

**EN BANC**

**[ G.R. No. 244027. April 11, 2023 ]**

**JOVIT BUELLA Y ABALAIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

**D E C I S I O N**

**GESMUNDO, C.J.:**

This is an Appeal by *Certiorari*<sup>[1]</sup> seeking to reverse and set aside the June 22, 2018 Decision<sup>[2]</sup> and the January 10, 2019 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 148051. The CA annulled and set aside the July 29, 2016 Joint Resolution<sup>[4]</sup> in Criminal Case Nos. 2016-0211 and 2016-0254, as well as the three separate Orders in Criminal Case Nos. 2016-0131,<sup>[5]</sup> 2016-0281,<sup>[6]</sup> and 2016-0313,<sup>[7]</sup> all dated August 1, 2016, and the August 25, 2016 Joint Resolution II<sup>[8]</sup> in the five preceding criminal cases of the Regional Trial Court of Naga City, Branch 61 (RTC). The CA remanded said criminal cases to the court of origin for further proceedings.

Said criminal cases were not consolidated by the RTC but all involve a charge of illegal possession, custody, and control of bladed instruments during the May 9, 2016 National and Local Elections, in violation of the Commission on Elections (COMELEC) Resolution No. 10015,<sup>[9]</sup> in relation to Section 261(q) of Batas Pambansa (B.P.) Blg. 881, also known as the Omnibus Election Code (*Omnibus Election Code*), as well as Sec. 32 of Republic Act (R.A.) No. 7166. The RTC declared as unconstitutional Sec. 1(a), Rule II, in relation to Sec. 1(f), Rule I of COMELEC Resolution No. 10015, insofar as it “includes all types of bladed instruments” in the prohibition to bear, carry, or transport firearms and other deadly weapons during the election period.

**The Antecedents**

Five separate Informations<sup>[10]</sup> were filed against Matea C. Obay (*Obay*), Jeffrey A. Esperas (*Esperas*),<sup>[11]</sup> Ruel A. Valencia (*Valencia*), Joel C. Pastorizo (*Pastorizo*),<sup>[12]</sup> and Jovit A. Buella (*petitioner*; collectively referred to as the *accused*) before the RTC for violation of the aforementioned COMELEC Resolution No. 10015.<sup>[13]</sup>

In particular, the Information against petitioner reads:

The undersigned Assistant City Prosecutor of Naga City accuses **JOVIT BUELLA y Abalain**, of Tapaz Compound, Brgy. Balatas, Naga City for Violation of Rule II, Sec. 1(a) of COMELEC Resolution 10015 and Omnibus Election Code, committed as follows:

That on or about May 8, 2016, in the City of Naga, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have in his possession, custody and control, one (1) black folding knife TM:Cardsharp, without the written permit to carry the same outside of his residence and public place for the election period January 10, 2016 to June 8, 2016 from the COMELEC.

ACTS CONTRARY TO LAW.<sup>[14]</sup>

Upon arraignment, the accused all pleaded not guilty to the respective charges against them.<sup>[15]</sup>

In a Motion to Dismiss<sup>[16]</sup> dated July 1, 2016, Obay and Esperas moved for the dismissal of the criminal charges against them on the ground of the unconstitutionality of Sec. 1(f), Rule I of COMELEC Resolution No. 10015. They alleged that said provision went beyond the scope of Sec. 32 of R.A. No. 7166 considering that it included “all types of bladed instruments” in the definition of “deadly weapon.” They asserted that the term “deadly weapon” should not include “bladed instruments” and should refer only to firearms and other weapons that can be fired. Thus, they concluded that said COMELEC Resolution is (a) enacted beyond the scope and power of the COMELEC insofar as it included and punished possession, as well as the carrying of a bladed weapon; (b) violative of the constitutional right of the accused to due process and equal protection of the laws; and (c) unreasonable in its operation because it requires the bearer of the bladed weapon to obtain a permit to carry or transport the same which the COMELEC does not or will never issue as such issuance pertains only to bearers of firearms and other explosives.<sup>[17]</sup>

In its Opposition/Comment,<sup>[18]</sup> the prosecutor averred that the constitutionality of the

assailed COMELEC Resolution cannot be attacked collaterally and that it is neither in conflict with nor does it expand the provisions of Sec. 32 of R.A. No. 7166 because the intent of the law is to include bladed weapons within the ambit of deadly weapons.<sup>[19]</sup>

### **The RTC Ruling**

In its July 29, 2016 Joint Resolution, the RTC granted the motion to dismiss filed by Obay and Esperas. It declared Sec. 1(a), Rule II, in relation to Sec. 1(f), Rule I of COMELEC Resolution No. 10015 unconstitutional, insofar as it “includes all types of bladed instruments” in the definition of deadly weapons. The *fallo* reads:

WHEREFORE, premises considered, Rule II, Sec. 1(a) in relation to Rule I, Sec. [1(f)] of COMELEC Resolution No. 10015 is hereby DECLARED UNCONSTITUTIONAL in so far as it “includes all types of bladed instruments” in the election period ban on bearing, carrying or transporting of firearms and other deadly weapons. Consequently, the two above-entitled cases are DISMISSED. The two herein accused are ordered IMMEDIATELY RELEASED from their detentions at the Naga City District Jail, unless there is other lawful cause to hold them.<sup>[20]</sup>

The RTC held that the motion to dismiss involved a pure question of law in assailing the constitutionality or validity of certain provisions of COMELEC Resolution No. 10015. It declared that the motion to dismiss directly attacked the constitutionality of said COMELEC Resolution; it did not do so collaterally as contended by the prosecution. Further, the question goes to the very *lis mota* of the cases against Obay and Esperas because the legal instrument is the basis for charging them. Obay and Esperas have an interest, personal and substantial, in the validity of the pertinent provisions of COMELEC Resolution No. 10015 because they have already lost their liberty by way of arrest and detention, without the ability to post bail. Thus, the RTC found that both cases pose an actual case ripe for constitutional adjudication. Obay and Esperas have *locus standi*.<sup>[21]</sup>

The RTC held that Sec. 1(a), Rule II of COMELEC Resolution No. 10015 is *ultra vires* insofar as it includes “all types of bladed instruments” in the definition of “deadly weapons” in Sec. 1(f), Rule I. It found that bladed instruments are not contemplated by Sec. 261(q) of the Omnibus Election Code and Sec. 32 of R.A. No. 7166. Instead, it declared that said statutory provisions referred only to firearms, not to deadly weapons. Thus, the RTC concluded that

COMELEC Resolution No. 10015, by including bladed instruments in the definition of deadly weapons, effectively amended or modified the law.<sup>[22]</sup>

The RTC also found that COMELEC Resolution No. 10015 violates a person's right to substantive due process as it is unreasonable in its operation. It requires the bearer of a bladed weapon to obtain a permit from the COMELEC to carry and possess the same, but the COMELEC does not and will never issue such permit. It is an impossible requirement that partakes of the exercise of arbitrary power and undue oppression. The trial court observed that the provisions in COMELEC Resolution No. 10015, specifically those in Rule III on the "Authority to Bear, Carry, or Transport Firearms or Other Deadly Weapons" and Rule V on "Transport or Delivery of Firearms and/or its Parts, Ammunition and/or its Components, or Explosives and/or its Components," are all firearms-oriented.<sup>[23]</sup>

The RTC did not give any credit to the prosecution's argument that the requirement of a permit pertains only to firearms, and not to bladed instruments. It observed that the Informations in cases for violation of COMELEC Resolution No. 10015 uniformly allege "without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside his residence" even when bladed instruments are involved. For the RTC, this demonstrates that the National Prosecution Service understands that such is an essential element of the offense of violation of COMELEC Resolution No. 10015 and, thus, must be alleged in the Information.<sup>[24]</sup>

Finally, the RTC observed that COMELEC Resolution No. 10015 failed to make a reasonable classification between two classes: (1) violators who bear firearms and (2) violators who bear bladed instruments. For the trial court, there are substantial differences between the two classes, such as their nature, lethality, and threat level, as well as the practicalities of their authorization requirements. The failure to draw this distinction is considered a violation of the equal protection clause.<sup>[25]</sup>

In separate Orders, all dated August 1, 2016, the RTC ordered the dismissal of the criminal charges against (1) Valencia in Criminal Case No. 2016-0131,<sup>[26]</sup> (2) petitioner in Criminal Case No. 2016-0281,<sup>[27]</sup> and (3) Pastorizo in Criminal Case No. 2016-0313<sup>[28]</sup> on the basis of its Joint Resolution dated July 29, 2016 in Criminal Case Nos. 2016-0211 and 2016-0254. The Orders are similarly worded in the following manner:

Considering the Joint Resolution of this Court dated 29 July 2016 dismissing the similarly situated Crim. Case No. 2016-0211 (*People of the Phils. v. Matea Obay*)

and Crim. Case No. 2016-0254 (*People of the Phils. v. Jeffrey Esperas*) due to the declared unconstitutionality of Rule II, Sec. 1(a) in relation to Rule I, Sec. 1 of COMELEC Resolution No. 10015 in so far as it “includes all types of bladed instruments” in the election period ban on bearing, carrying or transporting of firearms and other deadly weapons, and upholding the constitutional right of the accused to equal protection of the law, this case is now likewise hereby DISMISSED. The accused is ordered IMMEDIATELY RELEASED from his detention at the Naga City District Jail, unless there is other lawful cause to hold him.

1 August 2016, Naga City, Philippines.<sup>[29]</sup>

The prosecution filed a Motion for Reconsideration<sup>[30]</sup> dated August 10, 2016, challenging the July 29, 2016 Joint Resolution and the three separate Orders dated August 1, 2016 of the RTC. The RTC denied the same in its August 25, 2016 Joint Resolution II.<sup>[31]</sup>

The People of the Philippines, through the Office of the Solicitor General (OSG), filed a Petition for *Certiorari*<sup>[32]</sup> before the CA.

### The CA Ruling

In its June 22, 2018 Decision, the CA granted the petition for *certiorari*. It annulled and set aside the July 29, 2016 Joint Resolution, the three separate Orders dated August 1, 2016, and the August 25, 2016 Joint Resolution II of the RTC. The dispositive portion provides:

**WHEREFORE**, premises considered, the instant petition is **GRANTED**. The *Joint Resolutions* dated July 29, 2016 and August 25, 2016 in *Criminal Cases Nos. 2016-0211 and 2016-0254* and the corresponding three (3) separate *Orders* dated August 1, 2016 in *Criminal Case Nos. 2016-0131, 2016-0281 and 2016-0313*, of public respondent Hon. Soliman M. Santos, Jr. are hereby **ANNULLED AND SET ASIDE**. Accordingly, let the aforementioned criminal cases be **REMANDED** to the court of origin for further proceedings.

**SO ORDERED.**<sup>[33]</sup>

The CA held that the RTC committed grave abuse of discretion in declaring COMELEC

Resolution No. 10015 unconstitutional. It found that the RTC gravely abused its discretion when the RTC allowed the accused to challenge the constitutionality of said COMELEC Resolution *via* a collateral attack in the guise of a motion to dismiss the criminal charge against them. It held that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. The CA stated that, while the COMELEC Resolution may be challenged on the basis of its invalidity, a valid challenge must exist and, at the very least, the party challenging the same must have the requisite personality to mount the legal challenge. Further, the CA held that there are more appropriate remedies available to Obay and Esperas, such as a petition for declaratory relief under Rule 63 of the Rules of Court or a petition for prohibition under Rule 65. In fine, the CA held that COMELEC Resolution No. 10015 partakes of the nature of a statute and, thus, enjoys the presumption of validity unless it has been set aside in the proper proceedings by a competent court, not merely by way of a motion to dismiss.<sup>[34]</sup>

The accused filed a motion for reconsideration, which the CA denied in its January 10, 2019 Resolution.

### **The Petition**

Only petitioner brought the instant appeal by *certiorari* to question the CA Decision and Resolution.

### **The Issues**

#### I

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PETITIONER DID NOT HAVE THE REQUISITE PERSONALITY TO CHALLENGE THE COMELEC RESOLUTION NO. 10015.

#### II

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE HONORABLE JUDGE SOLIMAN M. SANTOS, JR. SHOULD NOT HAVE HEARD AND DECIDED ON THE ISSUE OF CONSTITUTIONALITY OF COMELEC RESOLUTION NO. 10015.<sup>[35]</sup>

*Petitioner's arguments*

*First*, petitioner asserts that he has the *locus standi* to challenge COMELEC Resolution No. 10015. The validity and constitutionality of said resolution is material and pertinent to petitioner's case as he had been detained without the ability to post bail and is facing the possibility of suffering the heavier penalty for election offenses under Sec. 3, Rule X of COMELEC Resolution No. 10015: imprisonment of not less than one year but not more than six years and not subject to probation. With his liberty at stake, petitioner has the requisite legal personality to mount a legal challenge to COMELEC Resolution No. 10015.<sup>[36]</sup>

*Second*, petitioner maintains that the RTC properly exercised its power of judicial review pursuant to its constitutional mandate. Petitioner points out that the motion to dismiss filed by Obay and Esperas raised the issue of constitutionality of COMELEC Resolution No. 10015, a pure question of law. Thus, it goes into the very *lis mota* of the cases because the law in question is the very basis for the criminal charge against them. The constitutionality of said resolution must be passed upon as it is the source of petitioner's alleged criminal liability. In short, the criminal charge against petitioner and the other accused cannot be resolved unless the constitutional question is determined by the trial court. Aside from the foregoing, petitioner alleges that the trial court is mandated by the highest law of the land to pass upon the constitutionality of the resolution.<sup>[37]</sup>

Further, the RTC's ruling on the unconstitutionality of said resolution was not carried out in an arbitrary and despotic manner amounting to grave abuse of discretion. In fact, it was grounded on substantial laws and the Constitution. Hence, there is no basis for the contention that the Honorable Judge Soliman M. Santos, Jr. (*Judge Santos, Jr.*) acted with grave abuse of discretion. Here, the wordings of R.A. No. 7166 is plain and clear that deadly weapons only pertain to firearms and explosives. The COMELEC cannot expand its meaning by including bladed instruments in the ban during the 2016 Elections. The statutes which COMELEC Resolution No. 10015 intend to implement - Sec. 261(q) of the Omnibus Election Code and Sec. 32 of R.A. No. 7166 - refer only to firearms and explosives, not bladed instruments. The principle of *ejusdem generis* applies. Thus, the COMELEC violated the principle of separation of powers because it overstepped the bounds of the delegating statute. In including bladed instruments in the prohibition, the COMELEC exercised law-making powers exclusively belonging to the Legislature. COMELEC Resolution No. 10015 is, thus, *ultra vires* insofar as the inclusion of bladed instruments is concerned.<sup>[38]</sup>

*Respondent's arguments*

In its November 4, 2020 Comment,<sup>[39]</sup> the People, through the OSG, argued that the CA correctly found that Judge Santos, Jr. acted with grave abuse of discretion in issuing the assailed rulings. *First*, the OSG posits that it was grave error for the trial court to hear and decide the issue of constitutionality of COMELEC Resolution No. 10015 because it was raised in a motion to dismiss, merely an incident in the criminal case. This is a collateral attack on the validity of the resolution and is dispensable to the resolution of the criminal cases. COMELEC Resolution No. 10015 has the force and effect of a law and enjoys the presumption of constitutionality and legality unless it has been set aside with finality in an appropriate case by a competent court, and not by a motion to dismiss. Said resolution may only be attacked by way of a direct action.<sup>[40]</sup>

*Second*, the OSG posited that deciding the constitutional issue raised is not necessary for the resolution of the criminal cases and, thus, the trial court is precluded from exercising its power of judicial review. It submitted that the *lis mota* requirement for judicial review is not present. It averred that Obay and Esperas failed to discharge the burden of first showing that the criminal charges against them could not be resolved unless the constitutional question they raised will be decided by the trial court. Further, the OSG argued that the allegations in the motion to dismiss are not clear and indubitable ground for the constitutional challenge but are merely questions of statutory construction and speculative assertions. Rather, the OSG claimed that the issue lies in the construction and interpretation of pertinent provisions of the Omnibus Election Code and R.A. No. 7166 *vis-à-vis* Sec. 1(f), Rule I of COMELEC Resolution No. 10015 on the definition of a deadly weapon. If, based on the evidence on record, the acts of the accused are not violative of or are not covered by these laws, the RTC could have dismissed the criminal cases on that basis and refrained from ruling on the issue of constitutionality.<sup>[41]</sup>

*Third*, the OSG claimed that Sec. 1(a), Rule II, in relation to Sec. 1(f), Rule I, of COMELEC Resolution No. 10015 is “constitutional.” It argued that the COMELEC did not violate the principle of separation of powers by including as a prohibited act the bearing, carrying, or transporting of a bladed weapon or instrument because the same is within its quasi-legislative powers. The COMELEC has the power to issue said resolution to regulate the conduct of the May 2016 Synchronized National and Local Elections and ensure free, orderly, and honest elections. Thus, it is indispensable for the COMELEC to have the authority to provide details of who may bear, carry, or transport firearms or other deadly weapons. This includes the authority to define and determine what is included in the terms “firearms or other deadly weapons.” The inclusion of bladed instruments is consistent with the objective of ensuring free, orderly, and honest elections because such bladed



instruments may be used to cause fear, disturbance, and terror during the election period. It is in accord with the COMELEC's contemporaneous construction of election laws, which is entitled to great respect and weight.<sup>[42]</sup>

The OSG further argued that the RTC's finding that the term deadly weapon does not include bladed instruments is incorrect. It pointed out that in the May 10, 2010 Synchronized National and Local Elections and in the May 13, 2013 Automated Synchronized National, Local, and Autonomous Region in Muslim Mindanao Regional Elections, the COMELEC promulgated Resolution No. 8714 and Resolution No. 9561-A, which also considered bladed weapons or instruments as deadly weapons.<sup>[43]</sup> Thus, the prevailing rule is that the bearing, carrying, or transporting of a bladed weapon or instrument during election period is prohibited.<sup>[44]</sup>

The OSG also took exception to the RTC's finding that the inclusion of bladed weapons or instruments in the prohibition is violative of the right to due process and equal protection of laws. It contended that bladed weapons or instruments, particularly those carried by the herein accused, fit the characteristics of a deadly weapon. It also asserted that nothing in COMELEC Resolution No. 10015 brings about undue favor or privilege to bearers of firearms or other explosives. It pointed out that a person who bears, carries, or transports a bladed weapon or instrument which is necessary for his occupation or uses it as a tool for a legitimate activity is exempt from the prohibition. Thus, the supposed violation of the right to due process and equal protection of laws is unfounded.<sup>[45]</sup>

In his March 15, 2021 Manifestation (In lieu of Reply),<sup>[46]</sup> petitioner manifested that he will no longer file a reply as his petition exhaustively discussed the assigned errors.<sup>[47]</sup>

### **The Court's Ruling**

The attack on the constitutionality of COMELEC Resolution No. 10015 was a direct challenge, and the CA erred in ruling that it was merely a collateral attack. The motion to dismiss filed by Obay and Esperas was the proper recourse available to them to question the constitutionality of the resolution on which basis they stand accused of a crime.

COMELEC Resolution No. 10015 expanded the coverage of the Omnibus Election Code and R.A. No. 7166 by including "bladed instruments" in the list of prohibited weapons during an election period. The prohibition under the said laws extends only to regulated deadly weapons. Bladed instruments are not regulated and, thus, do not fall within the ambit of the prohibition. By including bladed instruments in the prohibition, COMELEC Resolution No.

10015 criminalizes acts not criminalized under statutory law.

*Decisions of the lower courts are not judicial precedents; only decisions of the Court are judicial precedents.*

At this juncture, the Court must point out certain lapses that took place in the instant case. The Court observes that the case at bar arose out of a singular Motion to Dismiss filed by the same public prosecutor involving two separate criminal cases (Criminal Case Nos. 2016-0211 and 2016-0254), which was resolved by the RTC in one Joint Resolution dated July 29, 2016. The RTC then issued separate orders in three other criminal cases (Criminal Case Nos. 2016-0131, 2016-0281, and 2016-0313), all dated August 1, 2016, ordering the dismissal of said criminal cases against therein accused, one of whom is petitioner. In said orders, the RTC merely invoked its July 29, 2016 Joint Resolution dismissing the “similarly situated” Criminal Case Nos. 2016-0211 and 2016-0254, and upheld the rights of the accused to equal protection of the law.

The Court cautions lower courts against such conduct. They are reminded that only decisions of the Court have binding effect in accordance with the principle of *stare decisis et non quieta movere*:

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.<sup>[48]</sup>

Decisions of the lower courts are binding only to the extent that the principle of *res judicata*,

whether in the concept of conclusiveness of judgment or bar by judgment, applies. They are not judicial precedents in the same manner that final decisions of the Court are.

In *United Coconut Planters Bank v. Spouses Uy*,<sup>[49]</sup> the CA, in resolving an appeal before it, expressly noted its own pronouncements in another case. The CA cited its own decision in *United Coconut Planters Bank v. O'Halloran* due to the alleged similarity in facts and issues between that case and the case then before it. Respondents therein took exception to this and raised the same as an error before this Court.<sup>[50]</sup>

The Court held that therein respondents were correct in contesting the CA's reliance on the decision it had issued in a different case. The Court emphasized that the doctrine of *stare decisis* applies only to judicial precedents of this Court, to the exclusion of the lower courts. This is true regardless of whether the decisions of the lower courts are logically or legally sound as only decisions issued by the Court become part of the legal system. At most, decisions of the lower courts only have a persuasive effect.<sup>[51]</sup>

The Court reiterates the foregoing. Decisions of the lower courts, even if involving the constitutionality of legislative or quasi-legislative acts, do not have binding effect outside the normal application of *res judicata*. This is especially true in the instant case where the joint resolution of the RTC, declaring as unconstitutional certain provisions of COMELEC Resolution No. 10015, have yet to attain finality.

Notably, the appeal before the Court was filed by petitioner only. Petitioner is not one of those who filed the motion to dismiss before the RTC. Rather, he merely benefited from the *motu proprio* dismissal of his case by the RTC on the basis of its cognizance of its own joint resolution. Later, his case was among those lumped together by the prosecution when it moved for reconsideration, and by the RTC when it issued its August 25, 2016 Joint Resolution II.

Nonetheless, the Court shall proceed to resolve the issues raised as they affect the fundamental right of the accused to life and liberty. Relaxation of the rules is proper under the circumstances due to the jurisprudential nature of the issues raised and in the interest of substantial justice. The Court underscores, however, that "[i]n liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice."<sup>[52]</sup>

*The CA erred in finding that the constitutionality of COMELEC Resolution No. 10015 was attacked in a collateral manner.*

To recall, the constitutionality of COMELEC Resolution No. 10015, in relation to Sec. 261(q) of the Omnibus Election Code, as well as Sec. 32 of R.A. No. 7166, was assailed before the RTC by way of a motion to dismiss. The RTC found merit in the motion to dismiss and granted the same. On petition for *certiorari* before the CA, the OSG argued that the RTC gravely abused its discretion when it allowed a collateral attack on the constitutionality or validity of COMELEC Resolution No. 10015. The CA agreed with the OSG and annulled the resolutions and orders of the RTC. Now, on appeal before the Court, petitioner argues that the CA erred in annulling the resolutions and orders of the RTC.

The Court disagrees with the CA that the constitutionality of COMELEC Resolution No. 10015 was attacked in a collateral manner.

The ruling of the CA rests on the principle that the constitutionality of a statute cannot be collaterally attacked. It cited *Tan v. Bausch & Lomb, Inc.*<sup>[53]</sup> (*Tan*): “We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.”<sup>[54]</sup>

In order to fully understand this principle, its origin in jurisprudence, as well as recent applications by the Court must be scrutinized. In particular, the meanings of collateral attack and direct attack are most pertinent.

Before the CA and again before this Court, the OSG cited the distinction between a direct and a collateral attack found in *Firaza, Sr. v. Spouses Ugay*,<sup>[55]</sup> which in turn cited *Arangote v. Spouses Maglunob*:<sup>[56]</sup>

The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief, an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.**<sup>[57]</sup> (Emphasis in the original)

It is noteworthy, however, that the case cited by the OSG discussed the distinction between collateral or direct attacks in relation to the prohibition on collateral attacks on certificates of title under Presidential Decree (*P.D.*) No. 1529 or the Property Registration Decree. Instead, a better perspective may be offered by jurisprudence directly concerning the constitutionality of legislative or quasi-legislative enactments.

In the 1913 case of *Cadwallader-Gibson Lumber Company v. Del Rosario*<sup>[58]</sup> (*Cadwallader-Gibson*), the plaintiff before the Court of First Instance (*CFI*) of the City of Manila sought to hold his employer liable for damages for injuries sustained while rendering services as employee. Having found that the question was simply one of interpretation of Act No. 1874,<sup>[59]</sup> the *CFI* ordered the employer to pay the plaintiff a monthly pension during the pendency of the action. An action for prohibition was filed before this Court alleging that the order of the *CFI* was illegal, setting forth the argument that Act No. 1874 was unconstitutional.

The Court ruled that the action for prohibition before it was not maintainable. The Court pointed out, among others, that no question was raised as to the constitutionality of the law in the court below, and that if a constitutional question is involved, “some foundation must be laid for its presentation to this Court.”<sup>[60]</sup>

Subsequently in 1915, the Court promulgated its decision in the case of *McGirr v. Hamilton*<sup>[61]</sup> (*McGirr*). Said case arose out of an action to recover a sum of money filed before the justice’s court of the City of Manila. The justice’s court found in favor of the plaintiff therein. On appeal, the *CFI* of Manila likewise ruled in favor of the plaintiff and ordered payment. The defendant took exception to the judgment and served notice of his intention to perfect a bill of exceptions to the Court. The bill was prepared and presented to the *CFI* for approval, which the *CFI* denied on the ground that no appeal to the Court is possible since the *CFI* judgment is final. The *CFI* referred to Sec. 16 of Act No. 1627, which provides that judgments rendered by the *CFI* on appeal shall be final and conclusive except in cases involving the validity or constitutionality of a statute or municipal ordinance.

The defendant filed an action for *mandamus* before the Court, arguing that Sec. 16 of Act No. 1627 is invalid because it deprives the Court of a part of its jurisdiction which it had at the time the Philippine Organic Act of July 1, 1902 became effective. Said jurisdiction was confirmed and established by the act of Congress of the United States, which the Philippine Legislature had no authority to reduce or diminish. As such, Sec. 16 of Act No. 1627 is repugnant to the act of Congress and is without effect.

The Court found such contention to be well-placed since it observed, based on various sources, that the intent of the Philippine Commission was to confer on the Court's appellate jurisdiction with respect to all judgments pronounced by the CFIs in the country. It observed that one contention raised is relative to the power of the Court to declare a statute invalid even after having been recognized and applied for a considerable number of years. In resolving this question, the Court held that it is the general rule that a court will not pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the case. In short, it must be the *lis mota* of the case:

The question has been raised relative to the power of the Supreme Court to declare a statute invalid after it has recognized and applied it for a considerable number of years.

It is true that portion of Act No. 1627 to which we are directing our attention has been applied by this court in several cases; but the point to be kept in mind is that **this is the first time that its validity has been called in question in this court. It is the general rule that a court will not "pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. x x x While courts cannot shun the discussion of constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such weighty matters collaterally, nor on trivial occasions. It is both more proper and more respectful to a coordinate department to discuss constitutional questions only when that is the very *lis mota*. x x x *Prima facie*, and upon the face of the Act itself, nothing will generally appear to show that the Act is not valid; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property or his rights, that the objection of unconstitutionality can be presented and sustained."**

As we have already said, in the cases in which Act No. 1627 has been applied the question of the validity of the Act was not raised; and the resolution of that question not being the *lis mota*, not being necessary to the determination of the particular case, it was never considered and, of course, never decided. The mere fact that the law has been applied and given full force and effect precisely the

same as if it were valid does not deprive this court of the power to pass on the validity of the law when the occasion arises.<sup>[62]</sup> (Emphasis supplied; citations omitted)

The 1922 case of *Walter E. Olsen & Co. v. Aldanese*<sup>[63]</sup> (*Olsen*), involved a demurrer against an application for peremptory writ of *mandamus*. The Collector of Internal Revenue refused to issue a certificate of origin to therein petitioner, a tobacco manufacturer and exporter, on the basis that Sec. 9 of Administrative Order (A.O.) No. 35 - promulgated by the Collector of Internal Revenue - limits the exportation into the United States of Philippine cigars to those manufactured only from long filler tobacco produced exclusively by the provinces of Cagayan, Isabela, or Nueva Vizcaya. On a myriad of grounds, therein petitioner assailed the constitutionality of Sec. 9 of A.O. No. 35 and Secs. 6, 7, and 11 of Act No. 2613 of the Philippine Legislature. Respondent filed a demurrer, arguing that Act No. 2613 and the executive regulations do not contravene any provision of the fundamental law of the Philippines.

Preliminarily, prior to discussing the merits of the demurrer, the Court stated the following:

There is a legal presumption that any law enacted by the Legislature is valid, and we must assume that it was not the intention of the Legislature to enact a void law.

It is also the duty of courts to sustain the constitutionality of a legislative act when it can be done without violating an express provision of the organic law.

It is also a general rule that regardless of the question whether a law is or is constitutional, the courts will not pass upon its constitutionality, unless it is necessary to the decision.<sup>[64]</sup>

The Court noted that the power of the Collector of Internal Revenue to issue rules and regulations in relation to Act No. 2613 is limited “to the end that leaf tobacco be not mixed, packed, and marked as of the same quality when it is not of the same quality when it is not of the same class and origin.”<sup>[65]</sup> It added that “any rules or regulations which are not within the scope of the Act are null and void.”<sup>[66]</sup> However, the Court also stated that “[u]nder our view of the case, it is not necessary to pass on any other of the important questions so ably discussed by opposing counsel.”<sup>[67]</sup> Ultimately, the Court declared that “[t]he petition states

a cause of action, all the material allegations of which are admitted by the defendants' plea."<sup>[68]</sup> The Court overruled the demurrer and proceeded to hear the application for the peremptory writ.

These foregoing principles were applied by the Court in the case of *People v. Vera*<sup>[69]</sup> (*Vera*). Said case involved an action for *certiorari* and prohibition against the CFI of Manila in relation to the application of a defendant in a criminal case before it for probation under Act No. 4221,<sup>[70]</sup> after the latter's conviction had been affirmed by this Court.

Both public and private prosecutors opposed the application, but it was the private prosecution that alleged the unconstitutionality of Act No. 4221. The CFI denied the application for probation. However, despite the ruling, proceedings before the CFI continued to drag on and the respondent CFI judge continuously failed to commit the defendant to jail. Therein petitioners, thus, filed the action for *certiorari* and prohibition before the Court, alleging, among others, that the CFI had no jurisdiction to entertain the application for prohibition because Act No. 4221 applies only to provinces, and not to chartered cities like Manila.

In a supplementary petition, the private offended party further contended that Act No. 4221 was unconstitutional for transgressing the right to equal protection of the laws as it confers upon provincial boards the absolute power to make the law operative within its borders, and because it constitutes improper delegation to the provincial boards of legislative power lodged by the Constitution in the Philippine Legislature. Further, it gave provincial boards the authority to enlarge the powers of the CFI of the different provinces without uniformity. The Fiscal of the City of Manila subsequently concurred with the arguments of the private prosecutor, and later added that Act No. 4221 also encroached upon the exclusive power of the Chief Executive to grant pardons and reprieves.

Prior to determining the validity of Act No. 4221, the Court had to determine whether the issue of constitutionality had been properly raised in the case. The Court was guided by the principle 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[.]"<sup>[71]</sup>

The Court held that the issue of constitutionality had been squarely presented before the trial court. The CFI declined to pass upon the question on the ground that the private prosecution, not being a party whose rights are affected by the statute, may not raise said



question. The Court explained that although the general rule is that only parties to a suit may question the constitutionality of a statute involved, where the jurisdiction of the court depends on the validity of said statute, the question can be brought to the attention of the court by persons interested in the effect to be given the statute, since a decree pronounced by a court without jurisdiction would be void. In any case, resort may also be made to extraordinary legal remedies such as the instant action for *certiorari* and prohibition before the Court, particularly where remedies in the ordinary course of law are not plain, speedy, and adequate. The People, as represented by the Solicitor General and the Fiscal of the City of Manila, were proper parties in the proceedings before the Court.

The Court continued:

It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal. x x x But we must state that the general rule admits of exceptions. Courts, in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented. x x x **Thus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal.** Even in civil cases, it has been held that it is the duty of a court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case. x x x And it has been held that a constitutional question will be considered by an appellate court at any time, where it involves the jurisdiction of the court below[.]<sup>[72]</sup> (Emphasis supplied; citations omitted)

The Court again tackled the matter of collateral attacks on legislative enactments in *San Miguel Brewery, Inc. v. Magno*<sup>[73]</sup> (*San Miguel*). Said case arose out of a tax assessment issued by the City of Butuan against San Miguel Brewery, Inc. (SMB) pursuant to Ordinance Nos. 11 and 110. SMB was unable to pay the tax assessed. As a result, the City of Butuan issued a warrant of distraint and levy under Ordinance No. 26 against the properties of SMB, and seized two delivery trucks. SMB then instituted a complaint against Francisco Magno (*Magno*), the City Treasurer of Butuan City, in his personal capacity, for the release

of the trucks and for damages. The CFI dismissed the complaint. On appeal to the Court, the SMB argued, among others, that Ordinance No. 26 is *ultra vires*.

The Court declined to consider the issue of the constitutionality of Ordinance No. 26 raised in the appeal. It examined the complaint and found that there was neither any mention in the stipulation of facts nor evidence introduced during trial to show the intention of SMB to place in issue the validity of the ordinance. It held that “the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal[.]”<sup>[74]</sup> The Court noted that there are exceptions to the rule, citing *Vera*, but did not find any of the exceptions to be present. Further, it observed that Magno was impleaded in the complaint in his individual capacity. He is not the proper party to allege the invalidity of the ordinance. It is also not the proceeding wherein the alleged infirmity of the ordinance may be raised. This is because “[a] municipal ordinance is not subject to collateral attack. Public policy forbids collateral impeachment of legislative acts.”<sup>[75]</sup>

Subsequently, the decision in the case of *Philippine National Bank v. Palma*<sup>[76]</sup> (*Philippine National Bank*) was promulgated. Said case involved R.A. No. 6758, otherwise known as “An Act Prescribing a Revised Compensation and Position Classification System in the Government and For Other Purposes,” which took effect on July 1, 1989. Several employees of the Philippine National Bank (PNB) assailed before the RTC the bank’s failure to pay them certain allowances enjoyed by other employees because they were not incumbents as of July 1, 1989. The Court held that they were not entitled to said allowances. It cited the principle of *stare decisis* in view of previous decisions interpreting Sec. 12 of R.A. No. 6758, which limited certain benefits to incumbent government employees as of July 1, 1989. As to the argument that R.A. No. 6758 was unconstitutional due to the distinction between employees hired before or after July 1, 1989 being allegedly violative of the equal protection clause, the Court characterized said challenge as being collateral. The Court rejected the argument and held that the collateral attack cannot be allowed since the issue had not been duly pleaded in the trial court. It was not raised at the earliest opportunity, *viz.*:

Respondents further argue that upholding the distinction among the employees on the basis of the date of their hiring is violative of the equal protection clause of the Constitution. Elsewise stated, the constitutionality of RA 6758 is collaterally challenged by respondents, based on the constitutional precept of equal protection. For reasons of public policy, however, the constitutionality of a

law cannot be attacked in a collateral way.

**A law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity.**

Respondents not only failed to challenge the constitutionality of RA 6758; worse, they used it in seeking compensation from petitioner. The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it. Furthermore, as previously discussed, a valid classification was made by the law in segregating other employees from the incumbents who were already receiving the benefits on July 1, 1989.<sup>[77]</sup> (Emphasis supplied)

In *Rayo v. Metropolitan Bank and Trust Co.*,<sup>[78]</sup> the Court declared that therein petitioner's attack on the constitutionality or validity of Sec. 7 of Act No. 3135, as amended, by way of petition for annulment of judgment before the CA, was collateral in nature and not allowed, citing *Philippine National Bank*.

In *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*,<sup>[79]</sup> therein petitioner imported petroleum products, and subsequently filed import entry and internal revenue declarations. However, therein petitioner was assessed for deficiency customs duties and the goods were deemed abandoned and became property of the government pursuant to Secs. 1801 and 1802 of the Tariff and Customs Code because therein petitioner failed to file said declarations on time. Petitioner appealed to the Court of Tax Appeals, and then to this Court.

In addition to other arguments, therein petitioner claimed that it is arbitrary, harsh, and confiscatory to deprive importers of their property rights just because of their failure to timely file the declarations. The Court considered this a collateral attack on Secs. 1801 and 1802 of the Tariff and Customs Code.

Meanwhile, in *Dasmariñas Water District v. Monterey Foods Corp.*<sup>[80]</sup> (*Dasmariñas Water District*), therein respondent challenged in its memorandum the constitutionality of Sec. 39 of P.D. No. 98 on the ground that said provision was an undue delegation of legislative power. This was rejected on account of it being a collateral attack on a presumably valid law.

In *ABS-CBN Broadcasting Corp. v. Philippine Multi-Media System, Inc.*<sup>[81]</sup> (*ABS-CBN*), therein petitioner filed a complaint with the Intellectual Property Office (*IPO*) regarding the violation of its broadcasting rights. Eventually, the *IPO* ruled against therein petitioner, who appealed to the *CA*, assailing, among others, the constitutionality of National Telecommunications Commission Memorandum Circular No. 04-08-88. The Court characterized this as a collateral attack:

The records show that petitioner assailed the constitutionality of Memorandum Circular No. 04-08-88 by way of a collateral attack before the Court of Appeals. In *Philippine National Bank v. Palma*, we ruled that for reasons of public policy, the constitutionality of a law cannot be collaterally attacked. A law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court.

As a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal. In *Philippine Veterans Bank v. Court of Appeals*, we held:

We decline to rule on the issue of constitutionality as all the requisites for the exercise of judicial review are not present herein. Specifically, the question of constitutionality will not be passed upon by the Court unless, at the first opportunity, it is properly raised and presented in an appropriate case, adequately argued, and is necessary to a determination of the case, particularly where the issue of constitutionality is the very *lis mota* presented. x x x<sup>[82]</sup> (Emphasis and citations omitted)

In *Gutierrez v. Department of Budget and Management*<sup>[83]</sup> (*Gutierrez*), therein petitioners argued that the continued grant of allowances to military and police personnel under certain circulars issued by the Department of Budget and Management, to the exclusion of other government employees, violates the equal protection clause. The Court held that since Sec. 11 of R.A. No. 6758 allowed uniformed personnel to continue receiving such allowance over and above their basic pay, therein petitioners' challenge towards said circulars was

actually an attack on Sec. 11 of R.A No. 6758. Citing *Philippine National Bank*, the Court held that the constitutionality of a statute cannot be attacked collaterally as the constitutional issue must be pleaded directly. In any event, the Court was not persuaded by the substantive arguments.

In *Surigao del Norte Electric Cooperative, Inc. v. Energy Regulatory Commission*,<sup>[84]</sup> therein respondent Energy Regulatory Commission adopted a Purchased Power Adjustment formula which resulted in an order directing therein petitioner to return amounts over-recovered from its customers. In determining the appropriate charges therein petitioner could collect, the Court ruled that they could not validly assert that the caps on the recoverable rate of system loss set by R.A. No. 7832 (or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994) were arbitrary and violated the non-impairment clause of the Constitution. The Court cited *Philippine National Bank* in ruling that a legislative enactment, or any of its provision, may only be struck down by way of a direct action, not a collateral action, and not for the first time on appeal. The challenge should be raised at the earliest opportunity.

Of particular note is the case of *Garcia v. Drilon*<sup>[85]</sup> (*Garcia*). Said case involved R.A. No. 9262, otherwise known as the “Anti-Violence Against Women and their Children Act of 2004.” It originated from a petition for issuance of a Temporary Protection Order (*TPO*) filed by a wife against her husband, therein petitioner. While the petition for issuance of a *TPO* was pending before the RTC, therein petitioner filed a petition for prohibition before the CA, assailing the constitutionality of R.A. No. 9262. The CA dismissed the same due to the failure of therein petitioner to raise the issue in his pleadings before the trial court in the civil case and that the petition for prohibition seeking to annul the protection orders issued by the trial court constituted a collateral attack on said law.<sup>[86]</sup>

In resolving the issue, the Court stated, citing *ABS-CBN* and *Philippine National Bank*, that “[a]s a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal. Courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.”<sup>[87]</sup>

Therein petitioner argued that his failure to attack the constitutionality of R.A. No. 9262 before the RTC was proper since the family court has limited authority and jurisdiction to tackle the complex issue of constitutionality.<sup>[88]</sup>

Contrarily, the Court held that the RTC, despite acting as a family court, remains possessed of authority as a court of general original jurisdiction to resolve the constitutionality of a statute. As such, the issue of constitutionality of R.A. No. 9262 could have been raised at the earliest opportunity in therein petitioner's opposition to the petition for protection order.<sup>[89]</sup> Thus, the Court held that the CA correctly dismissed the petition for prohibition filed by therein petitioner. In short, the Court deemed the petition for prohibition as a collateral attack, and the proper and direct way to question the constitutionality of R.A. No. 9262 would have been by way of an opposition against the petition for issuance of a TPO before the RTC.

Meanwhile, in *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*<sup>[90]</sup> (*Vivas*), EuroCredit Community Bank, Incorporated was placed under receivership by the Monetary Board, pursuant to Sec. 30 of R.A. No. 7653.<sup>[91]</sup> Therein petitioner filed a petition for prohibition raising, among others, that Sec. 30 of R.A. No. 7653 was unconstitutional since it vested upon the Bangko Sentral ng Pilipinas unbridled power to close a rural bank and place it under receivership, resulting in an undue delegation of legislative power.

The Court primarily held that therein petitioner availed of the wrong remedy in filing a petition for prohibition. Therein petitioner should have instead filed a petition for *certiorari* in accordance with the remedy provided under Sec. 30 of R.A. No. 7653. Further, the petition should have been filed with the CA instead of the Court. Lastly, the Court held that therein petitioner's attempt to assail the constitutionality of Sec. 30 of R.A. No. 7653 constituted a collateral attack on said provision of law, which is not allowed. It cited *Gutierrez and Dasmariñas Water District* in support of this. Nevertheless, it found that there was no violation of the non-delegation of legislative power.

In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.)*,<sup>[92]</sup> the Court granted the motions for reconsideration of the Court's December 8, 2015 Decision,<sup>[93]</sup> which permanently enjoined the field testing for genetically modified eggplant and declared null and void the Department of Agriculture Administrative Order No. 08, series of 2002 (*DAO 08-2002*).<sup>[94]</sup> The Court reversed its earlier decision on the ground that the controversy is moot and not capable of repetition yet evading review. It also observed that the Court should not have delved into the constitutionality of DAO 08-2002 in said decision because it was collaterally challenged by therein respondent, as the petition merely prayed for the amendment of DAO 08-2002.

The Court, in the abovementioned case, citing *Vivas* and *ABS-CBN*, held that:

This attempt to assail the constitutionality of the public information and consultation requirements under DAO 08-2002 and the [National Biosafety Framework] constitutes a collateral attack on the said provisions of law that runs afoul of the well-settled rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. Verily, the policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers. This means that the measure had first been carefully studied by the executive department and found to be in accord with the Constitution before it was finally enacted and approved.<sup>[95]</sup>

The case of *National Association of Electricity Consumers for Reforms v. MERALCO*<sup>[96]</sup> is also pertinent. Therein petitioners assailed the Energy Regulation Commission's resolution shifting from the rate on return base methodology to the performance-based regulation methodology in fixing the wheeling rates of regulated entities. The Court rejected the argument, citing *Dasmariñas Water District*, and held that it constituted a collateral attack on the regulation since the instant case before it arose from the second proceeding for approval of the rates, which does not concern the propriety of MERALCO's shift to performance-based regulation. Further, the Court noted that therein petitioners also failed to object to the shift during public consultations held on the matter.

In *Republic v. N. Dela Merced & Sons, Inc.*,<sup>[97]</sup> the DENR assessed Dela Merced & Sons a fine of P3.98 million (P10,000.00 per day for 398 days) for failure to comply with the DENR Effluent<sup>[98]</sup> Standards in accordance with Sec. 28 of R.A. No. 9275. Dela Merced & Sons assailed the provision on the ground that it imposes excessive fines. Citing *Vivas*, the Court noted that the attempt to assail the constitutionality of Sec. 28 was collateral in nature. Even if properly presented, the issue is not the *lis mota* of the case, as Dela Merced & Sons failed to show that the case could not be legally resolved without ruling on the constitutional issue raised. It ultimately found that there was no violation of the constitutional prohibition against imposition of excessive fines since such prohibition applies only to criminal prosecutions, not to administrative proceedings.

From the foregoing recitation of relevant jurisprudence, it may be observed that **in determining whether a challenge against the constitutionality of a legislative act may be entertained by the courts, two requisites must be present: the validity of the**

**enactment is the *lis mota*<sup>[99]</sup> and the challenge must be raised at the earliest opportunity.<sup>[100]</sup> Otherwise, the challenge will be treated as a collateral attack.**

These two requisites form part of the requisites for judicial review. Sec. 1, Art. VIII of the 1987 Constitution confers and describes the judicial power of courts:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

It is well-established that “[t]he power of judicial review is the power of the Courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution.”<sup>[101]</sup> For a court to exercise this power, certain requirements must first be met:

- (1 ) an actual case or controversy calling for the exercise of judicial power;
- (2 ) the person challenging the act must have “standing” to challenge; he 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;
- (3 ) the question of constitutionality must be raised at the earliest possible opportunity; and
- (4 ) the issue of constitutionality must be the very *lis mota* of the case.<sup>[102]</sup>

Notably, the foregoing cases discussing collateral attacks on legislative acts do not involve the constitutionality of a criminal statute, regulation, or ordinance. This distinction is important and determinative of the treatment by the Court. **The fact that the right of the accused to life and liberty is at stake in a criminal proceeding necessitates a balanced view between the presumption of constitutionality of acts of the**



## **legislative and executive branches, and the right to due process.**

The doctrine concerning collateral attacks on the validity or constitutionality of a legislative act was discussed in two criminal cases: (1) *Estrada v. Sandiganbayan (Fifth Division)*<sup>[103]</sup> (*Estrada*) and (2) *Palencia v. People*<sup>[104]</sup> (*Palencia*).

In *Estrada*, therein petitioner, Senator Jose “Jinggoy” P. Ejercito Estrada (*Jinggoy*), was indicted for plunder before the Sandiganbayan. The Anti-Money Laundering Council (AMLC) filed an *ex parte* application with the CA to conduct an inquiry into Jinggoy’s bank accounts. The results of the inquiry were offered as evidence during Jinggoy’s bail hearing. Jinggoy moved to suppress the evidence but was denied by the Sandiganbayan. Jinggoy and his wife filed a petition for *certiorari*, prohibition, and *mandamus* before the Court, questioning, among others, the applicability of Sec. 11 of R.A. No. 9160 or the “Anti-Money Laundering Act,” as amended by R.A. No. 10167.<sup>[105]</sup> Therein petitioners challenged the authority of the AMLC to file an *ex parte* application for an order to inquire into bank deposits, and argued that the application of said provision to the case violated their right to privacy and due process. The Court rejected the attack on Sec. 11, characterizing the same as a collateral attack, and noting that the Court had already upheld the constitutionality of Sec. 11 in an earlier case.

Meanwhile, the ruling in *Palencia* is of particular note. Therein accused was charged with violation of Sec. 11, Art. II of R.A. No. 9165.<sup>[106]</sup> He was convicted by both the RTC and the CA. On appeal by *certiorari* to the Court, he questioned the constitutionality of Sec. 21(a) of R.A. No. 9165. The Court discussed the limitations of judicial review, one of which is the proscription against a collateral attack on the constitutionality of a law. In order to exercise the power of judicial review over the constitutionality of a statute, the issue must be properly raised and presented in the case, and the resolution of said issue must be necessary to a determination of the case. The Court also pointed out that it must be assailed by a direct attack, with the purported unconstitutionality pleaded directly before the court.

The Court specifically noted in the above-cited case, citing *San Miguel*, that in a criminal case, the constitutionality of a statute may be raised at any stage of the proceedings, even on appeal. Thus, the Court declared that “it is of no moment that petitioner only raised the issue of constitutionality for the first time on appeal, **as it was still properly and timely raised in a direct action.**”<sup>[107]</sup> Nonetheless, it did not delve into the constitutionality of the assailed provisions of the law and implementing rules as it was not essential to the disposition of the case.

Having discussed the jurisprudential underpinnings of the principle that collateral attacks on the constitutionality of a law are frowned upon, the Court will now resolve the application of said principle in the instant case.

The Court is convinced that there is no merit to the OSG's claim that the attack on the constitutionality of COMELEC Resolution No. 10015 was collateral in nature because it was raised by way of a motion to dismiss.

Scrutiny of the motion to dismiss itself readily reveals that it is a direct attack. It specifically prays for the declaration of unconstitutionality of Sec. 1(f), Rule I of COMELEC Resolution No. 10015 insofar as it includes bladed instruments in the definition of prohibited deadly weapons.<sup>[108]</sup> This cannot be characterized, in any manner, as a collateral attack.

More importantly, the requisites for judicial review, particularly the third and fourth requisites (that the issue of constitutionality was raised at the earliest opportunity, and that such issue is the *lis mota*), are present here. To recall, these two requisites were the basis of the Court's past rulings concerning collateral attacks on the constitutionality of legislative or quasi-legislative enactments.

*First*, there is an actual case or controversy calling for the exercise of judicial power. Herein petitioner stands accused of violation of COMELEC Resolution No. 10015, specifically the prohibition against carrying a bladed instrument during the 2016 election period without a permit. This is seen in the Information charging him with said violation.

The undersigned Assistant City Prosecutor of Naga City accuses **JOVIT BUELLA y Abalain**, of Tapaz Compound, Brgy. Balatas, Naga City for Violation of **Rule II, Sec. 1(a) of COMELEC Resolution 10015 and Omnibus Election Code**, committed as follows:

That **on or about May 8, 2016, in the City of Naga**, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have in **his possession, custody and control, one (1) black folding knife TM:Cardsharp, without the written permit to carry the same outside of his residence and public place for the election period January 10, 2016 to June 8, 2016 from the**

**COMELEC.**

ACTS CONTRARY TO LAW.<sup>[109]</sup> (Emphases supplied)

*Second*, petitioner possesses *locus standi*. He has a personal and substantial interest in the case. By virtue of the Information charging him with violation of COMELEC Resolution No. 10015, petitioner stands to suffer imprisonment. This is precisely the kind of direct injury contemplated by the requirement of *locus standi*. The factual circumstances in the case shed necessary light on the constitutional issue.

*Third*, the question of constitutionality was raised at the earliest possible opportunity. To recall, the charge of unconstitutionality was raised in a motion to dismiss before the RTC. To the mind of the Court, this stage is the earliest possible opportunity to attack the constitutionality of the penal provision. In any case, as stated in *San Miguel and Palencia*, the question of constitutionality of a penal statute may be raised at any stage, even during appeal. The rationale behind this is easy to see. Procedural concerns take a backseat when the constitutional right of the accused to life and liberty is at stake.

*Finally*, the issue of constitutionality is the very *lis mota* of the case. Petitioner was charged with violation of the provision being assailed as unconstitutional. To the mind of the Court, determination of its validity goes into the very heart of the matter before the Court. It is the *lis mota*, so to speak. There can be no final determination of petitioner's criminal liability under COMELEC Resolution No. 10015 without resolving the issue of constitutionality of the inclusion of "bladed instruments" in the deadly weapons prohibited during the 2016 election period.

At this juncture, the Court must address the CA's pronouncement that COMELEC Resolution No. 10015 should have been questioned by way of a stand-alone challenge, either through a petition for declaratory relief under Rule 63 of the Rules of Court or a petition for prohibition under Rule 65.

Under the circumstances of the instant case, the Court finds that it cannot ascribe to the view of the CA.

It is axiomatic that a petition for declaratory relief may only be filed before the breach or violation of the statute it refers to occur:

A petition for declaratory relief is an action instituted by a person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder. **It must be filed before the breach or violation of the statute, deed or contract to which it refers; otherwise, the court can no longer assume jurisdiction over the action.** Thus, “[t]he only issue that may be raised in such [an action] is the question of construction or validity of provisions in an instrument or statute.”

x x x x

x x x It must be stressed that an action for declaratory relief presupposes that there has been no actual breach as such action is filed only for the purpose of securing an authoritative statement of the rights and obligations of the parties under a contract, deed or statute. It cannot be availed of if the statute, deed or contract has been breached or violated because, in such a case, the remedy is for the aggrieved party to file the appropriate ordinary civil action in court. Thus, the Court has consistently ruled that “[i]f adequate relief is available through another form or action or proceeding, the other action must be preferred over an action for declaratory relief.”<sup>[110]</sup> (Emphasis supplied)

In the instant case, a breach or violation of COMELEC Resolution No. 10015 had already occurred. This breach or violation is the reason why petitioner stands accused before the RTC. As such, a petition for declaratory relief is no longer available and resort to the same would have been improper.

The Court further observed in *Sarmiento v. Capapas*<sup>[111]</sup> that to allow the filing of a petition for declaratory relief after a breach of the statute would result in a violation of the rule on multiplicity of suits:

Following the above-quoted decision, if an action for declaratory relief were to be allowed in this case, after a breach of the statute, the decision of the court in the action for declaratory relief would prejudice the action for violation of the barter law.

The institution of an action for declaratory relief after a breach of contract or statute, is objectionable on various grounds, among which is that it violates the rule on multiplicity of suits. If the case at bar were allowed for a declaratory relief, the judgment therein notwithstanding, another action would still lie against the importer respondent for violation of the barter law. So, instead of one case only before the courts in which all issues would be decided, two cases will be allowed, one being the present action for declaratory relief and a subsequent one for the confiscation of the importations as a consequence of the breach of the barter law.

The impropriety of allowing an action for declaratory relief, after a breach of the law, can be seen in the very decision of the court itself, which is now subject of the appeal. Whereas the case at bar was purported to bring about a simple declaration of the rights of the parties to the action, the judgment goes further than said declaration and decrees that the importation by the respondent corporation violates the law, and further directs that the legal importation be confiscated under the provisions of the law (Section 1(e), R.A. No. 1194). This confiscation directed by the court lies clearly beyond the scope and nature of an action for declaratory relief, as the judgment of confiscation goes beyond the issues expressly raised, and to that extent it is null and void.<sup>[112]</sup>

Similarly, a petition for prohibition is also unavailing in the instant case. It is well-entrenched in Our jurisdiction that for resort to Rule 65 be proper, there must no other plain, speedy, and adequate remedy in the ordinary course of law.<sup>[113]</sup> Here, the motion to dismiss filed by Obay and Esperas constitutes a plain, speedy, and adequate remedy in the ordinary course of law. Further, in the case of petitioner, the motion for reconsideration he filed before the CA questioning the nullification of the RTC joint resolutions and orders is also a plain, speedy, and adequate remedy in the ordinary course of law.

This is consistent with *Garcia*. To recall, said case actually involved a petition for prohibition. The Court therein held that the issue of constitutionality of R.A. No. 9262 could have been raised at the earliest opportunity in petitioner's opposition to the petition for protection order before the RTC. It was, in fact, the petition for prohibition that was considered by the Court to be a collateral attack, and the opposition before the RTC the proper opportunity to directly assail the invalidity of the law. After all, the RTC remains possessed of its authority as a court of general original jurisdiction despite acting as a

family court.

While *Drilon* did not involve a criminal charge, the Court believes that the reasoning therein is equally applicable to the instant case. The motion to dismiss is a direct attack on the constitutionality of COMELEC Resolution No. 10015. Here, the RTC, being a court of general original jurisdiction, properly took cognizance of such issue and did not shirk from its duty to resolve the same.

Without any doubt, there is no merit to the contention that COMELEC Resolution No. 10015 was attacked in a collateral manner. All requisites for judicial review are present.

*COMELEC Resolution No. 10015 is null and void insofar as it includes “bladed instruments” in the list of deadly weapons prohibited during the 2016 election period.*

The Constitution, in Sec. 2(1), Art. IX(C), grants the COMELEC the power to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial. The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications. **Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress.** Its administrative function refers to the enforcement and administration of election laws. In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.<sup>[114]</sup> (Emphasis supplied)

On November 13, 2015, the COMELEC promulgated Resolution No. 10015, entitled “*Rules*

*and Regulations On: (1) The Ban On The Bearing, Carrying Or Transporting Of Firearms And Other Deadly Weapons; And (2) The Employment, Availment Or Engagement Of The Services Of Security Personnel Or Bodyguards During The Election Period Of The May 9, 2016 Synchronized National And Local Elections.”* This was promulgated to implement Sec. 261(q) of the Omnibus Election Code and Secs. 32 and 33 of R.A. No. 7166 in connection with the May 9, 2016 Synchronized National and Local Elections, as expressly stated in the preamble of the resolution:

NOW, THEREFORE, pursuant to the power vested in it by the Constitution, the Omnibus Election Code (B.P. 881, as amended), Republic Act Nos. 6646 and 7166 and other election laws, the Commission RESOLVED, as it hereby RESOLVES, to promulgate the following rules and regulations to implement Section 261 (q) of the Omnibus Election Code and Sections 32 and 33 of Republic Act No. 7166 in connection with the May 9, 2016 Synchronized National and Local Election.

It is clear from the foregoing that COMELEC Resolution No. 10015 was issued in the exercise of COMELEC’s quasi-legislative power.

It must be emphasized that the exercise of this quasi-legislative power is subject to certain conditions, one of which is that it is within the scope of legislative authority:

x x x The power of administrative officials to promulgate rules in the implementation of a **statute is necessarily limited to what is provided for in the legislative enactment.**

It ought to be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. **The administrative regulation must be within the scope and purview of the law. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature.** Indeed, administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant or to modify, the law.

However, “administrative bodies are allowed, under their power of subordinate

legislation, to implement the broad policies laid down in the statute by ‘filling in’ the details. All that is required is that the regulation does not contradict, but conforms with the standards prescribed by law.<sup>[115]</sup> (Emphases supplied)

The threshold issue in the instant case is whether the inclusion of “bladed instruments” in the list of deadly weapons prohibited during the election period by the COMELEC in Resolution No. 10015 is within the scope of legislative authority provided for under the Omnibus Election Code and R.A. No. 7166.

The Court answers in the negative.

Sec. 261(q) of the Omnibus Election Code provides:

Section 261. *Prohibited Acts.* - The following shall be guilty of an election offense:

x x x x

q. ***Carrying firearms outside residence or place of business.*** - Any person who, **although possessing a permit to carry firearms**, carries any firearms outside his residence or place of business during the election period, **unless authorized in writing by the Commission**: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables. (Emphases supplied)

Meanwhile, Sec. 32 of R.A. No. 7166 provides:

Section 32. ***Who May Bear Firearms.*** - During the election period, **no person**



**shall bear, carry or transport firearms or other deadly weapons** in public places, including any building, street, park, private vehicle or public conveyance, **even if licensed to possess or carry the same, unless authorized in writing by the Commission.** The issuance of firearms licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: Provided, That, when in the possession of firearms the deputized law enforcement officer must be:

- a. in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and
- b. in the actual performance of his election duty in the specific area designated by the Commission. (Emphasis supplied)

Sec. 35 of R.A. No. 7166 authorizes the COMELEC to issue rules and regulations to implement the law:

Section 35. *Rules and Regulations.* — The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

For comparison, the relevant provisions of COMELEC Resolution No. 10015 are as follows:

RULE II  
*General Provisions*

Section 1. *Prohibited Acts.* - During the Election Period:

- No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building,
- a. street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution[.]

RULE I  
*Definition of Terms*

Section 1. *Definition of Terms.* - As used in this Resolution:

x x x x

- Deadly Weapon includes all types of **bladed instruments**, hand grenades or other explosives, except pyrotechnics. Provided, that a **bladed instrument**
- f. **is not covered by the prohibition when possession of the bladed instrument is necessary to the occupation of the possessor or when it is used as a tool for a legitimate activity.** (Emphases supplied)

RULE X  
*Prohibitions and Penalties*

x x x x

Section 2. *Absence of Valid and Subsisting Certificate of Authority.* - Any person who shall:

- a. Bear, carry or transport Firearms or other Deadly Weapons; or
- b. Employ, avail or engage of the services of security personnel or bodyguards; or
- c. Transport or deliver Firearms and/or its parts, Ammunition and/or its components, and, Explosives and/or its components;

during election period without a valid and subsisting Certificate of Authority shall be guilty of an election offense.

Section 3. *Penalty for Election Offenses.* - Any person found guilty of any election offense described in this Resolution shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served.

The power of the COMELEC to issue rules for the implementation of the Omnibus Election Code and R.A. No. 7166 is necessarily limited to what is provided for in said legislative enactments.

Sec. 261(q) of the Omnibus Election Code only contemplates firearms. This is evident in the title of the section, as well as its express terms.

On the other hand, Sec. 32 of R.A. No. 7166 appears, at first glance, to expand the scope of this prohibition as in addition to firearms, it also contemplates other deadly weapons. However, a more careful reading of Sec. 32 of R.A. No. 7166 reveals the phrase “deadly weapons” is restricted by the provision itself.

For one, Sec. 32 itself is entitled “Who May Bear Firearms.” As pointed out by the esteemed Justice Zalameda, “the general term ‘other deadly weapons’ is restricted and limited by the specific term ‘firearms.’ Otherwise, the Congress should not have limited the title of Section 32 to firearms, and if intended to be construed in its unrestricted sense, the Congress would not have made an enumeration of [a] particular instrument such as firearms and should have only used the general term ‘deadly weapon’ or words of similar import.”<sup>[116]</sup>

Further, the phrases “even if licensed to possess or carry the same” and “unless authorized in writing by the Commission” qualify both firearms and other deadly weapons. Thus, to come within the ambit of this election offense the deadly weapon must be: (1) one which is regulated or one for which a license is needed to possess or carry the same; and (2) one for which the COMELEC may issue an authorization to possess or carry during the election period.

In short, the deadly weapon must be regulated.

As correctly observed by the RTC, even the prosecution recognized that an essential element for a charge of violation of Sec. 1(a), Rule II, in relation to Sec. 1(f), Rule I of COMELEC Resolution No. 10015 is the carriage or possession of the prohibited weapon without written permit to carry the same outside of the residence and in a public place. This is plainly seen in the Information charging petitioner:

That on or about May 8, 2016, in the City of Naga, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have in his possession,

custody and control, one (1) black folding knife TM:Cardsharp, **without the written permit to carry the same outside of his residence and public place** for the election period January 10, 2016 to June 8, 2016 from the COMELEC.<sup>[117]</sup>  
(Emphasis supplied)

Further, COMELEC Resolution No. 10015 itself provides that for it to be considered an election offense, the deadly weapon must have been carried or transported without a valid and subsisting Certificate of Authority during the election period, as provided in Sec. 2 of Rule X.

This interpretation is consistent with the Court's ruling in *Orceo v. Commission on Elections*<sup>[118]</sup> (*Orceo*). In said case, therein petitioner assailed COMELEC Resolution No. 8714, entitled "Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections," through a petition for *certiorari*. Said COMELEC Resolution was likewise issued to implement Secs. 32 and 33 of R.A. No. 7166. Therein petitioner argued that the COMELEC gravely abused its discretion by providing that "firearms" included airsoft guns and their replicas/imitations, thereby bringing the same within the ambit of the gun ban.

The Court partially granted the petition. It held that the inclusion of airsoft guns and airguns in the term "firearms" for purposes of the gun ban during the election period is a reasonable restriction. In arriving at this conclusion, the Court observed that, contrary to therein petitioner's claim, there is a regulation governing the possession and carriage of airsoft rifles/pistols - Philippine National Police Circular No. 11 dated December 4, 2007, entitled "Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols and Operation of Airsoft Game Sites and Airsoft Teams."

Said Circular classifies an airsoft rifle/pistol as a special type of airgun restricted for use in sporting activities, requiring a license to possess and a permit to carry. Such license does not confer an absolute right, but only a privilege, subject to reasonable restrictions. However, the Court declared as excluded from the term "firearms" replicas and imitations of airsoft guns and airguns "because they are not subject to any regulation, unlike airsoft guns."<sup>[119]</sup>

Admittedly, the latter deals with the interpretation of the term “firearms.” Nonetheless, the rationale or reasoning of the Court equally applies here since, as discussed in the previous paragraphs, the qualifying clause “even if licensed to possess or carry the same, unless authorized in writing by the Commission” also applies to “other deadly weapons.”

The COMELEC exceeded the scope of legislative authority granted to it when it included bladed instruments in the term “deadly weapons.” Bladed instruments do not fall within the purview of R.A. No. 7166. Bladed instruments are not regulated since no license is issued for possession or carriage of such. Further, the COMELEC does not issue a permit for the possession or carriage of bladed instruments during the election period. It must be emphasized that:

[I]t is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. x x x The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.<sup>[120]</sup>

The Court cannot accept the OSG’s contention that the inclusion of bladed instruments is justified since COMELEC Resolution No. 10015 exempts from the prohibition bladed instruments whose possession is necessary to the occupation of the possessor or when it is used as a tool for a legitimate activity. Again, nothing in R.A. No. 7166 remotely suggests that bladed instruments are covered by the prohibition. Further, the exemption much touted by the OSG does not appear, in any manner, in R.A. No. 7166. The exemption cannot, and does not, correct COMELEC Resolution No. 10015 for exceeding the scope of legislative authority under R.A. No. 7166.

In addition to the foregoing, the Court also adopts with approval the enlightening exposition of the distinguished Senior Associate Justice (SAJ) Leonen concerning the vagueness of the COMELEC definition for “deadly weapons.”

SAJ Leonen astutely propounded that “the [COMELEC]’s definition of ‘deadly weapon’ is vague and unclear, not only on what may be considered deadly, but also on what may be considered a weapon.”<sup>[121]</sup> He observed that no law defines what a “deadly weapon” is. Meanwhile, the COMELEC-provided definition is unnecessarily broad as it includes all types of bladed instruments that are not necessary to the occupation of the possessor or are not used as tool for a legitimate activity.<sup>[122]</sup> There is also no definition on what is considered “necessary” to the possessor’s occupation or a “legitimate activity.”<sup>[123]</sup> Said definition does not even require that the bladed instrument be sharp or capable of doing harm.<sup>[124]</sup> He further elucidated:

This Court has stated that a statute or act is vague “when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. *People v. Nazario* explains that the statute or act is unconstitutional since “(1) it violates the process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.” *Nazario*, however, cautions that the vagueness must be such that “it cannot be clarified by either a saving clause or by construction.” The statute or act may still be valid if merely “couched in imprecise language—but which nonetheless specifies a standard though defectively phrased—in which case, it may be “saved” by proper construction.”<sup>[125]</sup>

Thus, SAJ Leonen concluded that for the definition under Sec. 1(f), Rule I to be valid, “it must state a more specific standard of what constitutes a ‘deadly weapon’.”<sup>[126]</sup>

The Court agrees with the erudite discussion offered by SAJ Leonen. Thus, it echoes his call for the COMELEC “to provide a clearer and more concise definition of ‘deadly weapon’ in their future resolutions.”<sup>[127]</sup> The COMELEC must be more discerning and detailed in providing such definition. It must keep in mind, at all times, the bounds of authority granted to it by the Congress and ensure that it does not exceed such bounds, as it did in the instant case.

At this juncture, the Court must discuss the existence of P.D. No. 9, as amended by B.P. Blg. 6. P.D. No. 9 is entitled “Declaring Violations of General Orders No. 6 And No. 7 Dated September 22, 1972 And September 23, 1972, Respectively, To Be Unlawful And Providing

Penalties Therefor.” Meanwhile, B.P. Blg. 6 is entitled “An Act Reducing The Penalty For Illegal Possession Of Bladed, Pointed Or Blunt Weapons, And For Other Purposes, Amending For The Purpose Presidential Decree Numbered Nine.”

Paragraph three of P.D. No. 9, as amended by B.P. Blg. 6, penalizes the possession of any bladed, pointed, or blunt weapon outside one’s residence:

3. It is unlawful to carry outside of one’s residence any bladed, pointed or blunt weapon such as ‘knife’, ‘spear’, ‘pana’, ‘dagger’, ‘bolo’, ‘barong’, ‘kris’, or ‘chako’, except where such articles are being used as necessary tools or implements to earn a livelihood or in pursuit of a lawful activity. Any person found guilty thereof shall suffer the penalty of imprisonment of not less than one month nor more than one year or a fine of not less than Two Hundred Pesos nor more than Two Thousand Pesos, or both such imprisonment and fine as the Court may direct.

The Court will not delve into the question of the continuing applicability of P.D. No. 9, as amended, in the absence of an actual case or controversy. It only notes, at this point, that this question may be of particular interest considering that Martial Law is no longer in place and P.D. No. 9 was specifically enacted in order to attain the desired result of Proclamation No. 1081 (Declaration of Martial Law) and General Order Nos. 6 and 7 (in relation to the possession and carriage of firearms), as shown in the preamble<sup>[128]</sup> of P.D. No. 9. *Cessante ratione legis cessat ipsa lex*. Where the reason for the existence of a law ceases, the law itself should also cease.

Further, in *People v. Purisima*,<sup>[129]</sup> the Court held that only the act of carrying a blunt or bladed weapon with a motivation connected with or related to the desired result of Proclamation No. 1081 is within the intent of paragraph three of P.D. No. 9. In arriving at this conclusion, the Court resorted to the preamble of P.D. No. 9 as it reveals the animating spirit behind its enactment:

*First, the presence of events which led to or precipitated the enactment of P.D. 9. These events are clearly spelled out in the “Whereas” clauses of the presidential decree, thus: (1) the state of martial law in the country pursuant to Proclamation 1081 dated September 21, 1972; (2) the desired result of Proclamation 1081 as*

well as General Orders Nos. 6 and 7 which are particularly mentioned in P.D. 9; and (3) the alleged fact that subversion, rebellion, insurrection, lawless violence, criminality, chaos, and public disorder mentioned in Proclamation 1081 are committed and abetted by the use of firearms and explosives and other deadly weapons.

The Solicitor General however contends that *a preamble of a statute* usually introduced by the word “whereas”, *is not an essential part of an act* and cannot enlarge or confer powers, or cure inherent defects in the statute x x x; that the *explanatory note or enacting clause of the decree*, if it indeed limits the violation of the decree, *cannot prevail over the text itself* inasmuch as such explanatory note merely states or explains the reason which prompted the issuance of the decree. x x x

We disagree with these contentions. **Because of the problem of determining what acts fall within the purview of P.D. 9, it becomes necessary to inquire into the intent and spirit of the decree and this can be found among others in the preamble or “whereas” clauses which enumerate the facts or events which justify the promulgation of the decree and the stiff sanctions stated therein.**

“A ‘preamble’ is the key of the statute, to open the minds of the makers as to the mischiefs which are to be remedied, and objects which are to be accomplished, by the provisions of the statute.”

“While the preamble of a statute is not strictly a part thereof, it may, when the statute is in itself ambiguous and difficult of interpretation, be resorted to, but not to create a doubt or uncertainty which otherwise does not exist.” x x x

In *Aboitiz Shipping Corporation, et al., v. The City of Cebu, et al.*, this Court had occasion to state that “(L)egislative intent must be ascertained *from a consideration of the statute as a whole*, and not of an isolated part or a particular provision alone. This is a cardinal rule of statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered



with those with which it is associated. Thus, an *apparently general provision may have a limited application if read together with other provisions.*”

*Second*, the result or effects of the presidential decree must be within its reason or intent.

In the paragraph immediately following the last “Whereas” clause, the presidential decree states:

“NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, in order to attain the desired result of the aforesaid Proclamation No. 1081 and General Orders Nos. 6 and 7, do hereby order and decree that:

[x x x x]

From the above it is clear that the acts penalized in P.D. 9 are those related to the desired result of Proclamation 1081 and General Orders Nos. 6 and 7. General Orders Nos. 6 and 7 refer to firearms and therefore have no relevance to P.D. 9(3) which refers to blunt or bladed weapons. With respect to Proclamation 1081 some of the underlying reasons for its issuance are quoted hereunder:

“WHEREAS, these lawless elements having taken up arms against our duly constituted government and against our people, and having committed and are still committing acts of armed insurrection and rebellion consisting of armed raids, forays, sorties, ambushes, wanton acts of murders, spoilage, plunder, looting, arsons, destruction of public and private buildings, and attacks against innocent and defenseless civilian lives and property, all of which activities have seriously endangered and continue to endanger public order and safety and the security of the nation, . . . .”

[x x x x]

“WHEREAS, it is evident that there is throughout the land a state of anarchy and lawlessness, chaos and disorder, turmoil and destruction

of a magnitude equivalent to an actual war between the forces of our duly constituted government and the New People's Army and their satellite organizations because of the unmitigated forays, raids, ambushes, assaults, violence, murders, assassinations, acts of terror, deceptions, coercions, threats, intimidations, treachery, machinations, arsons, plunders and depredations committed and being committed by the aforesaid lawless elements who have pledged to the whole nation that they will not stop their dastardly effort and scheme until and unless they have fully attained their primary and ultimate purpose of forcibly seizing political and state power in this country by overthrowing our present duly constituted government, . . . ." (See Book I, Vital Documents on the Declaration of Martial Law in the Philippines by the Supreme Court of the Philippines, pp. 13-39).

**It follows that it is only that act of carrying a blunt or bladed weapon with a motivation connected with or related to the afore-quoted desired result of Proclamation 1081 that is within the intent of P.D. 9(3), and nothing else.**<sup>[130]</sup> (Emphases supplied; italics in the original; citations omitted)

Nonetheless, the Court must state that P.D. No. 9, as amended, is not relevant to the instant case because petitioner is not charged with violation of the same, but with violation of COMELEC Resolution No. 10015. Further, P.D. No. 9, as amended, does not provide for the regulation or issuance of licenses for possession or carriage of bladed instruments.

Opportunity is also taken at this point to address the assertions in the Dissenting Opinion of Madame Justice Lazaro-Javier.

The esteemed Justice Lazaro-Javier disagrees with the pronouncement that the phrase "other deadly weapons" in Sec. 32 of R.A. No. 7166 does not include "bladed instruments."<sup>[131]</sup> She maintains that the clause "even if licensed to possess or carry the same, unless authorized in writing by the Commission" is not an element of the offense under Sec. 32 but a ground to defend oneself from such charge and that said clause pertains only to firearms and not to other "deadly weapons."<sup>[132]</sup> She proposes that, to arrive at the proper meaning of "other deadly weapons," the following must be resorted to: "(i) the principle of [*ejusdem generis*]; (ii) reference to statutes [*in pari materia*]; and (iii) the resort to the plain, ordinary and common definition of the term to be interpreted."<sup>[133]</sup> She adds

that the Legislature has long considered bladed instruments as deadly weapons, citing Act No. 1780, enacted as early as October 12, 1907. Finally, the good Justice adds that the COMELEC's contemporaneous interpretation of "other deadly weapons" is entitled to respect for it is the constitutional body tasked with the enforcement and administration of all election laws and regulations. She points to the numerous dangers that may arise if bladed instruments are allowed during the election period.<sup>[134]</sup>

As elucidated in the preceding paragraphs, the phrase "other deadly weapons" in Sec. 32 of R.A. No. 7166 does not contemplate "bladed instruments." A plain reading of the same, from its short title to its very language, reveals the intent of the Congress to limit said provision to firearms and other deadly weapons circumscribed by regulatory restrictions.

In addition, the prosecution has always included the element of "without the written permit to carry the same outside of his residence and public place" in the Informations<sup>[135]</sup> charging accused with violation of Sec. 32. This is an ***express and consistent recognition from the State*** that it is an essential element of the crime penalized by Sec. 32. While it is true that the Court is not bound by the interpretation of the prosecution, the prosecution itself, and in turn the State, is bound by such interpretation.

Furthermore, COMELEC Resolution No. 10015, an issuance of the COMELEC itself, categorically and expressly states in Sec. 2 of Rule X that any person who shall bear, carry, or transport **other deadly weapons during election period without a valid and subsisting Certificate of Authority shall be guilty of an election offense.**

From the foregoing, it is evident that the COMELEC, the implementing agency of R.A. No. 7166, recognizes that the requirement of a Certificate of Authority applies to the phrase *other deadly weapons*. It must be remembered that the five separate Informations in the present case involve a charge of violation of the aforementioned COMELEC Resolution No. 10015.<sup>[136]</sup>

Considering that the requirement of a valid and subsisting Certificate of Authority applies to the phrase "other deadly weapons," the ruling in *Orceo* is relevant. To reiterate, the Court held in said case that the inclusion of airsoft guns and airguns in the term "firearms" for purposes of the gun ban during the election period is a reasonable restriction because the same was regulated. Meanwhile, it declared as excluded from the term "firearms" replicas and imitations of airsoft guns and airguns "because they are not subject to any regulation, unlike airsoft guns."<sup>[137]</sup> The same legal reasoning applies to the instant case. Bladed

instruments are not regulated and, thus, do not fall within the purview of the prohibition.

The esteemed Madam Justice characterizes the clause “even if licensed to possess or carry the same, unless authorized in writing by the Commission” as a defense. However, with utmost respect, it is a **legal impossibility** to avail of this supposed defense for a charge involving possession or carriage of a bladed instrument during the election period. This could not have been the intent of the Legislature in enacting Sec. 32 of R.A. No. 7166.

The Court also cannot accept the averment that reference to statutes *in pari materia*, in this case Sec. 26 of Act No. 1780,<sup>[138]</sup> support the conclusion that bladed instruments have long been considered by the Legislature as being included in the phrase “deadly weapons.”

In the first place, the statutory construction principle of reference to statutes *in pari materia* applies to existing statutes on the same subject matter:

The rule on statutory construction provides that:

Statutes *in pari materia* should be read and construed together because **enactments of the same legislature on the same subject are supposed to form part of one uniform system**; later statutes are supplementary or [complementary] to the earlier enactments and in the passage of its acts the legislature is supposed to have **in mind the existing legislations on the subject** and to have enacted its new act with reference thereto.<sup>[139]</sup> (Emphases supplied)

Said principle cannot apply in the instant case to Act No. 1780 and R.A. No. 7166.

Act No. 1780 and R.A. No. 7166 govern different subject matters. *Act No. 1780* is intended to regulate the importation, acquisition, possession, use and transfer of firearms, and to prohibit the possession of the same. Sec. 26<sup>[140]</sup> thereof declared unlawful for any person to carry **concealed** about his person any bowie knife, dirk, dagger, kris, or other deadly weapon. It contemplates the concealment of such weapons on the person. Meanwhile, *R.A. No. 7166* is intended to regulate the synchronized national and local elections. As such, the prohibition to possess or carry firearms or other deadly weapons contained in Sec. 32 is applicable only during an election period. It does not require concealment, as opposed to Sec. 26 of Act No. 1780. The difference in subject matters of the two laws is evident. The statutory principle of reference to statutes *in pari materia* loses relevance considering this

difference in subject matters.

Aside from this, it is integral to contextualize the issuance of Act No. 1780. Act No. 1780 was enacted by the Second Philippine Commission or the Taft Commission in 1907, during the onset of the American colonial period:

x x x Spain relinquished its sovereignty over the Philippine Islands in favor of the U.S. upon its formal surrender a few months later. By 1899, the Americans had consolidated a military administration in the archipelago.

When it became clear that the American forces intended to impose colonial control over the Philippine Islands, General Emilio Aguinaldo immediately led the Filipinos into an all-out war against the U.S. The Filipinos were ultimately defeated in the Philippine-American War, which lasted until 1902 and led to the downfall of the first Philippine Republic. The Americans henceforth began to strengthen their foothold in the country.<sup>[141]</sup>

It must be emphasized that the Filipino resistance to the American colonization continued well after 1902. In fact, renowned historian Teodoro A. Agoncillo dedicated a full chapter entitled *The Continuing Resistance (1901-1913)*, in his seminal book *History of the Filipino People* (8<sup>th</sup> ed.),<sup>[142]</sup> on the enduring efforts of the Filipino people to resist the foreign invasion of our land. This is the context in which Act No. 1780 was enacted, by no less than the foreign power invading our land. In evaluating the import of Sec. 26 of Act No. 1780, this context must be kept in mind.

Finally, while it is true that the COMELEC's interpretation is entitled to great respect as the constitutional body tasked with enforcement and administration of all election laws and regulations, the COMELEC cannot exceed the bounds of the legislative authority granted it in interpreting "other deadly weapons."

Besides, the COMELEC has not always interpreted deadly weapons to include bladed instruments. Such practice only began in the 2007 Barangay/SK Elections.<sup>[143]</sup> Surely, a period of 15 years where the term "bladed instruments" was included in the phrase "deadly weapons," which coincidentally only involved six elections,<sup>[144]</sup> cannot sufficiently form basis to conclude that the COMELEC has always contemplated bladed instruments in the phrase "deadly weapons." There exists a 16-year period where a bladed instrument was not

considered a deadly weapon for purposes of the election ban. This 16-year period is counted from 1991, the year that R.A. No. 7166 came into effect, which contains the relevant Sec. 32, until the October 29, 2007 Barangay/SK Elections.

It must be emphasized that it is not the Court which makes applicable the clause “even if licensed to possess or carry the same, unless authorized in writing by the Commission” to “other deadly weapons.” It is the Legislature, the co-equal branch of this Court, which has done so. The Court, as well as the COMELEC, cannot supplant the same on the basis of perceived policy considerations.

Once more, the oft-repeated principle that necessarily guides this Court in the discharge of its constitutional mandate must be reiterated: **penal laws are to be construed strictly against the State and liberally in favor of the accused.**

In fine, the Court declares “bladed instruments” excluded from the term “deadly weapons” under Sec. 1(f), Rule I, in relation to Sec. 1(a), Rule II, of COMELEC Resolution No. 10015. Sec. 1(f), Rule I is void insofar as it includes “bladed instruments” in the definition of “deadly weapons,” thereby converting the possession or carriage of bladed instruments without the necessary permit from the COMELEC during the election period to an election offense. This is not what R.A. No. 7166 contemplates.

As a result, Criminal Case No. 2016-0281 against petitioner is dismissed.

Nonetheless, taking cue from the illuminating perspective offered by the respected Justice Zalameda during the deliberations on this case,<sup>[145]</sup> it must be clarified that the declaration in the instant case excluding “bladed instruments” from the term “deadly weapons” applies only to Sec. 1(f), Rule I, in relation to Sec. 1(a), Rule II, of COMELEC Resolution No. 10015, insofar as it “includes all types of bladed instruments” in the prohibition to bear, carry, or transport firearms and other deadly weapons during the election period. Said pronouncement does not apply to the inclusion of “bladed instruments” under the term “deadly weapons” in any other provision of law, such as Sec. 261(p)<sup>[146]</sup> of the Omnibus Election Code.

*Criminal Case No. 2016-0211 against Obay, Criminal Case No. 2016-0254 against Esperas, Criminal Case No. 2016-0131 against Valencia, and Criminal Case No. 2016-0313 against Pastorizo must also be dismissed.*

It must be recalled that only petitioner appealed before this Court the CA Decision annulling and setting aside the RTC Joint Resolutions and the three separate Orders in Criminal Case Nos. 2016-0131, 2016-0281, and 2016-0313. Obay, Esperas, Valencia, and Pastorizo did not appeal the CA Decision as against them. Nonetheless, the criminal charges against them must likewise be similarly dismissed.

The Information against Obay reads:

The undersigned Senior Assistant City Prosecutor of Naga City, Camarines Sur, accuses **MATEA OBAY y Coros**, for VIOLATION OF THE OMNIBUS ELECTION CODE, IN RELATION TO COMELEC RESOLUTION NO. SEC. 2(a) and SEC. 3, RULE X of Comelec Resolution No. 10015, committed as follows:

That on or about April 12, 2016, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while outside of [her] residence, and within the election period for the May 9, 2016 National and Local Elections, did, then and there, [willfully], unlawfully, and criminally carry and have in [her] possession, custody and control one red (1) Kitchen knife, with an over-all length of ten (10) inches and a blade length of five [sic] (7.5) inches without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside her resident or place of business.

ACTS CONTRARY TO LAW. <sup>[147]</sup>

Meanwhile, the Information against Esperas provides:

The undersigned Assistant City Prosecutor of Naga City accuses **JEFFREY ESPIRAS y Alemania** of Metroville, Zone 5, Sabang, Naga City, Camarines Sur, for **Violation of Sec. 2(a), Rule X, of COMELEC Resolution 10015 in rel. to Sec. 32 of RA 7166**, committed as follows:

That on or about **May 1, 2016**, at around 1:10 in the afternoon, in the

City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while outside of his residence and in a public place, within the election period for the May 9, 2016 National and Local Elections, did then and there willfully and unlawfully have in his possession, custody and control one (1) knife, with an overall length of 10 ½ inches, without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside his residence and not being a necessary tool of his trade.

ACTS CONTRARY TO LAW.<sup>[148]</sup>

On the other hand, the Information against Valencia reads:

The undersigned Senior Assistant City Prosecutor of Naga City accuses **RUEL VALENCIA y Adante** of San Mateo, Ca,aligan [sic], Camarines Sur, for **Violation of Sec. 1, Rule 2 of COMELEC Resolution 10015 in**, committed as follows:

That on or about March 13, 2016, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while outside of his residence and in a public place, within the election period for the May 9, 2016 National and Local elections, did then and there willfully and unlawfully have in his possession, custody and control one (1) folding knife TM : MASTIFF, with a blade length of 4 inches and an overall length of 8 inches, without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside his residence and not being a necessary tool of his trade.

ACTS CONTRARY TO LAW.<sup>[149]</sup>

Finally, the Information against Pastorizo reads:



The undersigned Assistant City Prosecutor of Naga City, Camarines Sur, accuses **JOEL PASTORIZO y Canlobo**, of Zone 7, Sagrada Familia, Peñafrancia Naga City, for **VIOLATION OF THE OMNIBUS ELECTION CODE, IN RELATION TO COMELEC RESOLUTION NO. 10015**, committed as follows:

That on or about **June 1, 2016**, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while outside of his residence, and within the election period for the May 9, 2016 synchronized National and Local Elections, did, then and there, [willfully], unlawfully and criminally carry and have in his possession, custody and control of the following, to wit: **1) two (2) pieces stainless shaving blade, with markings “FSC JR-2 6/1/2016” and “FSC JR-3 6/1/2016”; 2) one (1) piece icepick, with markings “FSC JR 6/1/2016”**, deadly weapon, without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside of his residence or place of business.

**ACTS CONTRARY TO LAW.**<sup>[150]</sup>

Obay, Esperas, Valencia, and Pastorizo were charged with the same crime as petitioner - violation of the prohibition to carry deadly weapons during the 2016 election period. All four were caught carrying bladed instruments during the 2016 election period and were charged with violation of COMELEC Resolution No. 10015.

It must be recalled that Obay and Esperas filed the motion to dismiss which led the RTC issuing its July 29, 2016 Joint Resolution declaring unconstitutional Sec. 1(a), Rule II of COMELEC Resolution No. 10015 and dismissing the criminal complaints against them both. In its separate August 1, 2016 Orders, the RTC cited its July 29, 2016 Joint Resolution and dismissed the criminal complaints against Valencia, Pastorizo, and petitioner. The prosecution filed a motion for reconsideration to the issuances, which the RTC denied in its August 25, 2016 Joint Resolution II. On petition for *certiorari* before the CA, the CA nullified and set aside these issuances of the RTC.

It is evident from the foregoing that the cases of the five accused (Obay, Esperas, Valencia, Pastorizo, and petitioner) have been treated as one by the prosecution, the defense, the

RTC, and the CA, at least insofar as the issue of the constitutionality of COMELEC Resolution No. 10015 is concerned. Their cases appear to have been impliedly consolidated with nary an objection from any actor. This is seen from the filing of the motion to dismiss before the RTC to the grant of the petition for *certiorari* by the CA.

While there has been no consolidation in any of the three commonly understood senses,<sup>[151]</sup> the Court sees no reason to depart from the treatment chosen by the prosecution, the defense, and the lower courts. Without necessarily delving into the propriety of an implied consolidation, the accused, having been treated as co-accused in the consolidated criminal cases, should reap the benefit of such procedure observed by the prosecution, the defense, and the lower courts.

It is also worth noting that all the accused were represented before the CA by the Special and Appealed Cases Service of the Public Attorney's Office (PAO), who remains to be the same counsel for petitioner herein. The PAO manifested that all the accused initially expressed their intention to appeal before this Court. However, despite diligent efforts, the accused later on could no longer be contacted, with the exception of petitioner who was able to sign the mandatory verification for the filing of this petition.<sup>[152]</sup>

Sec. 11(a), Rule 122 of the Revised Rules of Criminal Procedure as amended, states that:

Section 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter.** (Emphasis supplied)

The appeal taken by petitioner shall be applied to Obay, Esperas, Valencia, and Pastorizo since it is favorable and applicable to them. As discussed, Obay, Esperas, Valencia, and Pastorizo all face a criminal charge of violating the prohibition on carrying bladed instruments without the necessary permit during the 2016 election period as provided for in COMELEC Resolution No. 10015. Thus, the decision in the appeal taken by petitioner is pertinent to their respective criminal cases. Most importantly, it is beneficial to them since the Court hereby declares “bladed instruments” excluded from the definition of “deadly weapons” in COMELEC Resolution No. 10015.

Accordingly, Criminal Case No. 2016-0211 against Obay, Criminal Case No. 2016-0254

against Esperas, Criminal Case No. 2016-0131 against Valencia, and Criminal Case No. 2016-0313 against Pastorizo are dismissed.

**WHEREFORE**, the appeal is **GRANTED**. The June 22, 2018 Decision and the January 10, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 148051 are **REVERSED** and **SET ASIDE**.

Bladed instruments are hereby **DECLARED** excluded from the term “deadly weapons” in COMELEC Resolution No. 10015.

Criminal Case No. 2016-0281 against Jovit Buella y Abalain, Criminal Case No. 2016-0211 against Matea Obay y Coros, Criminal Case No. 2016-0254 against Jeffrey Esperas y Alemania, Criminal Case No. 2016-0131 against Ruel Valencia y Adante, and Criminal Case No. 2016-0313 against Joel Pastorizo y Canlobo are **DISMISSED**. The Court **ORDERS** their **IMMEDIATE RELEASE** from detention unless they are confined for another lawful cause.

The Regional Trial Court of Naga City, Branch 61 is **ORDERED** to **FURNISH** a copy of this Decision to the appropriate penal or detention facility where Buella, Obay, Esperas, Valencia, and Pastorizo may be detained within five (5) days from receipt of this Decision. The head of such institution is **ORDERED** to report to this Court the action taken within five (5) days from receipt of this Decision.

Let a copy of this Decision be **FURNISHED** to the Commission on Elections for their information and guidance.

**SO ORDERED.**

*Caguioa, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, and Marquez, JJ., concur.*

*Leonen, SAJ., concur. See separate opinion.*

*Kho, Jr. and Singh, JJ., no part.*

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\* No part due to his previous appointment as Commissioner of the Commission on Elections.

\*\* No part due to prior participation in the proceedings before the Court of Appeals.

<sup>[1]</sup> *Rollo*, pp. 11-34.

<sup>[2]</sup> *Id.* at 36-44; penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Maria Filomena D. Singh (now a Member of the Court).

<sup>[3]</sup> *Id.* at 46-47.

<sup>[4]</sup> *Id.* at 84-95; penned by Judge Soliman M. Santos, Jr.

<sup>[5]</sup> *Id.* at 106; some parts of the records indicate the Case No. as 2016-10131.

<sup>[6]</sup> *Id.* at 107.

<sup>[7]</sup> *Id.* at 109.

<sup>[8]</sup> *Id.* at 101-102.

<sup>[9]</sup> Entitled “RULES AND REGULATIONS ON: (1) THE BAN ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS; AND (2) THE EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS DURING THE ELECTION PERIOD OF THE MAY 9, 2016 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS.” Issued on November 13, 2015.

<sup>[10]</sup> *Rollo*, pp. 110-114.

<sup>[11]</sup> Also spelled as “Espiras” in some parts of the *rollo* (see *rollo*, p. 111).

<sup>[12]</sup> Also spelled as “Pastoreso” in some parts of the *rollo* (see *rollo*, p. 109).

<sup>[13]</sup> *Rollo*, p. 37.

<sup>[14]</sup> *Id.* at 113.

<sup>[15]</sup> *Id.* at 39.

<sup>[16]</sup> *Id.* at 96-100.

<sup>[17]</sup> *Id.* at 97-98.

<sup>[18]</sup> *Id.* at 133-135.

<sup>[19]</sup> *Id.* at 134-135.

<sup>[20]</sup> *Id.* at 95.

<sup>[21]</sup> *Id.* at 88.

<sup>[22]</sup> *Id.* at 89-91.

<sup>[23]</sup> *Id.* at 92-93.

<sup>[24]</sup> *Id.* at 93.

<sup>[25]</sup> *Id.* at 94.

<sup>[26]</sup> *Id.* at 106.

<sup>[27]</sup> *Id.* at 107.

<sup>[28]</sup> *Id.* at 109.

<sup>[29]</sup> *Id.* at 106, 107, and 109.

<sup>[30]</sup> *Id.* at 103-105.

<sup>[31]</sup> *Id.* at 101-102.

<sup>[32]</sup> *Id.* at 48-83.

<sup>[33]</sup> *Id.* at 43-44.

<sup>[34]</sup> *Id.* at 40-43.

<sup>[35]</sup> *Id.* at 21.

<sup>[36]</sup> *Id.* at 21-23.

<sup>[37]</sup> *Id.* at 24.

<sup>[38]</sup> *Id.* at 26-29.

<sup>[39]</sup> *Id.* at 240-278.

<sup>[40]</sup> *Id.* at 255-259.

<sup>[41]</sup> *Id.* at 259-262.

<sup>[42]</sup> *Id.* at 262-267.

<sup>[43]</sup> *Id.* at 268-270.

<sup>[44]</sup> *Id.* at 271.

<sup>[45]</sup> *Id.* at 271-273.

<sup>[46]</sup> *Id.* at 329-333.

<sup>[47]</sup> *Id.* at 329.

<sup>[48]</sup> **De Mesa v. Pepsi Cola Products Phils., Inc.**, 504 Phil. 685, 691 (2005).

<sup>[49]</sup> 823 Phil. 284 (2018).

<sup>[50]</sup> *Id.* at 291-292.

<sup>[51]</sup> *Id.* at 295.

<sup>[52]</sup> **Punongbayan-Visitacion v. People**, 823 Phil. 212, 223 (2018).

<sup>[53]</sup> 514 Phil. 307 (2005).

<sup>[54]</sup> *Id.* at 316.

<sup>[55]</sup> 708 Phil. 24 (2013).

<sup>[56]</sup> 599 Phil. 91 (2009).

<sup>[57]</sup> **Firaza, Sr. v. Spouses Ugay**, *supra* at 29.

<sup>[58]</sup> 26 Phil. 192 (1913).

<sup>[59]</sup> “An Act to Extend and Regulate the Responsibility of Employers for Personal Injuries and Deaths Suffered by their Employees While at Work.”

<sup>[60]</sup> **Cadwallader-Gibson Lumber Co. v. Del Rosario**, *supra* at 194.

<sup>[61]</sup> 30 Phil. 563 (1915).

[62] *Id.* at 568.

[63] 43 Phil. 259 (1922).

[64] *Id.* at 264.

[65] *Id.* at 265.

[66] *Id.*

[67] *Id.* at 270.

[68] *Id.*

[69] 65 Phil. 56 (1937).

[70] “An Act Establishing Probation for Persons, Eighteen Years of Age or Above, Convicted of Certain Crimes by the Courts of the Philippine Islands; Providing Probation Officers Therefor; and for Other Purposes.”

[71] **People v. Vera**, *supra* at 82, citing **McGirr v. Hamilton**, *supra* note 61, at 568.

[72] **People v. Vera**, *id.* at 88.

[73] 128 Phil. 328 (1967).

[74] *Id.* at 334, citing **People v. Vera**, *supra* at 88 and **Cadwallader-Gibson Lumber Company v. Del Rosario**, *supra* note 58, at 194.

[75] *Id.* at 335.

[76] 503 Phil. 917 (2005).

[77] *Id.* at 932-933.

[78] 564 Phil. 528, 539 (2007).

[79] 583 Phil. 706 (2008).

[80] 587 Phil. 403 (2008).

[81] 596 Phil. 283 (2009).

[82] *Id.* at 312-313.

[83] 630 Phil. 1 (2010).

[84] 646 Phil. 402 (2010).

[85] 712 Phil. 44 (2013).

[86] *Id.* at 77.

[87] *Id.* at 78.

[88] *Id.* at 78-79.

[89] *Id.* at 79-81.

[90] 716 Phil. 132 (2013).

[91] Otherwise known as the “New Central Bank Act.”

[92] 791 Phil. 243 (2016).

[93] **International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.)**, 774 Phil. 508 (2015).

[94] Rules and Regulations for the Importation and Release into the Environment of Plants and Plant Products Derived from the Use of Modern Biotechnology. Issued on April 3, 2002.

[95] **International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.)**, *supra* note 92, at 274-275.

[96] 797 Phil. 12 (2016).

[97] 824 Phil. 87 (2018).

[98] R.A. No. 9275, Art. 2, Sec. 4(m). *Effluent* - means discharges from known source which is passed into a body of water or land, or wastewater flowing out of a manufacturing plant, industrial plant including domestic, commercial and recreational facilities.

[99] **Cadwallader-Gibson Lumber Co. v. Del Rosario**, *supra*; **McGirr v. Hamilton**, *supra*; **Walter E. Olsen & Co., Inc. v. Aldanese**, *supra*; **People v. Vera**, *supra*; and **Republic v.**



**N. Dela Merced & Sons, Inc., supra.**

<sup>[100]</sup> **People v. Vera, supra; San Miguel Brewery, Inc. v. Magno, supra; Philippine National Bank v. Palma, supra; Rayo v. Metropolitan Bank and Trust Co., supra; Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs, supra; Dasmariñas Water District v. Monterey Foods Corp., supra; ABS-CBN Broadcasting Corp. v. Philippine Multi-Media System, Inc., supra; Gutierrez v. Department of Budget and Management, supra; Surigao del Norte Electric Cooperative, Inc. v. Energy Regulatory Commission, supra; Garcia v. Drilon, supra; Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas, supra; International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Phils.), supra; and National Association of Electricity Consumers for Reforms v. MERALCO, supra.**

<sup>[101]</sup> **Joint Ship Manning Group, Inc. v. Social Security System, G.R. No. 247471, July 7, 2020.**

<sup>[102]</sup> *Id.*

<sup>[103]</sup> 836 Phil. 281 (2018).

<sup>[104]</sup> **G.R. No. 219560, July 1, 2020.**

<sup>[105]</sup> “An Act to Further Strengthen the Anti-Money Laundering Law, Amending for the Purpose Sections 10 and 11 of Republic Act No. 9160, Otherwise Known as the Anti-Money Laundering Act of 2001, As Amended, and for Other Purposes.”

<sup>[106]</sup> Otherwise known as the “Dangerous Drugs Act of 2002.”

<sup>[107]</sup> **Palencia v. People, supra.**

<sup>[108]</sup> *Rollo*, p. 99.

<sup>[109]</sup> *Id.* at 113.

<sup>[110]</sup> **Commission on Audit v. Pampilo, Jr., G.R. No. 188760, June 30, 2020.**

<sup>[111]</sup> 114 Phil. 756 (1962).

<sup>[112]</sup> *Id.* at 762.

[113] 1997 Rules of Civil Procedure, Rule 65, Sec. 2.

[114] **Bedol v. Commission on Elections**, 621 Phil. 498, 510 (2009).

[115] **Lim v. Gamosa**, 774 Phil. 31, 66 (2015).

[116] Letter of Justice Zalameda dated April 9, 2023, p. 4.

[117] *Rollo*, p. 113.

[118] 630 Phil. 670 (2010).

[119] *Id.* at 684.

[120] **Centeno v. Villalon-Pornillos**, 306 Phil. 219, 230-231 (1994).

[121] Reflections of SAJ Leonen, p. 1.

[122] *Id.* at 4.

[123] *Id.*

[124] *Id.*

[125] *Id.* at 5.

[126] *Id.* at 6.

[127] *Id.* at 7.

[128] Pertinent excerpt from P.D. No. 9, as amended:

WHEREAS, pursuant to Proclamation No. 1081 dated September 21, 1972, the Philippines has been placed under a state of martial law;

WHEREAS, by virtue of said Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and General Order No. 7 dated September 23, 1972, have been promulgated by me;

WHEREAS, subversion, rebellion, insurrection, lawless violence, [criminality], chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly

weapons;

NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, in order to attain the desired result of the aforesaid Proclamation No. 1081 and General Orders Nos. 6 and 7, do hereby order and decree that:

x x x x

[129] 176 Phil. 186 (1978).

[130] **People v. Purisima**, *supra* note 129, at 203-206.

[131] Revised Reflections of Justice Lazaro-Javier, p. 4.

[132] *Id.* at 4-6.

[133] *Id.* at 7.

[134] *Id.* at 12-13.

[135] *Ponencia*, pp. 3, 49-50; Informations against the accused in the instant case.

[136] Rule X

*Prohibitions and Penalties*

x x x x

Section 2. *Absence of Valid and Subsisting Certificate of Authority.* - Any person who shall:

- a. **Bear, carry or transport Firearms or other Deadly Weapons; or**
- b. Employ, avail or engage of the services of security personnel or bodyguards; or
- c. Transport or deliver Firearms and/or its parts, Ammunition and/or its components, and, Explosives and/or its components;

**during election period without a valid and subsisting Certificate of Authority shall be guilty of an election offense.**

[137] **Orceo v. Commission on Elections**, *supra* note 118, at 684.

[138] Entitled "An Act to Regulate the Importation, Acquisition, Possession, Use, and Transfer of Firearms and to Prohibit the Possession of Same Except in Compliance with the Provisions of this Act," October 12, 1907.

[139] **Tan Co v. The Civil Register of Manila**, 467 Phil. 904, 913 (2004).

<sup>[140]</sup> Section 26. It shall be unlawful for any person to carry concealed about his person any bowie knife, dirk, dagger, kris, or other deadly weapon: *Provided*, That this prohibition shall not apply to firearms in the possession of persons who have secured a license therefor or who are entitled to carry same under the provisions of this Act. Any person violating the provisions of this section shall, upon conviction in a court of competent jurisdiction, be punished by a fine not exceeding five hundred pesos, or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment in the discretion of the court.

<sup>[141]</sup> **Saguisag v. Ochoa, Jr.**, 777 Phil. 280, 333 (2016).

<sup>[142]</sup> Quezon City: R.P. Garcia Publishing, Co., (1990), pp. 247-297.

<sup>[143]</sup> COMELEC Resolution No. 8298 dated September 11, 2007.

<sup>[144]</sup> The following COMELEC Resolutions all include “bladed instruments” in the purview of “deadly weapons” for their respective election periods:

1. Sec. 2(a) of Resolution No. 8298, as amended, for the October 29, 2007 Barangay/SK Elections;
2. Sec. 2(c) of Resolution No. 8714, as amended, for the May 10, 2010 National and Local Elections;
3. Sec. 2(c) of Resolution No. 9561-A, as amended, for the May 13, 2013 Automated Synchronized National, Local Elections and ARMM Regional Elections;
4. Sec. 1(a), Rule II, in relation to Sec. 1(f), Rule I of COMELEC Resolution No. 10015 for the May 9, 2016 Synchronized National and Local Elections;
5. Sec. 1(l) of Resolution No. 10446, as amended, for the May 13, 2019 National and Local Elections; and
6. Sec. 1(g) of Resolution No. 10728 for the May 9, 2022 National and Local Elections.

<sup>[145]</sup> Letter of Justice Zalameda dated April 9, 2023, pp. 4-5.

<sup>[146]</sup> Section 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x

(p) Deadly weapons. — Any person who carries any deadly weapon in the polling place and within a radius of one hundred meters thereof during the days and hours fixed by law for the registration of voters in the polling place, voting, counting of votes, or preparation of the election returns. However, in cases of

affray, turmoil, or disorder, any peace officer or public officer authorized by the Commission to supervise the election is entitled to carry firearms or any other weapon for the purpose of preserving order and enforcing the law.

<sup>[147]</sup> *Rollo*, p. 110.

<sup>[148]</sup> *Id.* at 111.

<sup>[149]</sup> *Id.* at 112.

<sup>[150]</sup> *Id.* at 114.

<sup>[151]</sup> See **Republic v. Sandiganbayan**, 678 Phil. 358, 403-404 (2011).

<sup>[152]</sup> *Rollo*, p. 11.

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## CONCURRING OPINION

### LEONEN, SAJ.:

The Commission on Elections is mandated to guarantee the orderly conduct of elections. Thus, the transport and possession of firearms and other deadly weapons are banned during the election period if done without the proper permits for exemption.

This purpose is not achieved if the commission indiscriminately classifies all types of bladed instruments as deadly weapons, without properly defining what should be banned. Bladed instruments, without further definition as to its primary purpose or use, may encompass a multitude of objects not contemplated by law enforcement agencies.

I agree with the *ponencia* that the inclusion of “bladed instruments” under the blanket prohibition on deadly weapons in Comelec Resolution No. 10015 is *ultra vires*. In my view, the Commission on Election’s definition of a “deadly weapon” is vague and unclear, not only on what may be considered deadly, but also on what may be considered a weapon.

During the 2016 National and Local Elections, five separate Informations were filed against Matea C. Obay (Obay), Jeffrey A. Esperas (Esperas), Ruel A. Valencia (Valencia), Joel C.

Pastorizo (Pastorizo), and Jovit A. Buella (Buella) before the trial court for violation of Comelec Resolution No. 10015 in relation to Section 261(q) of the Omnibus Election Code, or the prohibition against the bearing, carrying or transporting firearms or other deadly weapons during the election period.<sup>[1]</sup> The Information against Buella, in particular, reads:

That on or about May 8, 2016, in the City of Naga, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have in his possession, custody and control, one (1) black folding knife TM:Cardsharp, without the written permit to carry the same outside of his residence and public place for the election period January 10, 2016 to June 8, 2016 from the COMELEC.

ACTS CONTRARY TO LAW.<sup>[2]</sup>

For reference, Section 261(q) of the Omnibus Election Code provides:

Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense:

.....

q. Carrying firearms outside residence or place of business. - Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

Section 32 of Republic Act No. 7166,<sup>[3]</sup> on the other hand, provides:

SEC. 32. *Who May Bear Firearms.* - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places,

including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

Comelec Resolution No. 10015 was promulgated by the Commission on Elections on November 13, 2015 to provide for the rules and regulations relative to the bearing, carrying, or transporting of firearms or other deadly weapons during the 2016 National and Local Elections. The Resolution states:

## RULE II

### GENERAL PROVISIONS

#### SECTION 1. Prohibited Acts. - During the Election Period:

a. No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building, street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution[.]<sup>[4]</sup>

The Resolution states the same definition of “firearm” as Republic Act No. 10591,<sup>[5]</sup> that is “any handheld or portable weapon, whether a small arm or light weapon, that expels or is designed to expel a bullet, shot, slug, missile or any projectile, which is discharged by means of expansive force of gases from burning gunpowder or other form of combustion or

any similar instrument or implement.”<sup>[6]</sup> The Resolution goes even further and adds:

For purposes of this Resolution, imitation firearms are also deemed included in the term Firearms. An imitation firearm, as defined under R.A. No. 10591, refers to a replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to believe that such imitation firearm is a real firearm. The term shall include airguns and airsoft guns.<sup>[7]</sup>

Under the same Resolution, “deadly weapon” is defined as:

#### Rule I

SECTION 1. Definition of Terms. – As used in this Resolution:

• • • •

f. Deadly Weapon includes all types of bladed instruments, hand grenades or other explosives, except pyrotechnics. Provided, that a bladed instrument is not covered by the prohibition when possession of the bladed instrument is necessary to the occupation of the possessor or when it is used as a tool for a legitimate activity.<sup>[8]</sup>

The *ponencia* held that the Commission on Elections exceeded the scope of its authority when it included “bladed instruments” within the definition of “deadly weapons,” since the latter only contemplates those deadly weapons susceptible to licensing and regulation.<sup>[9]</sup>

I agree.

In my view, Rule II, Section 1 in relation to Rule I, Section 1(f) of Comelec Resolution No. 10015 is vague.

Unlike “firearms,” no law has defined what a “deadly weapon” is. The Commission on Elections’ definition is unnecessarily broad, including “*all types* of bladed instruments” that are not “necessary to the occupation of the possessor” or are not “used as a tool for a legitimate activity.”



In doing so, it has not given an enumeration on the bladed instruments included in that definition, preferring instead to subsume it into “all types,” or all objects with blades. Rule II, Section 1 of Comelec Resolution No. 10015 makes it an election offense to possess, transport, or carry outside of one’s residence *any* object with bladed edges during the election period. The Resolution has likewise not defined what could be considered “necessary” to the possessor’s occupation or what could be considered a “legitimate activity.”

Thus, the mere possession of a kitchen knife outside of one’s residence when not using it for kitchen purposes may be considered an election offense. The same situation can be said of shaving blades, when the possessor does not have or is incapable of growing a beard or body hair. This is an alarming interpretation, since election offenses carry with it the penalty of imprisonment of one year to six years, disqualification from public office, and deprivation of the right to suffrage.<sup>[10]</sup>

It can be argued that this absurd situation would not arise, since law enforcement officers would be reasonable enough not to include kitchen knives or shaving blades within this definition. In this particular case, however, accused Obay was charged with possession of a kitchen knife<sup>[11]</sup> while accused Pastorizo was charged with possession of two pieces of shaving blades.<sup>[12]</sup> With the myriad of bladed instruments in existence, it is unclear which specific bladed instruments should be included within the Commission on Elections’ definition.

The definition under Rule 1, Section 1(f) does not even require the bladed instrument to be sharp or capable of doing harm. It merely states that the instrument be “bladed” or having a blade or blades. A decorative sword may not necessarily be for one’s occupation, since one can purchase it as a hobby. It may also not be used as a tool for a legitimate activity since it is merely decorative. Thus, transporting, carrying, or possessing a decorative sword outside of one’s residence can be considered an election offense under Rule II, Section 1 of Comelec Resolution No. 10015.

Pastorizo was also found to be carrying an icepick.<sup>[13]</sup> An icepick, though sharp and pointy, does not have a blade, and thus, is not strictly a “bladed instrument.” It would not be included within the Commission’s definition of a “deadly weapon,” but Pastorizo was nonetheless charged with an election offense.

It can be argued that any object can become a deadly weapon if one is creative enough.

Section 264<sup>[14]</sup> of the Omnibus Election Code, however, is a penal provision. As the *ponencia* so aptly points out, penal laws are to be construed strictly against the State and liberally in favor of the accused.<sup>[15]</sup> The State cannot hold persons criminally liable under Rule II, Section 1 of Comelec Resolution No. 10015 without a precise definition of what exactly constitutes a “deadly weapon.”

This Court has stated that a statute or act is vague “when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application.”<sup>[16]</sup> *People v. Nazario*<sup>[17]</sup> explains that the statute or act is unconstitutional since “(1) it violates due process for failure to accord persons, especially the parties [targeted] by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.”<sup>[18]</sup> *Nazario*, however, cautions that the vagueness must be such that “it cannot be clarified by either a saving clause or by construction.”<sup>[19]</sup> The statute or act may still be valid if merely “couched in imprecise language—but which nonetheless specifies a standard though defectively phrased—in which case, it may be ‘saved’ by proper construction.”<sup>[20]</sup>

Thus, for the definition under Rule I, Section 1(f) to remain valid, it must state a more specific standard of what constitutes a “deadly weapon.”

Prior laws cannot be resorted to for this definition. Act No. 1780<sup>[21]</sup> implies that a “deadly weapon” is that “from which a bullet, ball, shot, shell, or other missile or missiles may be discharged by means of gunpowder or other explosive.”<sup>[22]</sup> Presidential Decree No. 9,<sup>[23]</sup> as amended by Batas Blg. 6<sup>[24]</sup> enumerates bladed, pointed, or blunt weapons as “knife, spear, *pana*, dagger, *bolo*, *barong*, kris, or *chako*.” The *ponencia*, however, has already pointed out that Presidential Decree No. 9 has since become inexistent, since the reason for its existence, that is, Martial Law in the 1970s, has already ceased.<sup>[25]</sup>

The Bureau of Jail Management Penology’s operating manual may provide this Court some insight into a proper definition:

Deadly Weapon/s — are generally defined as a firearm or anything manifestly designed, made, or adapted for purposes of inflicting death or serious physical injury. The term includes, but is not limited to, a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger, or any billy, black-jack, bludgeon, metal knuckles and improvised weapons.<sup>[26]</sup>

Buella was charged with possession of “one (1) black folding knife TM:Cardsharp.”<sup>[27]</sup> A folding knife, without further allegation as to its primary and exclusive purpose, should not be automatically classified as a weapon, much less as a deadly weapon.

In my view, a “deadly weapon” should be an object primarily and exclusively designed to maim, kill, or otherwise cause death. A bladed instrument, without any further definition as to its primary purpose, should not automatically be a “deadly weapon” within the definition of Comelec Resolution No. 10015. As such, instruments carried for the primary purpose of self-defense, though sharp, pointy, or bladed, should not be classified as “deadly weapons.”

The prohibition of firearms or other deadly weapons during the election period is meant to guarantee the safe and peaceful conduct of elections. However, elections are rarely disrupted by random individuals carrying common household items or self-defense tools outside their residences. Historically speaking, election-related violence is often committed by the private armies of rival politicians, as infamously illustrated by the Maguindanao Massacre.

The goal of the Commission of Elections is the conduct of free and safe elections. This is not achieved with indiscriminate arrests and unclear guidelines that do not clearly address the root of the violence. Accordingly, I recommend that the Commission on Elections be directed to provide a clearer and more concise definition of “deadly weapon” in their future resolutions.

**ACCORDINGLY**, I vote to **GRANT** the appeal and **DECLARE** “bladed weapons” as excluded from the scope of Comelec Resolution No. 10015.

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<sup>[1]</sup> *Ponencia*, p. 2.

<sup>[2]</sup> *Ponencia*, pp. 2-3.

<sup>[3]</sup> An Act Providing for Synchronized National and Local Elections and For Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes.

<sup>[4]</sup> Comelec Resolution No. 10015 (2015), rule 2, sec. 1(a).

<sup>[5]</sup> Comprehensive Firearms and Ammunition Regulation Act (2013).

<sup>[6]</sup> Comelec Resolution No. 10015 (2015), rule 1, sec. 1(j).

<sup>[7]</sup> *Id.*

<sup>[8]</sup> Comelec Resolution No. 10015 (2015), rule 1, sec. 1(f).

<sup>[9]</sup> *Ponencia*, p. 38.

<sup>[10]</sup> OMNIBUS ELECTION CODE (1985), sec. 264.

<sup>[11]</sup> *Ponencia*, p. 49.

<sup>[12]</sup> *Id.* at 50.

<sup>[13]</sup> *Id.*

<sup>[14]</sup> OMNIBUS ELECTION CODE (1985), sec. 264 provides:

Sec. 264. Penalties. - Any person found guilty or any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

<sup>[15]</sup> *Ponencia*, p. 38.

<sup>[16]</sup> **People v. Nazario**, 247-A Phil. 276, 286 (1988) [Per J. Sarmiento, *En Banc*].

<sup>[17]</sup> 247-A Phil. 276 (1988) [Per J. Sarmiento, *En Banc*].

<sup>[18]</sup> *Id.* at 286.

<sup>[19]</sup> *Id.*

<sup>[20]</sup> *Id.* at 287.

<sup>[21]</sup> An Act to Regulate the Importation, Acquisition, Possession, Use, and Transfer of

Firearms, and to Prohibit the Possession of Same Except in Compliance with the Provisions of this Act.

<sup>[22]</sup> Act No. 1780 (1907), sec. 1.

<sup>[23]</sup> Presidential Decree No. 9 (1972), sec. 3.

<sup>[24]</sup> Batas Pambansa Blg. 6, (1978), sec. 1.

<sup>[25]</sup> *Ponencia*, pp. 38-41.

<sup>[26]</sup> BJM-DI Standard Operating Procedure No. 19-17 (2017), Proper Handling, Custody and Disposition of Seized Deadly Weapons.

<sup>[27]</sup> *Ponencia*, p. 3. It is unclear what type of folding knife this is, but a preliminary search online shows this image:

(image supposed to be here)

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