

****Title**:** Loida Nicolas-Lewis vs. Commission on Elections

****Facts**:**

On February 13, 2003, Republic Act (R.A.) No. 9189, also known as “The Overseas Absentee Voting Act of 2003,” was enacted to enable Filipinos abroad to vote in Philippine elections. Amendments were later made through R.A. No. 10590, which included a provision under Section 36.8, prohibiting partisan political activities abroad during the 30-day overseas voting period. This provision fell under Section 37, which renumbered and amended Section 24 of the original act.

In addition, the Commission on Elections (COMELEC) promulgated Resolution No. 10035 on January 13, 2016, to provide general instructions for overseas voting for the May 9, 2016, national and local elections. Section 74(II)(8) of this resolution reiterated the same prohibition on partisan political activities.

Petitioner Loida Nicolas-Lewis, who held dual citizenship (Filipino and American), claimed that these legal provisions prevented her and other overseas Filipinos from conducting activities such as information campaigns, rallies, and outreach programs in support of candidates. Given the urgency with the upcoming 2016 elections, the Supreme Court partially granted a temporary restraining order (TRO) on April 19, 2016, restraining the implementation of the questioned provisions except within Philippine Embassies, Consulates, and other Posts.

****Issues**:**

1. Whether Section 36.8 of R.A. No. 9189 (as amended by R.A. No. 10590) and Section 74(II)(8) of COMELEC Resolution No. 10035 violate freedom of speech, expression, and assembly.
2. Whether the said provisions deny substantive due process and equal protection of laws.
3. Whether the provisions violate the territoriality principle of criminal law.

****Court’s Decision**:**

****1. Violation of Freedom of Speech, Expression, and Assembly:****

The Supreme Court ruled that Section 36.8 of R.A. No. 9189 and Section 74(II)(8) of the COMELEC Resolution were content-neutral regulations but found them overbroad and not narrowly tailored to meet the governmental objectives they purported to serve. The provisions failed the intermediate scrutiny test, which requires that the restriction must be no greater than necessary to serve a significant governmental interest. The Court held that

the prohibition on partisan political activities “abroad” posed an undue restriction on the freedom of expression of overseas Filipinos beyond Philippine jurisdiction, thus chilling their rights to political speech.

****2. Denial of Substantive Due Process and Equal Protection:****

The Court identified that the broad language of “any person” and “abroad” without sufficient guidelines created an ambiguity that resulted in broad and unnecessary restrictions. The lack of clear limitations and qualifications in the application of the provisions led to a failure to meet due process standards and also resulted in unequal application of the law in practice.

****3. Violation of the Territoriality Principle:****

The Court noted that the provisions ostensibly aimed to restrict activity outside Philippine territory, contradicting principles of territoriality in penal law. While normally Philippine criminal laws do not extend beyond its borders, the provision tried to do exactly that without sufficient justification.

Thus, the Court declared Section 36.8 and Section 74(II)(8) unconstitutional, permanentizing the TRO and invalidating these provisions.

****Doctrine**:**

- Content-neutral regulations are subject to the intermediate scrutiny test, requiring governmental actions to be narrowly tailored to serve a significant interest.
- Overbroad laws affecting freedom of expression lead to a chilling effect and thus, fail constitutional muster.
- Territoriality principle: Penal laws generally do not apply extraterritorially unless the law expressly provides for such and meets stringent international law standards.

****Class Notes**:**

1. ****Content-neutral vs. Content-based regulations****: Understand the difference and the corresponding tests (intermediate scrutiny vs. strict scrutiny).
2. ****Intermediate Scrutiny Test****: Must be within constitutional power, further an important governmental interest, unrelated to expression suppression, and be narrowly tailored.
3. ****Freedom of Expression****: The highest protection, especially political speech, under the Constitution.
4. ****Territoriality Principle in Criminal Law****: Criminal statutes typically apply only within national jurisdiction unless explicitly extended.

****Historical Background**:**

The “Overseas Absentee Voting Act of 2003” aimed to empower overseas Filipinos to engage in national elections, acknowledging their vital role within the country’s social fabric. However, the evolution of this policy through subsequent amendments reflected deeper tensions between state regulation to preserve electoral integrity and individual constitutional freedoms. This balance remains pivotal in evolving democracies that integrate global citizenry in national political processes.