

### ***Deposit Money in Presidential Elections Case***

[20-2(B) KCCR 477, 2007Hun-Ma1024, November 27, 2008]

In this case, the Constitutional Court decided that the provision of the Public Official Election Act which requires the applicants to pay 500 million Won as deposit money upon registration of presidential candidate is not compatible with the Constitution.

### **Background of the Case**

Article 56 Section 1 of the Public Official Election Act (hereinafter "the Provision") requires a person who applies for candidate registration in presidential elections to pay 500 million Won in deposit money to the competent constituency election commission at the time of application. The complainant here is one who desires to run for the 17th presidency, who filed a constitutional complaint arguing that the Provision infringes the right to hold public office.

### **Summary of Decision**

The Constitutional Court, in an opinion of 8 to 1 (5 voting for incompatible with the Constitution, 3 for simple unconstitutionality, 1 for constitutionality), declared that the Provision is not compatible with the Constitution according to the following reasons:

#### **1. Violation of the Right to Hold Public Office**

The legislative purpose of deposit money in presidential elections lies with preventing many insincere and indecent candidates from applying for registration. However the legislator's policy discretion should be exercised within the boundary of not excessively restricting the franchise and freedom of political expression of the preliminary candidates. Also, the deposit money should not be set at a notably excessive or unreasonable amount. Yet, 500 million Won is a very large sum for preliminary presidential candidates, which is not easy to collect without taking out loans or receiving donation unless he/she is very rich or recommended by a major political party funded by state subsidies. The Political Fund Act

revised on February 29, 2008 provides that "any candidate and any preliminary candidate to run in the election for the constituency" are also entitled to support payments, but 500 million Won is not a sum easy to collect and a candidate's high approval ratings does not necessarily result in the amount of support payment.

Even for candidates who have collected the deposit money, the candidate who obtains 10 to 15 percent of the gross number of valid votes will have 50 percent of the deposit money returned, and only those who obtain 15 percent or more will have the entire sum returned. Therefore, nobody but those who are willing to sacrifice 500 million Won in case they fail to obtain the stated number of votes will be able to exercise his/her right to be elected as the president.

The Constitutional Court, in its decisions such as one in case 92Hun-Ma269 on May 25, 1995, declared constitutional Article 26 Section 1 of the former Presidential Elections Act that prescribes deposit money worth 300 million Won in presidential elections. Then, the former Presidential Elections Act stipulated that the State, using the deposit money, bears the expenses required to make copies of the electoral register and the absentee report and to organize one speech session for each candidate and supporting member on TV and radio while deducting from the deposit money in case the candidate fails to obtain seven percent or more in votes. However, under the current law, expenses for keeping the electoral register is no longer disbursed from deposit money, and the candidate himself/herself has to fully shoulder the broadcasting costs except for the panels, seminars, and policy fora organized by the National Election Broadcasting Debate Commission. Eventually, the amount of deposit money has increased to 500 million Won instead although the necessity to maintain the previously prescribed 300 million Won has decreased, and the requirements for returning the deposit money has become stricter as the current Public Official Elections Act requires no less than 15 percent (full return) and 10 to 15 percent (half return) of the number of valid votes for return, compared to the previous seven percent or more.

Consequently, the Provision imposes extremely excessive burden on individuals, which is an unreasonable discrimination in offering the opportunity to exercise the right to hold public office according to the amount of candidates' assets. This, therefore, infringes the complainant's

right to hold public office.

## **2. Opinions of the Judgment**

### **A. Opinion of Five Justices (incompatible with the Constitution)**

The reason for the Provision's violation of the Constitution lies not in the deposit money system itself but in the excessive amount of the deposit money, so a plan to be considered could be for the legislature to adjust the amount of deposit money to conform to the constitutional range as well as to strengthen the recommendation requirements of independent candidates. Such power is vested with the legislature, so instead of eliminating the Provision by declaring simply unconstitutional, a decision of incompatible with the Constitution is needed for the legislature to consider diverse circumstances and come up with an revision to the Provision compatible with the Constitution.

### **B. Opinion of Two Justices (Simply Unconstitutional)**

As the next presidential election is scheduled for year 2012, the legislature has enough time to readjust the amount of deposit money to a constitutional range manageable by candidates even though the Provision is held unconstitutional. Therefore, a decision holding the Provision simply unconstitutional needs to take place instead of a incompatibility decision.

### **C. Opinion of One Justice (Simply Unconstitutional with Different Rationale)**

A system in which deposit money payment is required to apply for candidate registration in public official elections and those with less than a certain ratio of earned votes cannot have the deposit returned does not have legitimacy in its legislative purpose. Further, the system discriminates, without reasonable grounds, those who cannot afford to pay or give up deposit money by making their candidate registration difficult. These, consequently, all go against the Constitution.

### **D. Dissenting Opinion of One Justice**

In presidential elections, there is a desperate need to prevent too many candidates from running for office. These days every candidate is spending an enormous sum of money for campaign expenses in presidential elections. Candidates or preliminary candidates in presidential elections are entitled to designate their support associations according to Article 6 of the Political Fund Act, so, given our economic reality, it would not be impossible or extremely difficult for independent candidates capable of and qualified to attain recommendation of no less than 2,500 but no more than 5,000 people to collect the prescribed deposit money. In our election climate where fair election is strongly demanded given the existing practices such as excessive expenditure in election campaigns and injustice, unfairness, and overheat in elections, deposit money should be fixed at an amount that can be substantially effective in deterring potentially insincere candidates from applying for registration. That considered, 500 million Won in deposit money is not excessive as a sum necessary to serve the stated purpose.