commence on the first Monday of March 1980."

x x x (Batas Pambansa Blg. 51)

"Sec. 4. x x x

"Any person who has committed any act of disloyalty to the State, including acts amounting to subversion, insurrection, rebellion or other similar crimes, shall not be qualified to be a candidate for any of the offices covered by this Act, or to participate in any partisan political activity therein:

provided, that a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact and

the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact.

"x x x (Batas Pambansa Blg. 52) (Paragraphing and italics supplied).

"Section 1. Election of Certain Local Officials. — x x x The election shall be held on January 30, 1980." (Batas Pambansa, Blg. 52).

"Section 6. Election and Campaign Period. — The election period shall be fixed by the Commission on Elections in accordance with Section 6, Art. XII-C of the Constitution. The period of campaign shall commence on December 29, 1979 and terminate on January 28, 1980." (*ibid.*)

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In addition to the above-cited provisions, petitioners Igot and Salapantan, Jr. also question the accreditation of some political parties by respondent COMELEC, as authorized by Batas Pambansa Blg. 53, on the ground that it is contrary to Section 9(1), Art. XII(C) of the Constitution, which provides that a "*bona fide* candidate for any public office shall be free from any form of harassment and discrimination."

The question of accreditation will not be taken up in this case but in that of *Bacalso, et als., vs. COMELEC, et als.* (G.R. No. 52232) where the issue has been squarely raised.

Petitioners then pray that the statutory provisions they have challenged be declared null and void for being violative of the Constitution.

I. *The procedural aspect*

At the outset, it should be stated that this Petition suffers from basic procedural infirmities, hence, traditionally unacceptable for judicial resolution. For one, there is a misjoinder of parties and actions. Petitioner Dumlao's interest is alien to that of petitioners Igot and Salapantan. Petitioner Dumlao does not join petitioners Igot and Salapantan in the burden of their complaint, nor do the latter join Dumlao in his. They, respectively, contest completely different statutory provisions. Petitioner Dumlao has joined this suit in his individual capacity as a candidate. The action of petitioners Igot and Salapantan is more in the nature of a taxpayer's suit. Although petitioners plead time constraints as the reason of their joint Petition, it would have required only a modicum more of effort for petitioner Dumlao, on one hand, and petitioners Igot and Salapantan, on the other, to have filed separate suits, in the interest of orderly procedure.

For another, there are standards that have to be followed in the exercise of the function of judicial review, namely: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question

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be passed upon in order to decide the case (*People vs. Vera,* 65 Phil. 56 [1937]).

It may be conceded that the third requisite has been complied with, which is, that the parties have raised the issue of constitutionality early enough in their pleadings.

This Petition, however, has fallen far short of the other three criteria.

A. *Actual case and controversy.*

It is basic that the power of judicial review is limited to the determination of actual cases and controversies.

Petitioner Dumlao assails the constitutionality of the first paragraph of Section 4 of Batas Pambansa Blg. 52, quoted earlier, as being contrary to the equal protection clause guaranteed by the Constitution, and seeks to prohibit respondent COMELEC from implementing said provision. Yet, Dumlao has not been adversely affected by the application of that provision. No petition seeking Dumlao's disqualification has been filed before the COMELEC. There is no ruling of that constitutional body on the matter, which this Court is being asked to review on *Certiorari.* His is a question posed in the abstract, a hypothetical issue, and in effect, a petition for an advisory opinion from this Court to be "rendered without the benefit of a detailed factual record." Petitioner Dumlao's case is clearly within the primary jurisdiction (see concurring Opinion of now Chief Justice Fernando in *Peralta vs. Comelec*, 82 SCRA 30, 96 [1978]) of respondent COMELEC as provided for in Section 2, Art. XII-C, for the Constitution, the pertinent portion of which reads:

"Section 2. The Commission on Elections shall have the following power and functions.

1) xxx

2) Be the sole judge of all contests relating to the elections, returns and *qualifications* of all members of the National Assembly and elective provincial and city officials." (Italics supplied)

The aforequoted provision must also be related to Section 11 of Art. XII-C, which provides:

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"Section 11. Any decision, order, or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from his receipt of a copy thereof."

B. *Proper party.*

The long-standing rule has been that "the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement" (*People vs. Vera, supra*).

In the case of petitioners Igot and Salapantan, it was only during the hearing, not in their Petition, that Igot is said to be a candidate for Councilor. Even then, it cannot be denied that neither one has been convicted nor charged with acts of disloyalty to the State, nor disqualified from being candidates for local elective positions. Neither one of them has been alleged to have been adversely affected by the operation of the statutory provisions they assail as unconstitutional. Theirs is a generalized grievance. They have no personal nor substantial interest at stake. In the absence of any litigatable interest, they can claim no *locus standi* in seeking judicial redress.

It is true that petitioners Igot and Salapantan have instituted this case as a taxpayer's suit, and that the rule enunciated in *People vs. Vera*, above stated, has been relaxed in *Pascual vs. The Secretary of Public Works* (110 Phil. 331 [1960], thus:

"x x x it is well settled that the validity of a statute may be contested only by one who will sustain a direct injury in consequence of its enforcement. Yet, there are many decisions nullifying, at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that 'the expenditure of public funds, by an officer of the State for the purpose of administering an unconstitutional act constitutes a misapplication of such funds,' which may be enjoined at the request of a taxpayer."

In the same vein, it has been held:

"In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but

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also taxpayers have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and they may, therefore, question the constitutionality of statutes requiring expenditure of public moneys." (*Philippine Constitution Association, Inc., et als., vs. Gimenez, et als.* 15 SCRA 479 [1965]).

However, the statutory provisions questioned in this case, namely, Sec. 7, BP Blg. 51, and Sections 4, 1, and 6 BP Blg. 52, do not directly involve the disbursement of public funds. While, concededly, the elections to be held involve the expenditure of public moneys, nowhere in their Petition do said petitioners allege that their tax money is "being extracted and spent in violation of specific constitutional protections against abuses of legislative power" (*Flast v. Cohen*, 392 U.S., 83 [1960]), or that there is a misapplication of such funds by respondent COMELEC (see *Pascual vs. Secretary of Public Works,* 110 Phil. 331 [1960]), or that public money is being deflected to any improper purpose. Neither do petitioners seek to restrain respondent from wasting public funds through the enforcement of an invalid or unconstitutional law (*Philippine Constitution Association vs. Mathay*, 18 SCRA 300 [1966]), citing *Philippine Constitution Association vs. Gimenez,* 15 SCRA 479 [1965]). Besides, the institution of a taxpayer's suit, *per se*, is no assurance of judicial review. As held by this Court in *Tan vs. Macapagal* (43 SCRA 677 [1972]), speaking through our present Chief Justice, this Court is vested with discretion as to whether or not a taxpayer's suit should be entertained.

C. *Unavoidability of constitutional question.*

Again upon the authority of *People vs. Vera*, "it is a well-settled rule that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case; *i.e.*, the issue of constitutionality must be the very *lis mota* presented."

We have already stated that, by the standards set forth in *People vs. Vera*, the present is not an "appropriate case" for either petitioner Dumlao or for petitioners Igot and Salapantan. They are actually without cause of action. It follows that the

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necessity for resolving the issue of constitutionality is absent, and procedural regularity would require that this suit be dismissed.

II. *The substantive viewpoint.*

We have resolved, however, to rule squarely on two of the challenged provisions, the Courts not being entirely without discretion in the matter. Thus, adherence to the strict procedural standard was relaxed in *Tinio vs. Mina* (26 SCRA 512 [1968]); *Edu vs. Ericta* (35 SCRA 481 [1970]); and in *Gonzalez vs. Comelec* (27 SCRA 835 [1969]), the Opinion in the Tinio and Gonzales cases having been penned by our present Chief Justice. The reasons which have impelled us are the paramount public interest involved and the proximity of the elections which will be held only a few days hence.

Petitioner Dumlao's contention that Section 4 of BP Blg. 52 is discriminatory against him personally is belied by the fact that several petitions for the disqualification of other candidates for local positions based on the challenged provision have already been filed with the COMELEC (as listed in p. 15, respondent's Comment). This tellingly overthrows Dumlao's contention of intentional or purposeful discrimination.

The assertion that Section 4 of BP Blg. 52 is contrary to the safeguard of equal protection is neither well taken. The constitutional guarantee of equal protection of the laws is subject to rational classification. If the groupings are based on reasonable and real differentiations, one class can be treated and regulated differently from another class. For purposes of public service, employees 65 years of age, have been validly classified differently from younger employees. Employees attaining that age are subject to compulsory retirement, while those of younger ages are not so compulsorily retirable.

In respect of election to provincial, city, or municipal positions, to require that candidates should not be more than 65 years of age at the time they assume office, if applicable to everyone, might or might not be a reasonable classification although, as the Solicitor General has intimated, a good policy of the law would be to promote the emergence of younger blood in our

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political elective echelons. On the other hand, it might be that persons more than 65 years old may also be good elective local officials.

Coming now to the case of retirees. Retirement from government service may or may not be a reasonable disqualification for elective local officials. For one thing, there can also be retirees from government service at ages, say below 65. It may neither be reasonable to disqualify retirees, aged 65, for a 65-year old retiree could be a good local official just like one, aged 65, who is not a retiree.

But, in the case of a 65-year old elective local official, who has retired from a provincial, city, or municipal office, there is reason to disqualify him from running for the *same* office from which he had retired, as provided for in the challenged provision. The need for new blood assumes relevance. The tiredness of the retiree for government work is present, and what is emphatically significant is that the retired employee has already declared himself tired and unavailable for the same government work, but, which, by virtue of a change of mind, he would like to assume again. It is for this very reason that inequality will neither result from the application of the challenged provision. Just as that provision does not deny equal protection, neither does it permit such denial (see *People vs. Vera,* 65 Phil. 56 [1933]). Persons similarly situated are similarly treated.

In fine, it bears reiteration that the equal protection clause does not forbid all legal classification. What it proscribes is a classification which is arbitrary and unreasonable. That constitutional guarantee is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies to all those belonging to the same class (*Peralta vs. Comelec*, 82 SCRA 30 [1978] citing *Felwa vs. Salas,* 18 SCRA 606 [1966]; *Rafael v. Embroidery and Apparel Control and Inspection Board,* 21 SCRA 336 [1967]; *Inchong, etc., et al. vs. Hernandez,* 101 Phil. 1155 [1957]). The purpose of the law is to allow the emergence of younger blood in local governments. The classification in question being pursuant to

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that purpose, it cannot be considered invalid "even if at times, it may be susceptible to the objection that it is marred by theoretical inconsistencies" (Chief Justice Fernando, The Constitution of the Philippines, 1977 ed., p. 547).

There is an additional consideration. Absent herein is a showing of the clear invalidity of the questioned provision. Well accepted is the rule that to justify the nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and equivocal breach. Courts are practically unanimous in the pronouncement that laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt (*Peralta vs. COMELEC*, 82 SCRA 55 [1978], citing *Cooper vs. Telfair*, 4 Dall. 14; Dodd, Cases on Constitutional Law, 3rd ed. 1942, 56). Lastly, it is within the competence of the legislature to prescribe qualifications for one who desires to become a candidate for office provided they are reasonable, as in this case.

In so far as the petition of Igot and Salapantan are concerned, the second paragraph of Section 4 of Batas Pambansa Blg. 52, quoted in full earlier, and which they challenged, may be divided in two parts. The first provides:

"*a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact* x x x"

It is the opinion of the majority that for failure of petitioners Igot and Salapantan to satisfy the procedural requisites, we find no necessity at this stage to pass upon the validity of the aforequoted provision.

The situation is different, however, with respect to the second part of the provision, which reads as follows:

"x x x *the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact.*"

The supremacy of the Constitution stands out as the cardinal principle. We are aware of the presumption of validity that attaches to a challenged statute, of the well-settled principle

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that "all reasonable doubts should be resolved in favor of constitutionality," and that Courts will not set aside a statute as constitutionally defective "except in a clear case." (*People vs. Vera, supra*). We are constrained to hold that this is one such clear case.

Explicit is the constitutional provision that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel (Article IV, Section 19, 1973 Constitution). An accusation, according to the fundamental law, is not synonymous with guilt. The challenged proviso contravenes the constitutional presumption of innocence, as a candidate is disqualified from running for public office on the ground alone that charges have been filed against him before a civil or military tribunal. It condemns before one is fully heard. In ultimate effect, except as to the degree of proof, no distinction is made between a person convicted of acts of disloyalty and one against whom charges have been filed for such acts, as both of them would be ineligible to run for public office. A person disqualified to run for public office on the ground that charges have been filed against him is virtually placed in the same category as a person already convicted of a crime with the penalty of *arresto*, which carries with it the accessory penalty of suspension of the right to hold office during the term of the sentence (Art. 44, Revised Penal Code).

And although the filing of charges is considered as but *prima facie* evidence, and therefore, may be rebutted, yet, there is "clear and present danger" that because the proximity of the elections, time constraints will prevent one charged with acts of disloyalty from offering contrary proof to overcome the *prima facie* evidence against him.

Additionally, it is best that evidence *pro* and *con* of acts of disloyalty be aired before the Courts rather than before an administrative body such as the COMELEC. A highly possible conflict of findings between two government bodies, to the extreme detriment of a person charged, will thereby be avoided.

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Furthermore, a legislative/administrative determination of guilt should not be allowed to be substituted for a judicial determination.

Being infected with constitutional infirmity, a partial declaration of nullity of only that objectionable portion is mandated. It is separable from the first portion of the second paragraph of Section 4 of Batas Pambansa Blg. 52 which can stand by itself.

WHEREFORE, 1) the first paragraph of Section 4 of Batas Pambansa Bilang 52 is hereby declared valid. Said paragraph reads:

"SEC. 4. *Special Disqualification.* — In addition to violation of Section 10 of Article XII (C) of the Constitution and disqualifications mentioned in existing laws which are hereby declared as disqualifications for any of the elective officials enumerated in Section 1 hereof, any retired elective provincial, city or municipal official, who has received payment of the retirement benefits to which he is entitled under the law and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected, shall not be qualified to run for the same elective local office from which he has retired."

2) That portion of the second paragraph of Section 4 of Batas Pambansa Bilang 52 providing that "x x x the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be *prima facie* evidence of such fact," is hereby declared null and void, for being violative of the constitutional presumption of innocence guaranteed to an accused.

SO ORDERED.

Makasiar, Antonio, Concepcion Jr., Fernandez, and *Guerrero, JJ.*, concur.

Fernando, C.J., concurs and submits a brief separate opinion.

Teehankee, J., files a separate opinion dissenting from the adverse ruling on Dumlao's candidacy and declining to rule on the invalidity of the first part of Section 4 of the questioned Law; and concurs with the pronouncement that the mere filing

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of charges shall be *prima facie* cause for disqualification is void.

Barredo, J., concurs. But as regards the matter of equal protection, reiterates his view in Peralta that Sec. 9(1) Art. XII is more expansive than the equal protection clause.

Aquino, J., concurs in the result as to paragraph 1 of the dispositive part of the decision. Dissents as to paragraph 2. In his opinion, paragraph 2, Section 4 of Batas Pambansa Bilang 52 is valid, being similar to certain presumptions in Articles 217 and 315 of the Penal Code, as amended by Republic Act No. 4885. See *U.S. v. Luling*, 34 Phil. 725 and *People v. Mingoa*, 92 Phil. 856.

Abad Santos, J., concurs but wishes to add that a judgment of conviction as provided in Sec. 4, par. 2 of Batas Pambansa Blg. 52 should be one which is final and unappealable.

De Castro, J., abstains as far as petitioner Dumlao is concerned.

Santos, J., did not take part.

FERNANDO, *C.J., concurring:*

It is particularly gratifying that the reiteration in the ably-written and scholarly opinion of the Court, penned by Justice Melencio-Herrera, of the standard that must be met before the power of judicial review may be availed of, set forth with such lucidity and force by Justice Laurel in the two leading cases of *Angara v. Electoral Commission*[1] and *People v. Vera*,[2] did not constitute an obstacle to this Court ruling on the crucial constitutional issues raised. It was a cause for concern, for me at least, that counsel of private parties in not a few cases in the recent past had shown less than full awareness of the doctrines, procedural in character, that call for application

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[1] 63 Phil. 139 (1936).

[2] 65 Phil. 56 (1937).

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whenever the exercise of this awesome and delicate responsibility of adjudging the validity of a statute or presidential decree is invoked.[3] While this Court cannot be accused of being bound by the fetters of judicial timidity, it remains true that no cavalier disregard of tried and tested concepts should be given encouragement. A petitioner who bases his claim for relief on asserted constitutional deficiencies deserves to be heard. That goes without saying. For the judiciary must ever endeavor to vindicate rights safeguarded by the fundamental law. In that sense, this Tribunal is not susceptible to the reproach that it has imprisoned itself in its allegiance to the philosophy of judicial self-restraint. There are, however, limits to judicial activism. It cannot be too strongly stressed that a petition of this character must ever remain an orderly proceeding that cannot be oblivious of the requisites to be complied with to justify a pronouncement on constitutional issues. Where there is exuberance in the exercise of judicial power, the forms of litigation are but slight retaining walls. It is right and proper that the voice of the Solicitor General should be heard in protest against such neglect of rudimentary precepts. Necessarily then, whenever objections based on refusal to abide by the procedural principles are presented, this Court must rule. It would suffice if thereby the petition is dismissed for non-observance of the controlling doctrines. There are times, however, when the controversy is of such a character that to resolve doubts, erase uncertainty, and assure respect for constitutional limitations, this Tribunal must pass on the merits. This is one such case. I therefore concur with the opinion of the Court.

It may be a task of superfluity then to write a concurring opinion. Nonetheless, a few words may not be amiss on what for me is the proper approach to take as to the lack of power of this Court to pass on the motives of the legislative body, on

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[3] Cf. *Sanidad v. Commission on Elections,* L-44640, October 12, 1976, 73 SCRA 333; *De la Llana v. Commission on Elections*, L-47245, December 9, 1977, 80 SCRA 525; *Hidalgo v. Marcos,* L-47329, December 9, 1977, 80 SCRA 538; *Peralta v. Commission on Elections,* L-47771, March 11, 1978, 82 SCRA 30.

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the lack of persuasiveness of petitioner's argument based on the equal protection guarantee, and on the fundamental concept of fairness of which the due process clause is an embodiment, thus calling for the nullification of the disqualification of a candidate upon the mere filing of charges against him.

1. The challenge to the provision in question is predicated on what was referred to as "a known fact in the province of Nueva Vizcaya that the aforesaid provision was concocted and designed precisely to frustrate any bid of herein petitioner to make a political come back [*sic*] as governor of Nueva Vizcaya. The wordings [*sic*] of the law is so peculiarly attuned to discriminate against herein petitioner because every condition imposed as disqualification grounds are known to be possessed by him because he was a former elective provincial official who has received his retirement benefits, he desires to run for the same elective office and at the commencement of the term of office to which he now seeks to be elected, he shall have reached 65 years of age."[4] Clearly then, the plea for invalidating such provision is the motive attributed to the Interim *Batasang Pambansa*. For petitioner, it amounted to a constitutional infirmity fatal in character. The weakness of the petition is thus apparent. No decision of this Tribunal can be cited in support of such a proposition. It would be to extend unduly the concept of judicial review if a court can roam far and wide and range at will over the variety and diversity of the reasons, the promptings that may lead a legislator to cast his vote for or against a proposed legislation. It is not what inspired the introduction of a bill but the effect thereof if duly enacted that is decisive. That would be the test for its validity or lack of it. There is this relevant excerpt from *McCray v. United States*:[5] "The decisions of this Court [Supreme Court of the United States] from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be

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[4] Petition, 3-4.

[5] 195 US 27 (1904).

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exerted."[6] The late Chief Justice Warren, who penned the opinion in *United States v. O'Brien*,[7] put the matter thus: "Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in this circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork. We decline to void essentially on the ground that it is unwise legislation which Congress had the undoubted power to enact and which could be reenacted in its exact form if the same or another legislator made a 'wiser' speech about it."[8]

2. If, however, the provision in question is susceptible to the reproach that it amounts to a denial of equal protection, then his plea for nullification should be accorded a sympathetic response. As the opinion of the Court makes clear, such imputation is not deserving of credence. The classification cannot be stigmatized as lacking in rationality. It is germane to the subject. Age, as well as the fact of retirement and the receipt of retirement benefits are factors that can enter into any legislative determination of what disqualifications to impose. As was pointed out in *J.M. Tuason and Co., Inc. v. Land Tenure Administration*:[9] "It suffices then that the laws operate equally and uniformly on all persons under similar circumstances or that all persons must be treated in the same manner, the conditions not being different, both in the privileges conferred and the liabilities

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[6] *Ibid.*, 56.

[7] 391 US 367 (1968).

[8] *Ibid.*, 383-384.

[9] L-21064, February 18, 1970, 31 SCRA 413.

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imposed. Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion, whatever restrictions cast on some in the group equally binding on the rest."[10] It cannot be denied that others similarly fall under the same ban. It was not directed at petitioner solely. The most that can be said is that he falls within the proscribed class. The point was likewise raised as to why should national officials be excluded in the above provision. The answer is simple. There is nothing to prevent the legislative body from following a system of priorities. This it did under the challenged legislative provision. In its opinion, what called for such a measure is the propensity of the local officials having reached the retirement age and having received retirement benefits once again running for public office. Accordingly, the provision in question was enacted. A portion of the opinion in the aforesaid J.M. Tuason and Co., Inc. finds relevance: "It was confronted with a situation that called for correction, and the legislation that was the result of its deliberation sought to apply the necessary palliative. That it stopped short of possibly attaining the cure of other analogous ills certainly does not stigmatize its effort as a denial of equal protection. We have given our sanction to the principle underlying the exercise of police power and taxation, but certainly not excluding eminent domain, that 'the legislature is not required by the Constitution to adhere to the policy of all "or none."' Thus, to reiterate, the invocation by petitioner of the equal protection clause is futile and unavailing."[11]

3. That brings us to the assailed provision as to the sufficiency of the filing of charges for the commission of such crimes as subversion, insurrection, rebellion or others of similar nature before a civil court or military tribunal after preliminary investigation, being a *prima facie* evidence of such fact and therefore justifying the disqualification of a candidate. The opinion

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[10] *Ibid.*, 435.

[11] *Ibid.*, 439.

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of the Court invoked the constitutional presumption of innocence as a basis for its being annulled. That conclusion is well-founded. Such being the case, I am in full agreement. I would add that such a provision is moreover tainted with arbitrariness and therefore is violative of the due process clause. Such a constitutional right, to quote from *Luzon Surety Co., Inc. v. Beson,*[12] is "not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern. It is a constitutional safeguard of the highest order. It is a response to man's innate sense of justice."[13] As rightfully stressed in the opinion of the Court, the time element may invariably preclude a full hearing on the charge against him and thus effectively negate the opportunity of an individual to present himself as a candidate. If, as has been invariably the case, a prosecutor, whether in a civil court or in a military tribunal, saddled as he is with so many complaints filed on his desk would give in to the all-too-human propensity to take the easy way out and to file charges, then a candidate would be hard put to destroy the presumption. A sense of realism for me compels a declaration of nullity of a provision which on its face is patently offensive to the Constitution.

Hence my concurrence.

SEPARATE OPINION

TEEHANKEE, *J.:*

I. I dissent from the majority's dismissal of the petition insofar as it upholds the discriminatory and arbitrary provision of Sec. 4 of Batas Pambansa Blg. 52 which would impose a special disqualification on petitioner Patricio Dumlao from running for the elective local office of governor of his home province of Nueva Vizcaya and would in effect bar the electors of his province from electing him to said office in the January 30

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[12] L-26865-66, January 30, 1970, 31 SCRA 313.

[13] *Ibid.*, 318.

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elections, simply because he is a retired provincial governor of said province "who has received payment of the retirement benefits to which he is entitled under the law and who shall have been 65 years of age at the commencement of the term of office to which he seeks to be elected."

To specially and peculiarly ban a 65-year old previously retired elective local official from running for the *same* elective office (of governor, in this case) previously held by him and from which he has retired is arbitrary, oppressive and unreasonable. Persons similarly situated are not similarly treated, *e.g.,* a retired vice-governor, mayor or councilor of 65 is entitled to run for governor (because the disqualification is for the retiree of 65 to run for the same *elective* office from which he retired) but petitioner is barred from doing so (although he may run for any other lesser office). Both are 65 and are retirees, yet one is barred from running for the office of governor. What is the valid distinction? Is this not an arbitrary discrimination against petitioner who has cause to complain that "the aforesaid provision was concocted and designed precisely to frustrate any bid of herein petitioner to make a political comeback as governor of Nueva Vizcaya[1] — (since no other case of a former governor similarly barred by virtue of said provision can ever be cited[2]). Is there not here, therefore, a gross denial of the cardinal constitutional guarantee that equal protection and security shall be given under the law to every person, under analogous if not identical circumstances?

Respondent's claim, as accepted by the majority, is that the purpose of the special disqualification is "to infuse new blood in local governments" but the classification (that would bar 65-year old retirees from running for the same elective local office) is not rational nor reasonable. It is not germane nor relevant to the alleged purpose of "infusing new blood" because such "old blood" retirees may continue in local governments

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[1] Petition, at page 4.

[2] Respondent cites in its comment (at page 15) a handful of pending cases for disqualification of mayoral candidates.

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since they are not disqualified at all to run for any other local elective office such as from provincial governor, vice-governor, city, municipal or district mayor and vice-mayor to member of the Sangguniang Panlalawigan, Sangguniang Panglunsod and Sangguniang Bayan, other than the local elective office from which they retired.

Furthermore, other 65-year olds who have likewise retired from the judiciary and other branches of government are not in any manner disqualified to run for *any* local elective office, as in the case of retired Court of First Instance Judge (former Congressman) Alberto S. Ubay who retired with full substantial retirement benefits as such judge in 1978 at age 70 and now at past 71 years of age, is running as the official KBL candidate for governor of his province. And even in the case of 65-year old local elective officials, they are disqualified *only* when they have received payment of the retirement benefits to which they are entitled under the law (which amount to very little, compared to retirement benefits of other executive officials and members of the judiciary). If they have not received such retirement benefits, they are not disqualified. Certainly, their disqualification or non-disqualification and consequent classification as "old blood" or "new blood" cannot hinge on such an irrelevant question of whether or not they have received their retirement benefits.

The classification is patently arbitrary and unreasonable and is not based on substantial distinctions which make for real differences that would justify the special disqualification of petitioner, which, it is claimed, "is based on a presumption that elective local officials who have retired and are of advanced age cannot discharge the functions of the office they seek as those who are differently situated."[3] Such presumption is sheer conjecture. The mere fact that a candidate is less than 65 or has "young or new blood" does not mean that he would be more efficient, effective and competent than a mature 65-year old like petitioner who has had experience on the job and who was observed at the hearing to appear to be most physically

[3] Respondent's Comment, at pages 12-13.

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fit. Suffice it to cite the outstanding case of the incumbent ebullient Minister of Foreign Affairs, Gen. Carlos P. Romulo, who was elected at 80 as a member of the Interim Batasan Pambansa and who has just this month completed 81 years of age and has been hailed by the President himself as "the best foreign minister the Republic has ever had."

Age has simply just never been a yardstick for qualification or disqualification. At the most, a minimum age to hold public office has been required as a qualification to insure a modicum of maturity (now reduced to 21 years in the present *batas*), but no maximum age has ever been imposed as a disqualification for *elective* public office since the right and will of the people to elect the candidate of their choice for any elective office, no matter his age, has always been recognized as supreme.

The disqualification in question therefore is grossly violative of the equal protection clause which mandates that all persons subjected to legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The guarantee is meant to proscribe undue favor and individual or class privilege on the one hand and hostile discrimination and the oppression of inequality on the other. The questioned provision should therefore at the least be declared invalid in its application insofar as it would disqualify petitioner from running for the office of governor of his province.

As aptly restated by the Chief Justice, "Persons similarly situated should be similarly treated. Where no valid distinction could be made as to the relevant conditions that call for consideration, there should be none as to the privileges conferred and the liabilities imposed. There can be no undue favoritism or partiality on the one hand or hostility on the other. Arbitrary selection and discrimination against persons is thus ruled out. For the principle is that equal protection and security shall be given to every person under circumstances, which if not identical are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the

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same fashion, whatever restrictions cast on some in the group equally binding on the rest."[4]

Finally, this arbitrary disqualification is likewise grossly violative of Article XII, sub-article C, Section 9(1) of the 1973 Constitution that "*Bona fide* candidates for any public office shall be free from any form of harassment and discrimination."

II. I concur with the majority's declaration of invalidity of the portion of the second paragraph of Section 4 of Batas Pambansa Blg. 52 which would make the mere filing of charges of subversion, insurrection, rebellion or other similar crimes before a civil court or military tribunal after preliminary investigation *prima facie* evidence of the fact of commission of an act of disloyalty to the State on the part of the candidate and disqualify him from his candidacy. Such a provision could be the most insidious weapon to disqualify *bona fide* candidates who seem to be headed for election and places in the hands of the military and civil prosecutors a dangerous and devastating weapon of cutting off any candidate who may not be to their liking through the filing of last-hour charges against him.

I also concur with the pronouncement made in the majority decision that in order that a judgment of conviction may be deemed "as conclusive evidence" of the candidate's disloyalty to the State and of his disqualification from office, such judgment of conviction must be final and unappealable. This is so specifically provided in Section 22 of the 1978 Election Code.[5]

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[4] E.M. Fernando; *The Bill of Rights*, 2nd Ed., p. 100, cit. *J.M. Tuason & Co., Inc. vs. Land Tenure Administration*, 31 SCRA 413 (1970).

[5] "SEC. 22. Ineligibility of person found disloyal to the Government. — Any person found guilty in a *final* judgment or order of a competent court or tribunal of any crime involving disloyalty to the duly constituted Government such as rebellion, sedition, violations of the anti-subversion and firearms laws, and crimes against the national security shall not, unless restored to his full civil and political rights in accordance with law, be eligible and his certificate of candidacy shall not be given due course nor shall the votes cast in his favor be counted. In the event his *final conviction* comes after his election, he shall automatically cease in office." (P.D. 1296, decreed February 7, 1978).

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Otherwise, the questioned provision would deny the *bona fide* candidate substantive due process and would be grossly violative of his constitutional right of presumption of innocence and of the above-quoted provision of the 1973 Constitution protecting candidates for public office from any form of harassment and discrimination.

ADDENDUM

When the case was voted upon a second time last January 21st, there appeared to be a majority in favor of the declarations and pronouncements above referred to in the two preceding paragraphs, in view of the urgency of the matter and the evil sought to be avoided. However, as of this writing, January 23, 1980 in the afternoon, such majority seems to have been dissipated by the view that the action to nullify such second paragraph of Section 4 of the *Batas* in question is premature and has not been properly submitted for adjudication under the strict procedural requirements. If this be the case, my above views, termed as concurrences, should be taken as dissents against the majority action.

EN BANC

[G.R. No. 52365. January 22, 1980]

AMADO F. GADOR, *petitioner, vs.* **COMMISSION ON ELECTIONS AS REPRESENTED BY ITS CHAIRMAN, HON. LEONARDO PEREZ,** *respondent.*

SYLLABUS

POLITICAL LAW; ELECTION LAWS; BATAS PAMBANSA BILANG 52; CERTIFICATE OF CANDIDACY; NOT FILED WITHIN THE REGLEMENTARY PERIOD IN CASE AT BAR.—