THE ELECTORAL TRIBUNALS AND THE JUDICIARY

The Constitution provides an Electoral Tribunal for each house of Congress.[1] These tribunals are independent of the other branches of the government and decisions of the Supreme Court have consistently maintained this independence.[2] They were created to insure impartial determination of election contests. The equal representation of the majority and minority parties, and the presence of three Justices of the Supreme Court serve to attain this purpose.

I. TENURE

The Constitution is silent on the tenure of the members of the Electoral Tribunals. It merely provides that the Electoral Tribunals "shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of their President and Speaker respectively."[3] It does not state how long these members are to sit in the Tribunal.

Bearing in mind the independence of the Electoral Tribunals so vigorously stressed in the case of *Angara v. Electoral Commission*,[4] and the significant statement of the Supreme Court in the case of *Suanes v. Chief Accountant*,[5] "that the Chief Justice, in the exercise of his constitutional power to designate Associate Justices as members of the Electoral Tribunals, has established the policy, in conformity with what he believes to be the true meaning of the Constitution, that Associate Justices thus designated cannot be changed by him during the periods of their incumbency, except in cases of vacancy," it is submitted that the tenure of the members of the Electoral Tribunals is coextensive with their tenure as members of the Senate, the House of Representatives, or the Supreme Court.

It is rather unfortunate that the Supreme Court dismissed the case of *Concordia v. Tolentino*.[6] A decision of the merits would have resolved the question of tenure of the members.

Concordia was chosen member of the House Electoral Tribunal upon nomination by the Nacionalista party. Subsequently, he was replaced with Tolentino, another Nacionalista, upon the action of the Nacionalista

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[1] Sec. 11, Art. VI.
[2] *Angara v. Electoral Commission*, 63 Phil. 139, 175 (1936).
[3] Sec. 13, Art. VI.
[4] *Supra*, note 2.
[5] 46 O.G. 462 (1948).
[6] G.R. No. L-6482, July 17, 1953.

members of the House of Representatives. Alleging that his removal was due to the Nacionalista Party's disapproval of his vote in a previous election protest before that tribunal, Concordia filed a petition for *quo warranto* against Tolentino. In dismissing the case, the Supreme Court, in a resolution, declared: "It appearing that Petitioner Concordia has already left the Nacionalista Party, and joined the Liberal Party, his petition now lacks proper basis. His petition is therefore dismissed."

Here we find that the Court considered membership in the political party as a basis for membership in the Electoral Tribunal. It is submitted that this view does not find support in the Constitution. The Constitution provides "the remaining six shall be members of the Senate or the House of Representatives as the case may be, who shall be chosen by each house, three upon nomination of the Party having the largest number of votes, and three of the party having the second largest number of votes therein."[7]

It will be readily seen that the parties only nominate; the nominee does not even have to be a member of the party making the nomination. It is clear, therefore, that membership in a political party, as far as the Constitution is concerned, does not affect the tenure of the members of the Tribunals coming from the Senate or the House of Representatives.

If the Supreme Court had jurisdiction over the case (and there are reasons to believe that it had), the Court should have ousted Tolentino. The tribunal is independent of the Legislature. So the *Angara* and *Suanes* cases have held. To sanction the ouster of Concordia was to undermine the very independence of the tribunal because an Electoral Tribunal can not be independent if at least six of its nine members can be coerced under pain of removal, to be party men first, and impartial judges, last. The framers sought to create an Electoral Tribunal of nine impartial judges, not a tribunal of three judges and six party men.[8]

II. JURISDICTION

The case of *Vera v. Avelino*[9] held that the jurisdiction of the Electoral Tribunals referred only to contests that each House retained

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[7] Sec. 11, Art. VI.

[8] El Sr. Conejero. Tal como está el *draft*, dando tres miembros a la mayoría, y otros tres a la minoría y tres a la Corte Suprema, ¿no cree Su Señoría que esto equivale prácticamente a dejar el asunto a los miembros del Tribunal Supremo?

"El Sr. Roxas. Sí y no. Creemos que si el Tribunal o la Comision está constituido en esa forma, tanto los miembros de la mayoría como los de la minoría así como los miembros de la Corte Suprema considerarán la cuestion sobre la base de sus méritos, sabiendo que el partidismo no es suficiente para dar el triunfo.

"El Sr. Conejero. ¿Cree Su Señoría que en un caso como ese, podríamos hacer que tanto los de la mayoría como los de la minoría prescindieran del partidismo?

"El Sr. Roxas. Creo que sí, porque el partidismo no les daría el triunfo." (Constitutional Convention, Session of December 4, 1934, quoted in *Angara v. Electoral Commission*, *supra*, 168-169, note 2).

[9] 77 Phil. 192 (1946).

its power to pass upon the election and qualifications of its members, and that an election contest as used in the Constitution, relates only to statutory contests in which the contestant seeks not only to oust the intruder but also to have himself inducted into the office. In its desire to follow the intent of the framers to limit the jurisdiction of the Electoral Tribunals, the Supreme Court gave a definition of the word "contest" which seems to limit unduly the jurisdiction of the Electoral Tribunals.

The Constitution provides that the Electoral Tribunals "shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members."[10] The definition given by the Court nullifies the jurisdiction of the Tribunals over contests relating to qualifications. For there may be filed with the Tribunal a protest in which protestant admits that protestee received a majority of the votes cast but alleges that the protestee does not possess the qualifications for the office, such as age,[11] residence,[12] or natural-born citizenship.[13] If the allegations are proved, the Tribunal will unseat the protestee and the seat becomes vacant. These are instances where a protestant does not seek to have himself inducted into the office. And yet under the ruling in *Vera v. Avelino,* there would be no contest in the instances above-mentioned, and the Electoral Tribunal would be acting without jurisdiction.

It is, therefore, submitted that the word "contest" should be given a broader meaning; it should refer to an action brought by a registered candidate for the same seat, challenging the election, returns and qualifications of the person proclaimed, regardless of whether or not the protestant seeks to have himself inducted into office. This proposition finds support in the explanation given by Delegate Manuel Roxas during the Constitutional Convention.[14]

III. OBSERVATIONS AND RECOMMENDATIONS

A study of the operation of the Electoral Tribunal points to one important reform or change: the transfer of their functions to the Supreme Court.

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[10] Sec. 11, Art. VI.

[11] *Marrero v. Bocar,* 66 Phil. 429 (1938).

[12] *Lim v. Pelaez,* 49 O.G. 3952 (1953).

[13] *Ty Deling et al. v. Chiongbian,* ETHR Cases No. 69-82 & 84.

[14] "The difference, Mr. President, consists only in obviating the objection pointed out by various delegates to the effect that the first clause of the draft which states 'The election, returns, and qualifications of the Members of the National Assembly' seems to give to the Electoral Commission the power to determine also the election of the Members who have not been protested. And in order to obviate that difficulty, we believe that the amendment is right in that sense * * * that is, if we amend the draft so that it should read as follows: 'All cases contesting the election, etc.' so that the judges of the Electoral Commission will limit themselves only to cases in which there has been a protest against the returns." I Aruego, THE FRAMING OF THE PHILIPPINE CONSTITUTION, pp. 270-271 (1936).

Out of the 63 cases decided by the Electoral Tribunal of the House of Representatives from 1946 to 1953, we note that when a case is decided on the merits, the Representatives-Members vote strictly along party lines in almost all cases. This is even more true with the Senate Electoral Tribunal. In the first decision of the *Lim v. Pelaez* case,[15] these Representatives-Members crossed party lines. But this was due, as previous and subsequent events revealed, to the fact that Pelaez was already half-way out of the Liberal Party and half-way in the Nacionalista Party. The decisions of the Tribunals show that the Justices of the Supreme Court cast the deciding votes, which we may consider to be the correct and impartial votes. Very often, these Justices are left to supervise the recounting of ballots while the others wait for the results, only to raise a lot of noise later on, when the results of the recounting are unfavorable to their party.[16] To give the work of deciding such protests to the more experienced and impartial men would be more in keeping with the intent of the framers of the Constitution to have election contests determined "devoid of partisan considerations.[17]

Another reason for the proposed transfer is economy. Under the present system, each Electoral Tribunal may exist, maintain, and pay its personnel even though it has no work to do. This is true of the Senate Electoral Tribunal which has spent for the last two years and will spend for the next two years approximately ₱134,660.00 per annum[18] even though no protest is pending before it. If the functions were transferred to the Supreme Court, such useless expenditure would be avoided because deciding such protests would be just one of the many functions of the Court.

In advocating this transfer of functions, I am not unaware of the objections that may be raised against it.

Some would contend that a body should not have any say on who shall be members of an equal and co-important body, that only the Houses of Congress should pass upon the election and qualifications of their members. This objection was raised during the Constitutional Convention, principally by Delegate Labrador. Despite this objection, the Convention approved the proposal to create an independent Electoral Tribunal. There is, therefore, no reason why the functions cannot be transferred from the Electoral Tribunals to the Supreme Court, when both are independent of the Legislature. Furthermore, one can no more object to the transfer of such limited power to the Supreme Court than he can to the fact that members of the Judiciary are appointed by the

[15] *Supra*, note 12.
[16] *Recto v. Paredes*, 48 O.G. 1336 (1952).
[17] Angara v. Electoral Commission, *supra*, 175, note 2.
[18] 1951-52—₱150,000.00, R. A. No. 673; 1952-53—₱133,460.00, R. A. No. 816; 1953-54—₱134,660.00, R. A. No. 906.

President with the consent of the Commission on Appointments of Congress.

Another objection is the belief that the Supreme Court will be further overworked. That such a transfer will add another duty or burden on the Court is obvious. But considering that six out of the eleven Justices are practically doing the work of the Electoral Tribunals now, I believe it will not be imposing overly heavy burden on the Court if we transfer to it formally what it practically has been doing.

The proposed transfer has not yet been discussed thoroughly. The reasons for or against, as well as the details have not been brought out. But I think our experience with the Electoral Tribunals demands serious study of the transfer or any other reform. The transfer may pave the way for the decision of all important election contests, including contests in presidential elections.

SABINO PADILLA, JR. '57