

MOANA DUBAY CAMILOTES JICKAIN, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. E-01622 (UDK), November 11, 2025

Ponente: LOPEZ, J.

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LOPEZ, J.:

This Court resolves the Petition for Certiorari (With Urgent Prayer for Writ of Preliminary Injunction, and for Urgent Issuance of Temporary Restraining Order (TRO), and/or Status Quo Ante Order)[1] filed by petitioner Moana Dubay Camilotes Jickain (Jickain) assailing the Resolution[2] of the Commission on Elections En Banc (COMELEC En Banc), which affirmed the Resolution[3] of COMELEC First Division (COMELEC Division). COMELEC Division granted the Petition (with Motion for Suspension of Proclamation Ad Cautelam)[4] filed by COMELEC Task Force Against Premature Campaigning (Task Force) against Jickain for violating Section 80, in relation to Section 68, of Batas Pambansa Bilang 881, or the Omnibus Election Code (OEC).

Facts

On September 1, 2023, Jickain, a resident of Barangay Villarica, Babak District, Island Garden City of Samal (IGaCOS), Davao Del Norte, filed a Certificate of Candidacy (COC) for the position of member, Sangguniang Barangay of Barangay Moncada, IGaCOS, Davao Del Norte in the October 30, 2023 Barangay Sangguniang Kabataan Elections (2023 BSKE).[5]

On October 17, 2023, the Office of the Regional Election Director (ORED) of Region XI received a complaint, accompanied by Facebook photos posted by Jickain. These included a profile picture frame featuring her face, name, and the statement "IPADAYON UG MAS PALAMBUON", as well as shared posts made prior to the official campaign period.[6]

Acting on this complaint, the ORED issued an Order which directed Jickain to submit an answer or counter-affidavit within three days from receipt of the notice, and to explain why she should not be disqualified. Jickain filed her answer within the prescribed period, asserting that changing her profile picture and posting public information on her social media account did not constitute campaigning. She further argued that these actions were merely an exercise of her freedom of expression.[7]

On October 27, 2023, the Task Force received a recommendatory resolution from the ORED, which contained its findings that the acts committed by Jickain constitute premature campaigning, in violation of Section 80 of the OEC.[8]

On October 30, 2023, Jickain, among others, was proclaimed as member of the Sangguniang Barangay of Barangay Moncada, IGaCOS, Davao Del Norte, based on the Certificate of Canvass of Votes and Proclamation of Winning Candidates for Punong Barangay and Kagawad, Sangguniang Barangay[9] issued by COMELEC.

On October 31, 2023, the Task Force filed a Petition (with Motion for Suspension of Proclamation Ad Cautelam)[10] *motu proprio* against Jickain. The pertinent portions of the Petition are quoted below:

16.

In defining the term "candidate", Section 79 of the OEC states as follows:

Section 79. Definitions. – As used in this Code:

The term "candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties[.]

17.

A reading of the said provision shows that a person is already deemed a "candidate" at the time of the filing of his COC.

18.

Thus, when the [F]acebook profile picture frame and [F]acebook posts of [Jickain] are shared in the online platform shows an active invitation to its viewers to make known her intention to run and promote her candidacy, while she was already a candidate under the provisions of the law, and as such, is precluded from campaigning outside the designated campaign period which is from October 19, 2023 (Thursday) to October 28, 2023 (Saturday).

19.

It must be emphasized that the audience to where these [F]acebook campaign materials were posted are primarily composed of friends of [Jickain] which may be in the same location more so are voters in the barangay where [Jickain] seeks to be elected. Verily, the intention of [Jickain] In such acts, was to solicit votes and promote his [sic] candidacy for the 2023 BSKE.

20.

While the act may be, in the eyes of a layman [sic], just an ordinary act of reaching out to her constituents, such is considered as campaigning by the OEC. The same section, Section 79 of the OEC, defined "election campaign" or "partisan political activity", viz[.]:

Section 79. Definitions. – As used in this Code: [. . .]

[. . .]

(b)

The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1)

Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate:

(2)

Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3)

Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4)

Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5)

Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for

nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

21.

Relative thereto, the Commission En Banc promulgated Minute Resolution No. 23-0442. Relevant portions thereof read:

The Commission, after due deliberation, RESOLVED, as it hereby RESOLVES, to APPROVE the following recommendations of the Law Department, to wit:

To amend item (1) of the Glossary of Terms, as follows:

1)

Candidate shall refer to any person seeking an elective public office, who has filed [their] certificate of candidacy, and who has filed [their] certificate of candidacy, and who has not died, withdrawn [their] certificate of candidacy, had [their] certificate of candidacy denied due course or cancelled, or has been otherwise disqualified before the start of the campaign period for which [they] filed [their] certificate of candidacy. Provided, that, unlawful acts or omissions applicable to a candidate shall take effect upon the filing of Certificate of Candidacy.

To add Section 174 (c), to wit:

c.

Any unlawful act or omissions applicable to a candidate shall take effect upon the filing of Certificate of Candidacy[.][11]

In essence, the Task Force opined that Jickain engaged in premature campaigning when she used a Facebook profile picture containing a campaign slogan and shared related posts despite having already filed her COC on September 1, 2023. While she argued that the campaign period had not yet begun at the time of posting, COMELEC clarified that the prohibition against premature campaigning applies immediately upon the filing of the COC. COMELEC made it clear that any unlawful act or omission applicable to a candidate takes effect from the moment the COC is filed, regardless of the official campaign period.[12]

In her answer, Jickain maintained that she was merely exercising her right to freedom of expression. She further asserted that, under this Court's ruling in *Penera v. COMELEC*,[13] a candidate can only be held liable for unlawful acts or omissions committed during the official campaign period.[14]

On March 6, 2024, COMELEC Division rendered its assailed Resolution[15] which granted the Task Force's Petition. COMELEC Division found that Jickain engaged in premature campaigning, as defined by the following elements: (1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; and (3) the act is done outside the campaign period.[16]

Here, Jickain's act of uploading a publicly viewable profile picture on Facebook, bearing her name, image, and the phrase "IPADAYON UG MAS PALAMBUON," remains uncontroverted. Viewed in the context of her re-election bid, the post constitutes partisan political activity aimed at promoting the continuation of her public service, which satisfies the first element.[17]

The second element is likewise established. Jickain filed her COC on September 1, 2023, rendering her a candidate under the law. The subject post was clearly intended to advance her candidacy.[18]

Jickain invokes *Penera*, arguing that she was not yet considered a candidate at the time of the alleged partisan activity, as candidacy is deemed to commence only at the start of the campaign period. This principle, however, is inapplicable to the present case.[19]

In *Lanot v. Commission on Elections*,[20] this Court clarified that the intent behind Section 11 of Republic Act No. 8436,[21] later amended by Republic Act No. 9369,[22] was to accommodate the requirements of the automated election system, particularly the early printing of official ballots. Congress explicitly intended that persons filing COC under the early deadline would not be penalized for acts committed prior to the campaign period. This legislative intent was specific to national and local elections conducted under the automated system.[23]

However, the 2023 BSKE were not conducted using an automated election system. As such, the rationale underlying *Penera* and the amendments to Republic Act. No. 8436 does not apply. The exemption from liability for premature campaigning based on the timing of candidacy under the automated system cannot be extended to the 2023 BSKE.[24]

As to the third element, the social media post was made on October 17, 2023 or outside the official campaign period, which ran from October 19 to 28, 2023. Thus, all requisites of premature campaigning are present.[25]

The dispositive portion of COMELEC Division's Resolution states:

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES,

[sic] to GRANT the Petition (with Motion for Suspension of Proclamation Ad Cautelam) filed by the Taskforce Against Premature Campaigning against Respondent Moana Dubay Camilotes Jickain.

SO ORDERED.[26]

Jickain received a copy of COMELEC Division's Resolution on March 7, 2024 via electronic mail.[27]

On March 12, 2024, Jickain filed a Motion for Reconsideration. On April 14, 2025, COMELEC En Banc denied her Motion in its assailed Resolution.[28] The dispositive portion of which reads:

WHEREFORE, premises considered, the instant Motion for Reconsideration is DENIED and the assailed Resolution dated [March 6,] 2024 is hereby AFFIRMED.

SO ORDERED.[29]

Jickain received a copy of COMELEC En Banc's Resolution on April 15, 2025 via electronic mail.[30]

On May 14, 2025, Jickain allegedly filed a Motion for Extension to File a Petition for Certiorari before this Court.[31] However, this Court has yet to receive a copy of the said Motion for Extension.[32]

On July 2, 2025, Jickain filed the present Petition for Certiorari claiming that COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the Resolution of COMELEC Division, which granted the motu proprio Petition (with Motion for Suspension of Proclamation Ad Cautelam) filed by the Task Force to disqualify her, despite her prior proclamation.[33]

This Court's Ruling

The Petition lacks merit.

The Petition for Certiorari is filed out of time

Rule 64, Section 3, in relation to Rule 65, of the Rules of Court provides that a petition challenging any decision, order, or ruling issued by COMELEC must be filed strictly within 30 days from receipt of the judgment, final order, or resolution being challenged. If a motion for new trial or reconsideration is filed, the running of the 30-day period is interrupted. If the motion is denied, the petitioner has only the remaining balance of the original 30-day period to file the petition, which in no case shall be less than five days from notice of the denial. The rule states:

Section 3. Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

It bears to stress that Rule 64 is distinct from Rule 65, especially in the prescribed period for filing petitions for certiorari.[34] In *Pates v. COMELEC*,[35] this Court explained:

Rule 64, however, cannot simply be equated to Rule 65 even if it expressly refers to the latter rule. They exist as separate rules for substantive reasons as discussed below. Procedurally, the most patent difference between the two — i.e., the exception that Section 2, Rule 64 refers to — is Section 3 which provides for a special period for the filing of petitions for certiorari from decisions or rulings of the COMELEC en banc. The period is 30

days from notice of the decision or ruling (instead of the 60 days that Rule 65 provides), with the intervening period used for the filing of any motion for reconsideration deductible from the originally-granted 30 days (instead of the fresh period of 60 days that Rule 65 provides).[36]

Indeed, Rule 64 and Rule 65 are distinct and separate provisions. The most notable difference lies in the prescribed period for filing petitions for certiorari. Under Rule 64, a petition must be filed within 30 days from notice of the judgment or final order of COMELEC. This period is interrupted only by the filing of a motion for reconsideration, and upon its denial, the petitioner may file the petition within the remaining balance of the original 30-day period, which must not be less than five days. In contrast, Rule 65 allows a 60-day period for filing, and under the "fresh period rule," the entire 60 days recommences from notice of the denial of the motion for reconsideration. This Court in *Pates* made it clear that this fresh period rule does not apply to petitions under Rule 64, reinforcing the strict and limited timeline for assailing decisions of constitutional commissions, such as COMELEC.[37]

In the same vein, in *Mayor Villanueva v. Commission on Elections*,[38] this Court underscored that "the fresh-period rule does not apply to petitions for certiorari under Rule 64 of the Rules of Court." [39] In *Mayor Villanueva*, this Court held:

The period cannot be reckoned from the date of notice of the second assailed resolution as this is merely a denial of the preliminary recourse (identified in Rule 64, Section 3 as the "motion for new trial or reconsideration") from the initial ruling, which is the "decision, order, or ruling" contemplated by the Constitution. This is precisely the reason why Rule 64, Section 3 suspends the running of the thirty-day period upon the filing of such preliminary recourse, and restarts the period once the aggrieved party is notified of the action thereon.[40]

In this case, the chronology of material dates shows:

- On March 6, 2024—COMELEC Division issued its Resolution;[41]
- On March 7, 2024—petitioner received via electronic email a copy of COMELEC Division's Resolution;[42]
- On March 12, 2024—petitioner filed a motion for reconsideration;[43]
- On April 14, 2025—COMELEC En Banc issued its assailed Resolution,[44] which denied petitioner's Motion for Reconsideration;
- On April 15, 2025—petitioner received a copy of COMELEC En Banc's Resolution via electronic mail from the Office of the Clerk of COMELEC;[45]
- On May 14, 2025—petitioner allegedly filed a Motion for Extension to File a Petition for Certiorari before this Court. However, this Court has yet to receive a copy of the said Motion for Extension;[46]
- On July 2, 2025—petitioner filed the present Petition for Certiorari.[47]

From the date of receipt of COMELEC Division's Resolution on March 7, 2024, the 30-day period within which to file a petition for certiorari under Rule 64, Section 3 of the Rules of Court commenced. As petitioner filed a Motion for Reconsideration on March 12, 2024, it used up five days of the original 30-day period. The filing of the Motion for Reconsideration interrupted the running of the period. Upon receipt of COMELEC En Banc's denial of the Motion for Reconsideration on April 14, 2025, petitioner had the remaining 25 days to file her petition for certiorari. Counting 25 days from April 14, 2025, the deadline to file the petition fell on May 10, 2025. However, since May 10 was a Saturday and May 12 was declared a holiday due to the mid-term elections, the next working day and therefore, the effective deadline was May 13, 2025.

Petitioner claims to have filed a Motion for Extension to File a Petition for Certiorari before this Court on May 14, 2025, requesting an additional 30 days from May 10, 2025, or until June 10, 2025, to file the petition for certiorari.[48] However, records do not show a copy of the alleged Motion for Extension. More, no receiving copy of the alleged Motion for Extension was attached to the case records, casting doubt on its actual filing.[49]

Even on the assumption that a Motion for Extension was filed, the said Motion was filed only on May 14, 2025,[50] or a day after the last day to file the petition for certiorari on May 13, 2025. A Motion for Extension to file a Petition for Certiorari may be granted only in exceptional and meritorious cases. However, it must be filed prior to the expiration of the original period sought to be extended.[51] "A motion for extension of time filed beyond the period to appeal, or beyond the period to file a petition...has of no effect because there would no longer be any period to extend, and the judgment or order to be appealed from will have to become final and executory."[52]

Finally, even assuming that this Court granted the alleged Motion for Extension to File the Petition, the records show that the present Petition was filed beyond the extended period sought until June 10, 2025, as it was filed only on July 2, 2025.[53]

In *Abpi v. Commission on Audit*,[54] this Court underscored that "the belated filing of a petition for certiorari under Rule 64 is fatal." [55] In *Abpi*, this Court held:

We have said previously that the belated filing of a petition for certiorari under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[56]

Consequently, a petition for certiorari under Rule 64 can be dismissed outright for being filed out of time.[57] Given that the present Petition for Certiorari was filed only on July 2, 2025, or 50 days after the May 13, 2025 deadline, it was clearly filed beyond the reglementary period, which merits its outright dismissal. Subsequently, the Resolution of COMELEC En Banc which affirmed the Resolution of COMELEC Division, that disqualified petitioner for violating Section 80, in relation to Section 68, of the OEC had become final and executory.

Notably, a decision becomes final and executory by operation of law, which means that it automatically takes effect once the reglementary period to file an appeal or the appropriate remedy lapses, unless such legal recourse is timely filed in accordance with the rules.[58] It is a well-established rule that once a decision becomes final, it is deemed immutable and unalterable. This means it can no longer be modified in any way, even to correct factual or legal errors, regardless of whether the change is sought by the court that issued it or even by this Court. Although exceptions to this rule exist, petitioner failed to show that the present case falls under any of those recognized exceptions.[59]

Petitioner failed to attach proof of service to COMELEC in violation of Rule 64, Section 5 of the Rules of Court. Such failure constitutes a sufficient ground for the dismissal of the petition

Rule 64, Section 5, pars. 4 and 5 states:

The petition shall further be accompanied by proof of service of a copy thereof on the Commission concerned and on the adverse party, and of the timely payment of docket and other lawful fees.

The failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Jurisprudence[60] explains the importance of proof of service to the adverse party as follows:

In *Cui v. Judge Madayag*, we held that any motion that does not contain proof of service of notice to the other party is not entitled to judicial cognizance. (Such) motion is nothing but a (mere) scrap of paper. It is important, however, to note that these doctrines refer exclusively to motions.

The logic for such a requirement is simple: a motion invariably contains a prayer which the movant makes to the court, which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent [their] opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.[61] (Citations omitted)

While this doctrine was articulated in the context of motions, the underlying rationale which is anchored on the constitutional guarantee of due process, applies with equal force to petitions for certiorari under Rule 64.

A petition for certiorari, like a motion, seeks relief that may adversely affect the rights or interests of another party. In the context of Rule 64, which governs judicial review of decisions of constitutional commissions such as COMELEC, the Rules of Court explicitly require that the petition be accompanied by proof of service on both the Commission and the adverse party under Rule 64, Section 5. This requirement ensures that the parties concerned are properly notified and given an opportunity to respond.

In *Fortune Life Insurance Company, Inc. v. COA Proper*,[62] this Court dismissed a petition for certiorari due to its non-compliance with the provisions of Rule 64, particularly with the rule on proof of service.[63]

Here, the records bear that the present petition lacks proof of service to COMELEC.[64] Without proof of service, COMELEC is deprived of the opportunity to defend its ruling, violating its right to due process and undermining the adversarial nature of judicial review. Accordingly, petitioner's failure to serve a copy of the petition on COMELEC renders the present Petition defective and warrants its outright dismissal under Section 5 Rule 64 of the Rules of Court.

Petitioner is estopped from assailing the jurisdiction of COMELEC

At the outset, this Court notes that this is the first instance in which petitioner raised the issue of COMELEC's lack of jurisdiction. In her Answer before COMELEC Division, petitioner only asserted that: (a) she was merely exercising her right to freedom of expression; and (b) a candidate can only be held liable for unlawful acts or omissions committed during the official campaign period.[65] Meanwhile, in her Motion for Reconsideration before COMELEC En Banc, petitioner limited her arguments to the following issues:

(1)

the evidence presented by [Task Force] and considered by the [First Division] falls short from the burden of proof required in administrative proceedings; and

(2)

the [First Division] inadvertently failed to consider the pronouncement in [*People v. Ramoy*].][66]

As a general rule, "the issue on jurisdiction over the subject matter may be raised at any time in the proceedings, even on appeal." [67] However, in *Tijam v. Sibonghanoy*,[68] this Court carved out an exception that "estoppel by

laches may bar a party from invoking lack of jurisdiction when the issue is raised later in the proceedings of the case and only after the party raising the argument has actively participated during trial and lost." [69]

In *Commissioner of Internal Revenue v. Court of Tax Appeals-Third Division*, [70] this Court held that the application of the doctrine in *Tijam*, requires the concurrence of the following elements: first, the existence of a statutory right in favor of the claimant; second, the claimant's failure to timely invoke that right; third, the lapse of an unreasonable period before the jurisdictional issue is raised; and fourth, the claimant's active participation in the proceedings, including a prayer for affirmative relief from the very court or tribunal whose jurisdiction is later assailed. The presence of these elements indicates that the claimant knew or ought to have known of the jurisdictional defect, yet deliberately chose to delay its invocation. Such conduct is inconsistent with the principles of equity and fairness, which justifies the application of estoppel. [71]

Indeed, the belated invocation of the jurisdictional issue, coupled with the moving party's active participation in the proceedings, reasonably led both the Court and the opposing party to conclude that the issue had been waived. To entertain such a claim at this stage, and more so to grant it, would be improper and inequitable, as it constitutes an opportunistic attempt to nullify an unfavorable outcome. [72]

In this case, the petitioner raises for the first time before this Court the issue of COMELEC's alleged lack of jurisdiction. Petitioner asserts that COMELEC En Banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the Resolution of COMELEC Division, which granted the *motu proprio* Petition (with Motion for Suspension of Proclamation *Ad Cautelam*) filed by the Task Force to disqualify petitioner, despite her prior proclamation. [73]

A review of the proceedings, however, reveals that petitioner actively participated in the case before COMELEC Division and COMELEC En Banc without questioning COMELEC's jurisdiction. In her Answer before COMELEC Division, petitioner merely asserted substantive defenses, namely: (a) that she was exercising her right to freedom of expression, and (b) that a candidate may only be held liable for acts committed during the official campaign period. Similarly, in her Motion for Reconsideration before COMELEC En Banc, petitioner confined her arguments to the sufficiency of evidence and the alleged failure of COMELEC to consider applicable jurisprudence. Taken together, these circumstances demonstrate that petitioner knew, or ought to have known, of the jurisdictional issue but deliberately chose not to raise it until after receiving an unfavorable ruling. Following the doctrine in *Tijam*, petitioner is now estopped from assailing the jurisdiction of COMELEC.

More importantly, if this Court were to dismiss disqualification petitions solely on the ground that they were not resolved before the elections, it would effectively reward candidates who commit election offenses and then strategically delay proceedings to evade accountability. Such a precedent would encourage aspirants to engage in premature campaigning or other prohibited acts, knowing that they could later challenge the jurisdiction of COMELEC only after an adverse ruling, and potentially after securing electoral victory. This undermines the very purpose of election laws, which is to ensure fair and honest elections. It would also render the enforcement powers of COMELEC inutile, allowing candidates to manipulate procedural timelines to their advantage. [74] As this Court aptly held in *Atty. Francisco v. COMELEC*:

A candidate guilty of election offenses would be undeservedly rewarded, instead of punished, by the dismissal of the disqualification case against [them] simply because the investigating body was unable, for any reason caused upon it, to determine before the election if the offenses were indeed committed by the candidate sought to be disqualified. All that the erring aspirant would need to do is to employ delaying tactics so that the disqualification case based on the commission of election offenses would not be decided before the election. This scenario is productive of more fraud which certainly is not the main intent and purpose of the law. [75] (Citation omitted)

The doctrine of estoppel must therefore apply to prevent this abuse-where parties actively participated in the proceedings and only questioned jurisdiction on appeal. They cannot be allowed to benefit from their own delay. Otherwise, the electoral process becomes vulnerable to fraud, and public trust in democratic institutions is eroded.

ACCORDINGLY, the Petition for Certiorari is DISMISSED.

With the dismissal of the main Petition, Moana Dubay Camilotes Jickain's prayer for the issuance of a Temporary Restraining Order and/or Status Quo Ante Order and/or Writ of Preliminary Injunction is accordingly DENIED.

SO ORDERED.

Gesmundo, C.J., Caguioa, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, Kho, Jr., Singh, and Villanueva, JJ., concur.

Leonen, SAJ., see separate concurring opinion.

Hernando[*] and Lazaro-Javier,**] JJ., on official business.

Inting,[***] J., no part.

[*] On official business.

[**] On official business.

[***] No part.

[1] Rollo, pp. 3-15.

[2] Id. at 16-22. The April 14, 2025 Resolution in SPA No. 23-304 (B)(MP) was approved by Chairperson George Erwin M. Garcia and Commissioners Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr., Nelson J. Celis, Maria Norina S. Tangaro-Casingal, and Noli R. Pipo of the En Banc, Commission on Elections, Manila.

[3] Id. at 39-51. The March 6, 2024 Resolution in SPA No. 23-304 (B)(MP) was approved by Presiding Commissioner Socorro B. Inting and Commissioners Aimee P. Ferolino and Ernesto Ferdinand P. Maceda, Jr. of the First Division, Commission on Elections, Manila.

[4] Id. at 23-38.

[5] Id. at 24-25.

[6] Id. at 25-29.

[7] Id. at 41.

[8] Id. at 25.

[9] Id. at 57.

[10] Id. at 23-38.

[11] Id. at 26-29.

[12] Id. at 27-28.

[13] 620 Phil. 593 (2009) [Per J. Carpio, En Banc].

[14] Id. at 640. See also rollo, p. 43.

[15] Rollo, pp. 39-51.

[16] Id. at 45.

[17] Id. at 47.

[18] Id. at 48.

[19] Id. at 49.

[20] 537 Phil. 332 (2006) [Per J. Carpio, En Banc].

[21] Republic Act No. 8436 (1997), An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes.

[22] Republic Act No. 9369 (2007), An Act Amending Republic Act No. 8436, Entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes."

[23] Rollo, pp. 49-50.

[24] Id. at 50.

[25] Id. at 48.

[26] Id. at 50-51.

[27] Id. at 6.

[28] Id. at 16-22.

[29] Id. at 21.

[30] Id. at 6.

[31] Id.

[32] Id. at 1.

[33] Id. at 8-10.

[34] Pates v. Commission on Election, 609 Phil. 260, 265 (2009) [Per J. Brion, En Banc].

[35] 609 Phil. 260, 265 (2009) [Per J. Brion, En Banc].

[36] Id. at 265-266.

[37] Id.

[38] 944 Phil. 356 (2023) [Per J. Gaerlan, En Banc].

[39] Id. at 361.

[40] Id. at 363.

[41] Rollo, p. 6.

[42] Id.

[43] Id.

[44] Id. at 16-22.

[45] Id. at 6.

[46] Id. at 1.

[47] Id. at 3-15.

[48] Id. at 6-7.

[49] Id. at 1.

[50] Id. at 6.

[51] *Rebuta v. People*, 944 Phil. 634, 656 (2023) [Per J. Inting, Third Division].

[52] Id.

[53] Rollo, p. 1.

[54] 877 Phil. 362 (2020) [Per J. Delos Santos, En Banc].

[55] Id. at 373.

[56] Id. at 373-374.

[57] *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, 750 Phil. 258, 274 (2015) [Per J. Leonen, En Banc].

[58] *Brgy. Chairman Chua v. COMELEC*, 838 Phil. 619, 626-628 (2018) [Per J. Reyes Jr., En Banc].

[59] Id. at 628-629.

[60] *Atty. Neri v. Judge de la Peña*, 497 Phil. 73 (2005) [Per J. Corona, Third Division].

[61] Id. at 80-81.

[62] 752 Phil. 97 (2015) [Per J. Bersamin, En Banc].

[63] Id. at 101-102.

[64] Rollo, p. 1.

[65] Id. at 41-43.

[66] Id. at 18.

[67] *Heirs of Angel Yadao v. Heirs of Juan Caletina*, 919 Phil. 833, 845 (2022) [Per J. Lazaro-Javier, First Division].

[68] 131 Phil. 556 (1968) [Per J. Dizon, En Banc].

[69] *Heirs of Angel Yadao v. Heirs of Juan Caletina*, 919 Phil. 833, 845 (2022) [Per J. Lazaro-Javier, First Division].

[70] 902 Phil. 446 (2021) [Per J. Leonen, Third Division].

[71] Id. at 459.

[72] See *Heirs of Angel Yadao v. Heirs of Juan Caletina*, 919 Phil. 833, 845 (2022) [Per J. Lazaro-Javier, First Division].

[73] Rollo, pp. 8-10.

[74] *Atty. Francisco v. COMELEC*, 831 Phil. 106, 129 (2018) [Per J. Velasco, Jr., En Banc].

[75] Id.

CONCURRING OPINION

LEONEN, SAJ.:

This case involves a Petition for Certiorari^[1] under Rule 64 of the Rules of Court seeking to reverse the Commission on Elections (COMELEC) First Division's Resolution^[2] and COMELEC En Banc's Resolution.^[3] The questioned rulings found petitioner Moana Dubay Camilotes Jickain (Jickain) to have committed premature campaigning in violation of Section 80, in relation to Section 68, of Batas Pambansa Blg. 881 or the Omnibus Election Code.

Seeking to run for office in the October 2023 Barangay Sangguniang Kabataan Elections (2023 BSK Elections), Jickain filed a certificate of candidacy on September 1, 2023 to become a member of the Sangguniang Barangay of Barangay Moncado, Island Garden City of Samal (IGaCOS), Davao del Norte.^[4]

The official campaign period for the 2023 BSK Elections was set on October 19, 2023.^[5]

Prior to this date, on October 16, 2023,^[6] Jickain changed her profile picture on Facebook to one with a frame featuring her face, name, and her campaign slogan "IPADAYON UG MAS PALAMBUON"^[7] Jickain also shared posts tending to engage in campaigning:^[8]

a. Using as profile pictures in their public Facebook accounts pictures with Facebook frames containing text containing their campaign slogan. These profile pictures were shared by their relatives using captions which may be construed as giving incentives to the voting public.

...

b. Respondent Torculas, who presently is not yet holding any SK position, has in various instances posted status messages containing information as regards the workings in the SK governance under the tag ALDREI KIM TORCULAS' INFORMATION BOARD. These posts have also been shared by respondent Jickain. ...

...

d Respondent Jickain posted a Facebook status message wherein it can be clearly seen that she was campaigning for respondent Torculas, her publicly known boyfriend.^[9]

On October 17, 2023, the Office of the Regional Election Director (ORED) of Region XI received a complaint, alleging that Jickain is engaging in premature campaigning.^[10]

In her Answer, Jickain insisted that changing her profile picture and posting publicly available information on her social media account do not constitute campaigning. She further argued that such acts are protected by her right to freedom of expression.^[11]

On October 27, 2023, the ORED found that Jickain indirectly solicited votes, and thus recommended her disqualification.^[12]

On October 30, 2023, Jickain, among others, won as a candidate and was proclaimed as a member of the Sangguniang Barangay.[13]

However, the next day, the COMELEC Task Force Against Premature Campaigning (Task Force), filed a Petition[14] seeking to disqualify Jickain.[15]

On March 6, 2024, the COMELEC First Division ruled in favor of the Task Force and found that Jickain engaged in premature campaigning:[16]

WHEREFORE, premises considered, the Commission (First Division) RESOLVED, as it hereby RESOLVES, to GRANT the Petition (with Motion for Suspension of Proclamation Ad Cautelam) filed by the Taskforce Against Premature Campaigning against Respondent Moana Dubay Camilotes Jickain.

SO ORDERED.[17]

On March 12, 2024, Jickain filed a motion for reconsideration with the COMELEC En Banc. However, on April 15, 2025, the COMELEC En Banc denied her motion:[18]

WHEREFORE, premises considered, the instant Motion for Reconsideration is DENIED and the assailed Resolution dated 06 March 2024 is hereby AFFIRMED.

SO ORDERED.[19]

Thus, Jickain is questioning these rulings in her Petition before this Court.

This case is meant to resolve whether petitioner Moana Dubay Camilotes Jickain should be disqualified from the 2023 BSK Elections for premature campaigning.

However, her petition suffered from several grave procedural infirmities. The ponencia dismissed it for having been filed out of time,[20] and for petitioner's failure to attach a proof of service to the COMELEC in violation of Rule 64, Section 5 of the Rules of Court.[21] Moreover, the ponencia likewise held that petitioner is estopped from assailing COMELEC's jurisdiction, noting that she only raised the issue of jurisdiction after actively participating in the proceedings before the COMELEC First Division and COMELEC En Banc.[22]

I agree that these are valid grounds for dismissal.

I note, however, that this case presents an opportunity for this Court to rule on the extent of the COMELEC's power to regulate digital election campaigns of candidates, especially considering that many candidates utilize social media, the internet, and other digital strategies to reach the voting public.

The Constitution bestows upon the COMELEC the power to supervise and regulate the enjoyment or utilization of all media communication or information to ensure equal opportunity, time, and space among candidates. Article IX(C)(4) of the Constitution provides:

Sec. 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Nonetheless, the exercise of this power must keep in mind the rights to freedom of expression and speech, which is constitutionally protected under Article III, Section 4 of the 1987 Constitution:

SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

The exercise of the rights to free speech and expression are accorded such importance as it has been deemed necessary and fundamental to our democracy. In *In Re: Gonzales v. Commission on Elections*:^[23]

The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issue should be uninhibited, robust, and wide-open[.]^[24] (Citations omitted, emphasis supplied)

In *Chavez v. Gonzales* (*Chavez*),^[25] this Court adopted the concept of a marketplace of ideas as a rationale for the exercise of free speech and expression. Further, in *Diocese of Bacolod v. Commission on Elections* (*Diocese*):^[26]

[F]ree speech should be encouraged under the concept of a market place [sic] of ideas. This theory was articulated by Justice Holmes in that "the ultimate good desired is better reached by [the] free trade in ideas": When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

The way it works, the exposure to the ideas of others allows one to "consider, test, and develop their own conclusions." A free, open, and dynamic market place [sic] of ideas is constantly shaping new ones. This promotes both stability and change where recurring points may crystallize and weak ones may develop. Of course, free speech is more than the right to approve existing political beliefs and economic arrangements as it includes, "[t]o paraphrase Justice Holmes, [the] freedom for the thought that we hate, no less than for the thought that agrees with us." In fact, free speech may "best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." It is in this context that we should guard against any curtailment of the people's right to participate in the free trade of ideas.^[27] (Citations omitted, emphasis supplied)

The concept of a free marketplace of ideas assumes that if all ideas are freely and openly expressed without regulation, human rationality will prevail and, thus, society will arrive at the truth and the best ideas.

However, the landscape by which speech and expression is communicated has changed over the times. Today, much of interactions between citizens take place in cyberspace, through the internet and social media.

These platforms have opened the widest of opportunities to exercise the rights to free speech and expression. People use social media to share information, connect with community, promote creative work, and engage in social, economic, and political discussions:^[28]

Social media platforms have come to dominate almost every aspect of human interaction, from interpersonal relations to the global economy. But they also perform important civic functions. Increasingly, these platforms are an important source of news and information for citizens around the world. They are a place for political discussion and debate, and for mobilizing political action. Politicians also rely on social media for political campaigning, galvanizing support and connecting with their constituents.^[29]

In this realm, however, because of the way digital platforms are configured, it has been increasingly difficult for users to determine truths from falsities or real from unreal. Digital platforms are designed to gather data from

users to determine the content that will be shown up in their feeds. As such, social media platforms shape what citizens consume as information. They can show different versions of realities that can have tremendous influence on the user's behavior. Seeing this as an opportunity, many, especially those with vast resources, have used the design of social media to manipulate users to achieve a desired behavior. This has resulted in the proliferation of misinformation and disinformation in cyberspace:[30]

[S]ocial media platforms are not neutral platforms. Scholars have described how their technical designs and governance policies (such as terms of service, community standards or advertising policies) embed a wide range of public policy concerns, from freedom of speech and censorship to intellectual property rights and fair use or tensions between privacy and surveillance online. Platform design and governance also impact the democratic functions of platforms, including how disinformation and propaganda are spread. While it is important to recognize that all technologies have socio-political implications to various degrees, several characteristics of social media platforms create a particular set of concerns for the spread of disinformation and propaganda.

AGGREGATION

One of the most salient features of today's information and communication environment is the massive amount of data aggregated about individuals and their social behaviour. The immense amount of data we leave behind as we interact with technology and content has been called "data exhaust" by some scholars. Our exhaust — or the by-product of our interactions with online content — is used by platforms to create detailed pictures of who we are not only as people and consumers, but also as citizens or potential voters in a democracy. The collection, aggregation and use of data allows foreign adversaries to micro-target users with political advertisements during elections. Like all political advertising, these messages could drive support and mobilization for a certain candidate or suppress the political participation of certain segments of the population. We have already seen foreign agents purchase political advertisements to target individuals or communities with messages of mobilization and suppression. Although platforms have taken several steps to limit foreign advertising on their platforms, such as currency restrictions or account verification measures, foreign actors have found ways to subvert these measures.

ALGORITHMS

Platforms apply algorithms — or automated sets of rules or instructions — to transform data into a desired output. Using mathematical formulas, algorithms rate, rank, order and deliver content based on factors such as an individual user's data and personal preferences, aggregate trends in the interests and behaviour of similar users, and reputation systems that evaluate the quality of information. The algorithmic curation of content — whether it be a result of personalization, virality and trends, or reputation scores — affects how news and information is prioritized and delivered to users, including whether algorithms present diverse views or reinforce singular ones, nudge users toward extreme or polarizing information or emphasize sensational, tabloid or junk content over news and other authoritative sources of information.

ANONYMITY

Platforms afford different levels of anonymity to users. Whether users must use their real name has implications for whether bots, trolls or even foreign state actors use anonymity to mask their identity in order to harass or threaten political activists and journalists, or to distort authentic conversations about politics. With anonymity, there is a lack of transparency about the source of information and whether news, comments or debate come from authentic voices or ones trying to distort the public sphere. Related to the question of anonymity is the question of data disclosure and how personal data disclosed to third parties can be used if unscrupulous firms or foreign state actors are able to use psychographic profiles to suppress voter turnout.

AUTOMATION

Platforms afford automation — where accounts can automatically post, share or engage with content or users online. Unlike a human user, automated accounts — which are sometimes referred to as "political bots" or "amplifier accounts" — can post much more frequently and consistently than any human user. Although there are many ways to classify automated accounts and the activities they perform, they generally perform two functions when it comes to foreign influence operations. First, by liking, sharing, retweeting or posting content, automated accounts can generate a false sense of popularity, momentum or relevance around a particular person or idea. Networks of bots can be used to distort conversations online by getting disinformation or propaganda to trend. Second, automation has been an incredibly powerful tool in the targeting and harassment of journalists and activists, whereby individuals are flooded with threats and hate by accounts that are not even real. (Citations omitted)[31]

Thus, considering the nature of digital spaces, the exchanges emerging in today's highly digital marketplace of ideas is a mix of real human interactions and unreal, skewed, agenda-driven, bot-powered discussions.

Recognizing these factors, the COMELEC has issued guidelines on the use of social media, artificial intelligence, and internet technology for digital election campaigns for the 2025 National and Local Elections. In its Resolution No. 11064 dated September 17, 2024, it: (i) required candidates and parties to register their official social media accounts, websites, digital and internet-based campaign platforms;[32] (ii) required the disclosure by candidates of their use of artificial intelligence (AI) technology in their election propaganda and campaign materials;[33] and (iii) prohibited and deemed as an election offense the misuse of social media, AI technology and internet technology in their digital election campaigns, including the propagating of disinformation and misinformation for or against a candidate or against the Philippine election system, the COMELEC, and the electoral processes in the Philippines during the election and campaign period.[34]

I find that this Court should likewise consider these factors in evaluating what is covered by the rights of free speech and expression vis-à-vis digital election campaigns. This issue is presented in this case.

Here, petitioner is being disqualified for premature campaigning. However, she insists that her acts fall within her right to free speech and expression.

Premature campaigning is penalized under Section 80 of the Omnibus Election Code:

SECTION 80. Election campaign or partisan political activity outside campaign period. — It shall be unlawful for any person, whether or not a voter or candidate, or for any part, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period: Provided, That political parties may hold political conventions or meetings to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election.

Furthermore, it is a ground for disqualification of the candidate:

SECTION 68. Disqualifications. — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having ... (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office[.]

The elements of premature campaigning are: "(1) a person engages in an election campaign or partisan political activity; (2) the act is designed to promote the election or defeat of a particular candidate or candidates; [and] (3) the act is done outside the campaign period." [35]

The COMELEC ruled that all elements are present in this case.

It found that petitioner engaged in election campaigning. Section 79 of the Omnibus Code enumerates what

constitutes as election campaign acts:

SECTION 79. Definitions. — As used in this Code:

....

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include: (1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

In changing her Facebook profile picture to have a frame featuring her face, name, and her campaign slogan "IPADAYON UG MAS PALAMBUON,"[36] petitioner indirectly solicited votes in her favor.

It is also undisputed that petitioner posted the picture on October 16, 2024, prior to the official campaign period for the 2023 BSK Elections, which was set on October 19, 2023.[37]

However, there is a need to determine whether petitioner already qualifies as a candidate at the time she posted the photo.

Petitioner filed her certificate of candidacy on September 1, 2023. Under Section 79 of the Omnibus Election Code, a candidate is a person aspiring for an elective public office who has filed a certificate of candidacy.[38] Furthermore, under the COMELEC's General Guidelines for the 2023 BSK Elections, any unlawful act or omission applicable to a candidate shall take effect upon the filing of their certificate of candidacy.[39]

However, this Court has ruled that pursuant to Section 13 of Republic Act No. 9369,[40] unlawful acts or omissions applicable to a candidate, take effect only when the campaign period starts. Section 13 states:

SECTION 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC. 15. Official Ballot. —

...

"For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall [take] effect only upon [the] start of the aforesaid campaign period: Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or-controlled corporations, shall be considered ipso facto resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy.

In *People v. Ramoy*,[41] this Court affirmed that a candidate only becomes one at the start of the campaign

period. As such, "there can be no scenario in which premature campaign may be committed, as there can be no "candidate" prior to the campaign period:"[42]

In relation to the second element, Section 79(a) of the Omnibus Election Code defines a "candidate" as "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties." Notwithstanding such definition, a person is considered as a "candidate" only at the start of the campaign period for which the certificate of candidacy is filed. The provision further qualifies that unlawful acts or omissions applicable to a candidate shall take effect only upon the start such of the campaign period. In this sense therefore, there can be no scenario in which premature campaign may be committed, as there can be no "candidate" prior to the campaign period.

The Court in *Penera v. COMELEC, et al.*, explained that legislative intent prevents the immediate application of Section 80 of the Omnibus Election Code to those filing to meet the early deadline. This is because the only purpose for the early filing of certificates of candidacy is to give ample time for the printing of official ballots. Furthermore, the Court expounded. . .

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the start of the campaign period. x x x

x x x The plain meaning of this provision is that the effective date when partisan political acts become unlawful as to a candidate is when the campaign period starts. Before the start of the campaign period, the same partisan political acts are lawful.

...

As stated in *Penera*, a review of legislative deliberations in the passage of the Omnibus Election Code and R.A. No. 9369, does not lend guidance with respect to the rationale behind the definition and enumeration of prohibited acts; thus, the Court cannot speculate and is left to apply the law as stated. Otherwise stated, the limitation with respect to how a candidate may be held liable for the offense of premature campaigning, irrespective of the motivation is a policy determination which the Court cannot overturn without offending the Constitution and the principle of separation of powers.[43] (Citations omitted, emphasis supplied)

Thus, to properly resolve whether petitioner should be disqualified, this Court must determine which should prevail: the COMELEC's General Guidelines for the 2023 BSK Elections or Section 13 of Republic Act No. 9369.

Likewise, determining whether petitioner was already a candidate at the time she posted the photo affects whether her acts constitute protected speech or expression.

As mentioned, the rights of free speech and expression are protected freedoms. As such, there are several tests that must be passed before the State may restrict its exercise. The test on the State regulation differs depending on whether the restriction is content-based or content-neutral.[44]

A regulation is content-neutral if it is not restricting the message communicated by the utterance, but is "merely concerned with the incidents of the speech[.]" or regulates its time, place, or manner.[45] As such, content-neutral regulations are subject to an intermediate review.[46] This entails showing that the restrictions are "narrowly-tailored to promote an important or significant governmental interest unrelated to the suppression of expression." [47] The regulation must be "no greater than is essential to the furtherance of that interest." In *Chavez*: [48]

When the speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an intermediate approach — somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. The test is called intermediate because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. The intermediate approach has been formulated in this manner: A governmental regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.[49] (Citations omitted, emphasis supplied)

On the other hand, a regulation is content-based when the message of the speech is a factor in the restriction.[50] A content-based regulation bears a heavy presumption of invalidity and is measured against stricter tests. The regulation, thus, must be justified by a compelling reason and the restrictions imposed should not be overbroad or vague. In *Newsounds Broadcasting Network, Inc. v. Dy*: [51]

On the other hand, a governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny in light of its inherent and invasive impact. Only when the challenged act has overcome the clear and present danger rule will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality.

Unless the government can overthrow this presumption, the content-based restraint will be struck down.

With respect to content-based restrictions, the government must also show the type of harm the speech sought to be restrained would bring about — especially the gravity and the imminence of the threatened harm — otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.

Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.[52] (Citations omitted, emphasis in the original)

I maintain that the applicable test is determined after analyzing not only the content of the speech or expression itself, but also all other factors including its speaker, intent, medium, manner of delivery, effect, impact, audiences, social and political context, and totality of all circumstances. Certainly, today's digital landscape and other global technological advances, which have exponentially expanded the reach of speech and the speed by which it is delivered, should be factored in.

Thus, in election cases, this analysis of all factors involves determining whether the speaker is a candidate or part of the public, how large the speaker's platform is, whether their statements fall under election paraphernalia, etc.

I highlight a few that are crucial:

First, the standards governing the regulation of speech by candidates differ from those applicable to private citizens. The electoral campaigns of candidates may be regulated as to time, place, and manner. Thus, the time as to when candidates may start expressing their campaigns may be restricted by the COMELEC. However, if the COMELEC seeks to restrict private citizens in endorsing a candidate, it must comply with the least restrictive means test. Thus, the following requisites must be present: (1) the regulation must be provided by law; (2) is reasonable; (3) is narrowly tailored to meet a compelling state interest; and (4) is clearly the least restrictive means to attain these objectives. Moreover, in *Diocese*:^[53]

Thus clearly, regulation of speech in the context of electoral campaigns made by candidates or the members of their political parties or their political parties may be regulated as to time, place, and manner. This is the effect of our rulings in *Osmeña v. COMELEC* and *National Press Club v. COMELEC*.

Regulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is unconstitutional. Such regulation is inconsistent with the guarantee of according the fullest possible range of opinions coming from the electorate including those that can catalyze candid, uninhibited, and robust debate in the criteria for the choice of a candidate.

This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.^[54] (Emphasis supplied)

The least restrictive means test is best applied in cases when the government has a compelling state interest, like providing all candidates the opportunity to be heard while still considering the primacy of free expression.

I opine that providing equal opportunity for all candidates is a compelling state interest that should be a factor in determining the extent of the restriction on the speech or expression.

The equality-based approach has been discussed in *Diocese*:^[55]

In an equality-based approach, "politically disadvantaged speech prevails over regulation[,] but regulation promoting political equality prevails over speech." This view allows the government leeway to redistribute or equalize 'speaking power,' such as protecting, even implicitly subsidizing, unpopular or dissenting voices often systematically subdued within society's ideological ladder. This view acknowledges that there are dominant political actors who, through authority, power, resources, identity, or status, have capabilities that may drown out the messages of others. This is especially true in a developing or emerging economy that is part of the majoritarian world like ours.

The question of libertarian tolerance

This balance between equality and the ability to express so as to find one's authentic self or to participate in the self determination of one's communities is not new only to law. It has always been a philosophical problematique.

In his seminal work, *Repressive Tolerance*, philosopher and social theorist Herbert Marcuse recognized how institutionalized inequality exists as a background limitation, rendering freedoms exercised within such limitation as merely "protect[ing] the already established machinery of discrimination." In his view, any improvement "in the normal course of events" within an unequal society, without subversion, only strengthens existing interests of those in power and control.

In other words, abstract guarantees of fundamental rights like freedom of expression may become meaningless if not taken in a real context. This tendency to tackle rights in the abstract compromises liberties...

Marcuse suggests that the democratic argument — with all opinions presented to and deliberated by the people — "implies a necessary condition, namely, that the people must be capable of deliberating and choosing on the basis of knowledge, that they must have access to authentic information, and that, on this basis, their evaluation must be the result of autonomous thought." He submits that "[d]ifferent opinions and 'philosophies' can no longer compete peacefully for adherence and persuasion on rational grounds: the 'marketplace of ideas' is organized and delimited by those who determine the national and the individual interest." (Citations omitted)

Political equality finds support in the Constitution. Article XIII, Section 1 provides:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments. (Emphasis supplied)

Likewise, Article II, Section 26 provides:

Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law. (Emphasis supplied)

In relation to the elections, Article IX-C, Section 4 of the Constitution empowers the COMELEC to regulate the use of media or communication to ensure equal opportunity, time, and space for public information campaigns among candidates:

The commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections. (Emphasis supplied)

In *Osmeña v. Commission on Elections (Osmeña)*,^[56] this Court upheld the validity of a provision in Republic Act No. 6646, or the Electoral Reforms Law of 1987, which prohibited mass media from selling print space or airtime for campaign or other political purposes, except to the COMELEC. It held:

The law's concern is not with the message or content of the ad but with ensuring media equality between candidates with "deep pockets," as Justice Feliciano called them in his opinion of the Court in *NPC*, and those with less resources. The law is part of a package of electoral reforms adopted in 1987. Actually, similar effort was made in 1970 to equalize the opportunity of candidates to advertise themselves and their programs of government by requiring the COMELEC to have a COMELEC space in newspapers, magazines, and periodicals and prohibiting candidates to advertise outside such space, unless the names of all the other candidates in the district in which the candidate is running are mentioned "with equal prominence." The

validity of the law was challenged in *Badoy, Jr. v. COMELEC*. The voting was equally divided (5-5), however, with the result that the validity of the law was deemed upheld.

...

Here, on the other hand, there is no total ban on political ads, much less restriction on the content of the speech. Given the fact that print space and air time can be controlled or dominated by rich candidates to the disadvantage of poor candidates, there is a substantial or legitimate governmental interest justifying exercise of the regulatory power of the COMELEC under Art. IX-C, §4 of the Constitution, which provides:

...

The provisions in question involve no suppression of political ads. They only prohibit the sale or donation of print space and air time to candidates but require the COMELEC instead to procure space and time in the mass media for allocation, free of charge, to the candidates. In effect, during the election period, the COMELEC takes over the advertising page of newspapers or the commercial time of radio and TV stations and allocates these to the candidates.[57] (Citations omitted)

Osmeña also outlined previous decisions relating to equality of opportunity among candidates:

There is a difference in kind and in severity between restrictions such as those imposed by the election law provisions in question in this case and those found to be unconstitutional in the cases cited by both petitioners and the Solicitor General, who has taken the side of petitioners. In *Adiong v. COMELEC* the Court struck down a regulation of the COMELEC which prohibited the use of campaign decals and stickers on mobile units, allowing their location only in the COMELEC common poster area or billboard, at the campaign headquarters of the candidate or his political party, or at his residence. The Court found the restriction "so broad that it encompasses even the citizen's private property, which in this case is a privately-owned car." Nor was there a substantial governmental interest justifying the restriction.[T]he constitutional objective to give a rich candidate and a poor candidate equal opportunity to inform the electorate as regards their candidacies, mandated by Article II, Section 26 and Article XIII, Section I in relation to Article IX(c) Section 4 of the Constitution, is not impaired by posting decals and stickers on cars and other private vehicles. Compared to the paramount interest of the State in guaranteeing freedom of expression, any financial considerations behind the regulation are of marginal significance.

Mutuc v. COMELEC is of a piece with *Adiong*. An order of the COMELEC prohibiting the playing of taped campaign jingles through sound systems mounted on mobile units was held to be an invalid prior restraint without any apparent governmental interest to promote, as the restriction did not simply regulate time, place or manner but imposed an absolute ban on the use of the jingles. The prohibition was actually content-based and was for that reason bad as a prior restraint on speech, as inhibiting as prohibiting the candidate himself to use the loudspeaker. So is a ban against newspaper columnists expressing opinion on an issue in a plebiscite a content restriction which, unless justified by compelling reason, is unconstitutional.

...

In *Gonzales v. COMELEC*, the Court sustained the validity of a provision of R.A. No. 4880 which in part reads:

SEC. 50-B. Limitation upon the period of Election Campaign or Partisan Political Activity. — It is unlawful for any person whether or not a voter or candidate, or for any group, or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.

...

In *Valmonte v. COMELEC*, on the other hand, the Court upheld the validity of a COMELEC resolution prohibiting members of citizen groups or associations from entering any polling place except to vote. Indeed, §261(k) of the Omnibus Election Code makes it unlawful for anyone to solicit votes in the polling place and within a radius of 30 meters thereof.[58] (Citations omitted)

As discussed in *Osmeña*, "unlimited expenditure for political advertising in the mass media skews the political process and subverts democratic self-government." [59] Since wealthy or more powerful candidates have the resources to dominate mass media, poorer candidates are placed at a disadvantage in their campaigns. However, the COMELEC has a mandate to ensure free, orderly, honest, peaceful, and credible elections, and this entails providing all candidates equal time and space. Thus, the COMELEC has a substantial or legitimate governmental interest to regulate the time, place, and manner of campaigning under well-defined standards. As further provided in *Osmeña*, "[t]he State can prohibit campaigning, outside a certain period as well as campaigning, within a certain place" [60] to ensure free, orderly, honest, peaceful, and credible elections.

I find that this principle still holds true despite the technological and digital advances today. Although much of exchanges and interactions between citizens already take place in digital platforms, those with wealth, power, or prominence are still able to dominate election campaigns. While social media access involves minimal costs and many from all walks of life can build a following or go viral, as earlier mentioned, the configuration of social media allows for its manipulation so that specific content is what will show up in feeds. It may be used, and it is used, to bring about specific behaviors.

Thus, the use of troll farms, bot armies, and hackers has been reported as part of efforts to influence election outcomes.[61] These users may leverage data harvested from social media platforms, manipulate algorithms, and automate engagement to amplify particular narratives and shape public opinion.[62] Thus, in this respect, I find that regulation by the COMELEC of the time, place, and manner of campaigning in these platforms still serve a substantial or legitimate governmental interest so long as the regulation is content-neutral.

Next, in determining the test that should apply on government restrictions against speech during elections, a very important consideration is the determination of whether the speech is: (1) disinformation; (2) misinformation; or (3) mal-information.

There is misinformation when false information is shared by someone unaware of its falsity and, in fact, believes it to be true. Mal-information is information which may be true, but is being shared to hurt or harm another. Disinformation, however, is false or wrong information deliberately shared by those knowing of its falsity, usually to attain an objective.[63]

The malicious spreading of false or harmful statements is not constitutionally protected. As illustrated in *In re: Jurado*: [64]

It is worth stressing that false reports about a public official or other person are not shielded from sanction by the cardinal right to free speech enshrined in the Constitution. Even the most liberal view of free speech has never countenanced the publication of falsehoods, specially the persistent and unmitigated dissemination of patent lies. The U.S. Supreme Court, while asserting that "(u)nder the First Amendment there is no such thing as a false idea," and that "(h)owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas" (citing a passage from the first Inaugural Address of Thomas Jefferson), nonetheless made the firm pronouncement that "there is no constitutional value in false statements of fact," and "the erroneous statement of fact is not worthy of constitutional protection (although) . . . nevertheless inevitable in free debate." "Neither the intentional lie nor the careless error," it said, "materially advances society's interest in 'unhindered, robust, and wide-open' debate on public issues. *New York Times Co. v. Sullivan*, 376 US, at 270, 11 L Ed 2d 686, 95 ALR2d 1412. They belong to that category of

utterances which 'are no essential part of any exposition of ideas, and are of such slight social value as a step to the truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' *Chaplinsky v. New Hampshire*, 315 US 568, 572, 86 L Ed 1031, 62 S Ct 766 (1942)."

"The use of calculated falsehood," it was observed in another case, [30] "would put a different cast on the constitutional question. Although honest utterances, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity. . . . (T)he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection." [65] (Citations omitted, emphasis supplied)

As discussed, disinformation, misinformation, and mal-information have proliferated in cyberspace because of the nature and configuration of digital platforms. I opine that these distortions of the truth have impacted the actions, reactions, and behaviors of people and have caused substantial harm not just to individuals, but to nations as well.

Thus, while free speech and expression are protected freedoms, disinformation should have no free speech value, even if the speaker belongs to the general public. Due to the harm and danger it causes, it cannot be considered protected speech, and should be classified in the same manner as hate speech or obscene speech.

Finally, I maintain that the classification and the components of the speech should be considered.

A speech may be an act. [66] Speech acts may be classified as constative or performative utterances. Constative speech is, simply put, descriptive, and may be verified as true or false. [67] Performative speech, however, involves an action in its utterance. [68] The speech results in an effect because of "specific conventions linking the words to institutional or institutionalized procedures." [69] The intent, context, and execution of the speech results to an action. An example is the exchange of "I do" during a wedding ceremony. Aside from being an utterance, it is also the act of getting married, resulting in a change of status acknowledged by all. [70]

There are also three components of speech or utterances: (1) locutionary acts; (2) illocutionary acts; and (3) perlocutionary acts. [71]

A locutionary act pertains to the uttering of the speech itself. It is the act of speaking words that are understandable and have meaning. [72] Illocutionary acts refer to the speaker's intention in uttering their statement. [73] It involves the purpose of the speaker. Thus, the context in which the utterance was expressed is considered. Perlocutionary acts pertain to the produced effect of the utterance on the audience. [74]

Using *Diocese* [75] as an example, the locutionary acts are the statements in the tarpaulin that listed candidates as either "(Anti-Reproductive Health) Team Buhay" or "(Pro-Reproductive Health) Team Patay." The illocutionary act is the informing of the tarpaulin's viewers of the petitioner's stance in the elections. The perlocutionary acts may be the convincing or dissuading of its audience as to who to vote for during the elections.

This consideration of the intention, context and possible effect of this speech act in *Diocese* is apparent in its discussion on satire:

The message of petitioners in this case will certainly not be what candidates and political parties will carry in their election posters or media ads. The message of petitioner, taken as a whole, is an advocacy of a social issue that it deeply believes. Through rhetorical devices, it communicates the desire of *Diocese* that the positions of those who run for a political position on this social issue be determinative of how the public will vote. It primarily advocates a stand on a social issue; only secondarily — even almost incidentally — will cause the election or non-election of a candidate.

The twin tarpaulins consist of satire of political parties. Satire is a "literary form that employs such devices as

sarcasm, irony and ridicule to deride prevailing vices or follies," and this may target any individual or group in society, private and government alike. It seeks to effectively communicate a greater purpose, often used for "political and social criticism" "because it tears down facades, deflates stuffed shirts, and unmasks hypocrisy... Nothing is more thoroughly democratic than to have the high-and-mighty lampooned and spoofed." [270] Northrop Frye, well-known in this literary field, claimed that satire had two defining features: "one is wit or humor founded on fantasy or a sense of the grotesque and absurd, the other is an object of attack." Thus, satire frequently uses exaggeration, analogy, and other rhetorical devices.

The tarpaulins exaggerate. Surely, "Team Patay" does not refer to a list of dead individuals nor could the Archbishop of the Diocese of Bacolod have intended it to mean that the entire plan of the candidates in his list was to cause death intentionally. The tarpaulin caricatures political parties and parodies the intention of those in the list. Furthermore, the list of "Team Patay" is juxtaposed with the list of "Team Buhay" that further emphasizes the theme of its author: Reproductive health is an important marker for the church of petitioners to endorse.[76] (Citations omitted, emphasis in the original)

Thus, I maintain that speech and expression should be evaluated using this holistic lens. It should be seen as an act, set in a specific context, done with intent, causing an effect, and producing an impact.

ACCORDINGLY, I vote that the Petition be DISMISSED based on the procedural grounds discussed in the ponencia.

[1] Rollo, pp. 3-15. With Urgent Prayer for Writ of Preliminary Injunction, and for Urgent Issuance of Temporary Restraining Order, and/or Status Quo Ante Order.

[2] Id. at 39-51. The March 6, 2024 Resolution in SPA No. 23-304 (B)(MP) was approved by Presiding Commissioner Socorro B. Inting and Commissioners Aimee P. Ferolino and Ernesto Ferdinand P. Maceda, Jr. of the First Division, Commission on Elections, Manila.

[3] Id. at 16-22. The April 14, 2025 Resolution in SPA No. 23-304 (B)(MP) was approved by Chairperson George Erwin M. Garcia and Commissioners Aimee P. Ferolino, Rey E. Bulay, Ernesto Ferdinand P. Maceda, Jr., Nelson J. Celis, Maria Norina S. Tangaro-Casingal, and Noli R. Pipo of the En Banc, Commission on Elections, Manila.

[4] Ponencia, pp. 1-2.

[5] March 6, 2024 COMELEC First Division Resolution, p. 10.

[6] Id. at 11.

[7] Ponencia, p. 2.

[8] Id.

[9] March 6, 2024 COMELEC First Division Resolution, pp. 2-3.

[10] Ponencia, p. 2.

[11] Id.

[12] Id. See also March 6, 2024 COMELEC First Division Resolution, p. 3.

[13] Ponencia, p. 2.

[14] With Motion for Suspension of Proclamation Ad Cautelam.

[15] March 6, 2024 COMELEC First Division Resolution, p. 3.

- [16] Ponencia, p. 5.
- [17] March 6, 2024 COMELEC First Division Resolution, p. 12.
- [18] Ponencia, p. 17.
- [19] April 15, 2025 COMELEC En Banc Resolution, p. 12.
- [20] Ponencia, pp. 7-11.
- [21] Id. at 11-12.
- [22] Id. at 13-15.
- [23] In Re: Gonzales v. Commission on Elections, 137 Phil. 471 (1969) [Per J. Fernando, En Banc].
- [24] Id. at 493.
- [25] 569 Phil. 155 (2008) [Per J. Puno, En Banc].
- [26] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].
- [27] Id. at 361-362.
- [28] Stephen Tully, People You Might Know: Social Media in the Conflict Between Law and Democracy, LAW AND DEMOCRACY: CONTEMPORARY QUESTIONS, 153-172 (2014).
- [29] Bradshaw, S., Influence Operations and Disinformation on Social Media, in Modern Conflict and Artificial Intelligence, 41-47 (Centre for International Governance Innovation, 2020).
- [30] Note: Misinformation is shared by someone who is unaware of the information's falsity and, in fact, believes it to be true or correct. Disinformation, on the other hand, is wrong information deliberately shared by those knowing it is false, usually in furtherance of an agenda. Malinformation is that which may be true or correct but is being shared to hurt or harm another person or entity.
- See also footnote no. 326 of ABS-CBN Corp. v. Ampatuan, Jr., 941 Phil. 182, 305 (2023) [Per J. Leonen, En Banc], which notes that "[m]isinformation is the sharing of false information without intent to cause harm, while malinformation is the opposite where genuine information is shared to cause harm[.]" Citing Clair Wardle & Hossein Derakhshan, Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking, 5 (Council of Europe, 2017).
- [31] Bradshaw, S., Influence Operations and Disinformation on Social Media, in Modern Conflict and Artificial Intelligence, 41-47 (Centre for International Governance Innovation, 2020).
- [32] Art. III, Guidelines on the Use of Social Media, Artificial Intelligence, and Internet Technology, for Digital Election Campaign, and the Prohibition and Punishment of Its Misuse for Disinformation, and Misinformation, in Connection with the 2025 National and local Elections and the BARMM Parliamentary Elections, COMELEC Res. No. 11064, September 17, 2024.
- [33] Art. IV, Guidelines on the Use of Social Media, Artificial Intelligence, and Internet Technology, for Digital Election Campaign, and the Prohibition and Punishment of Its Misuse for Disinformation, and Misinformation, in Connection with the 2025 National and Local Elections and the BARMM Parliamentary Elections, COMELEC Res. No. 11064, September 17, 2024.
- [34] Art. V, Guidelines on the Use of Social Media, Artificial Intelligence, and Internet Technology, for Digital

Election Campaign, and the Prohibition and Punishment of Its Misuse for Disinformation, and Misinformation, in Connection with the 2025 National and local Elections and the BARMM Parliamentary Elections, COMELEC Res. No. 11064, September 17, 2024.

[35] *Lanot v. COMELEC*, 537 Phil. 332-391 (2006) [Per J. Carpio, En Banc].

[36] Ponencia, p. 2.

[37] COMELEC First Division Resolution, March 6, 2024, p. 10.

[38] OMNIBUS ELECTION CODE, sec. 79(a) reads:

SECTION 79. Definitions. — As used in this Code:(a) The term "candidate" refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties[.]

[39] COMELEC, Minute Resolution No. 23-0442, July 6, 2023, amending COMELEC Resolution No. 10924, General Guidelines and Other Related Rules and Regulations for the October 30, 2023 BSK Elections and All Succeeding BSK Elections Thereafter reads:

Item (1) of the Glossary of Terms shall read as:"1) Candidate shall refer to any person seeking an elective public office, who has filed his or her certificate of candidacy, and who has not died, withdrawn his or her certificate of candidacy, had his or her certificate of candidacy denied due course or cancelled, or has been otherwise disqualified before the start of the campaign period for which he or she filed his certificate of candidacy. Provided, that, unlawful acts or omissions applicable to a candidate shall take effect upon the filing of Certificate of Candidacy."

Section 174 shall read as:

SECTION 174, Effects of Filing Certificate of Candidacy. a. Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines (AFP), and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from office and must vacate the office at the start of the regular office hours of the day when the aspirant filed the COC. [. . .]

b. Any person holding an elective office or position shall not be considered resigned upon the filing of a COC whether for the same or any other elective office or position.

c. Any unlawful acts or omissions applicable to a candidate shall take effect upon the filing of Certificate of Candidacy.

[40] Republic Act No. 9369, An Act Amending Republic Act No. 8436 (The Election Modernization Act), January 23, 2007.

[41] *People v. Ramoy*, 920 Phil. 656 (2022) [Per J. Gaerlan, First Division].

[42] *Id.* at 667.

[43] *Id.* at 667-669.

[44] 569 Phil 155 (2008) [Per CJ. Puno, En Banc].

[45] *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

[46] *Chavez v. Gonzales*, 569 Phil. 155, 205 (2008) [Per C.J. Puno, En Banc].

[47] Chavez v. Gonzales, 569 Phil. 155, 205 (2008) [Per C.J. Puno, En Banc].

[48] Id.

[49] Id. at 205-208.

[50] Newsounds Broadcasting Network, Inc. v. Dy, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

[51] Id.

[52] Chavez v. Gonzales, 569 Phil 155, 205-208 (2008) [Per CJ. Puno, En Banc].

[53] Diocese of Bacolod v. Commission on Elections, 751 Phil. 301, 327 (2015) [Per J. Leonen, En Banc].

[54] Id.

[55] Diocese of Bacolod v. Commission on Elections, 751 Phil. 301, 386-388 (2015) [Per J. Leonen, En Banc].

[56] Osmeña v. Commission on Elections, 351 Phil 692 (1998) [Per J. Mendoza, En Banc].

[57] Id. at 706-709.

[58] Id. at 707-710.

[59] Id. at 710.

[60] Id.

[61] Bradshaw, Samantha, and Philip N. Howard, The Global Organization of Social Media Disinformation Campaigns, 71 Journal of International Affairs, no. 1.5, pp. 23-32 (2018). JSTOR, <https://www.jstor.org/stable/26508115>. Accessed 7 Apr. 2026. See also: Bradshaw, S., Influence Operations and Disinformation on Social Media, in Modern Conflict and Artificial Intelligence, 41-47 (Centre for International Governance Innovation, 2020).

[62] Id.

[63] See also footnote no. 326 of ABS-CBN Corp. v. Ampatuan, Jr., 941 Phil. 182, 305 (2023) [Per J. Leonen, En Banc], which notes that "[m]isinformation is the sharing of false information without intent to cause harm, while malinformation is the opposite where genuine information is shared to cause harm[.]" Citing Clair Wardle & Hossein Derakhshan, Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking, 5 (Council of Europe, 2017).

[64] 313 Phil. 119 (1995) [Per C.J. Narvasa, En Banc].

[65] Id. at 193-194.

[66] Mary Kate McGowan, Beyond Speech Acts: On Hate Speech and the Ubiquity of Norm Enactment, 20 GEO. J.L. & PUB. POL'Y 1055, 1061 (2022).

[67] J.L. AUSTIN, HOW TO DO THINGS WITH WORDS 3 (1962).

[68] Id. at 5.

[69] Chris Hutton, Chapter 3: Philosophy, Law and Language, in LANGUAGE, MEANING AND THE LAW 58 (2009).

[70] J.L. AUSTIN, HOW TO DO THINGS WITH WORDS 5, n. 2 (1962).

[71] Id. at 99-103.

[72] Id. at 108.

[73] Id. at 123.

[74] Id. at 108-109.

[75] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[76] Id. at 383-384.

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