

## **ATTY. MARK KRISTOPHER G. TOLENTINO AND ATTY. ROLEX SUPLICO, IN THEIR CAPACITIES AS MEMBERS OF THE PHILIPPINE BAR AND OFFICERS OF THE COURT, PETITIONERS, VS. RICHARD J. HEYDARIAN...**

*G.R. Nos. E-01742 and E-01747, April 08, 2026*

Ponente: LEONEN, SAJ.

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### **LEONEN, SAJ.:**

Criticizing the Court for its decisions and policies is one of the most protected forms of political expression. Thus, before it may be deemed as contemptuous, the danger of the speech must not only be clear and present danger to the Court's administration of justice. It must also incite the public to lose trust in the Judiciary, and the imminence and likelihood of this intended effect must also be established.[1]

This Court resolves the Petitions for Indirect Contempt[2] under Rule 71 of the Rules of Court against Richard J. Heydarian (Heydarian), Hon. Percival Cendaña (Cendaña), and Secretary Lorenzo "Larry" G. Gadon (Gadon) for their alleged deliberate, malicious, scandalous,[3] offensive, and outrageous public remarks[4] against the Supreme Court in connection with its July 25, 2025 Decision in Duterte v. House of Representatives.[5]

In December 2024, three impeachment complaints against Vice President Sara Z. Duterte (Vice President Duterte) were filed before the House of Representatives by various individuals. These were duly endorsed by certain Members of the House of Representatives and contained allegations of graft and corruption, betrayal of public trust, and other impeachable offenses.[6] Subsequently, on February 5, 2025, a fourth impeachment complaint, signed by 215 Members of the House of Representatives, was filed and, on the same day, transmitted to the Senate of the Philippines for appropriate action.[7]

On February 18, 2025, Vice President Duterte and a group of lawyers led by Atty. Israelito P. Torreon each filed separate Petitions for Certiorari and Prohibition before this Court, assailing the constitutionality of the fourth impeachment complaint.[8]

On July 25, 2025, the Court issued a Decision declaring the fourth impeachment complaint as unconstitutional for being barred by Article XI, Section 3(5) of the Constitution.[9] The Court further ruled that consequently, the Senate did not acquire jurisdiction to constitute itself as an impeachment court.[10]

Following the release of the Decision, Heydarian, a political analyst, author, journalist, and member of the academe,[11] posted a statement on his verified account on the social media platform X (formerly Twitter), stating:

FACT: DUTERTE had APPOINTED as many as 13 out of 15 SUPREME COURT justices by 2022!![12]

The same statement was also posted on Heydarian's official Facebook page.[13] As of February 2026, Heydarian maintains a following of over 128,200 on X[14] and approximately 316,000 on Facebook.[15]

On the same day, Cendaña, an incumbent Representative of the Akbayan Partylist,[16] released a video statement on his official Facebook page, where he said:

Gaya ng makulimlim na panahon, madilim din ang ating demokrasya. Binalewala ng Supreme Court ang Konstitusyon, binalewala ang sarili nilang mga desisyon, binalewala ang separation of powers para lang protektahan ang Bise Presidente. Nireduce ng Supreme Court ang kanyang sarili bilang Supreme Coddler of the Philippines.

The dismissal of the impeachment sets a dangerous precedent. Lahat ng tiwaling pulitiko pwedeng magtago sa likod ng Supreme Court at takasan ang pananagutan sa sambayanan. A [disastrous] day for Philippine democracy.[17]

The same video statement was also posted on the official Facebook page of Akbayan Partylist.[18] As of February 2026, Cendaña maintains a following of over 54,000 on Facebook,[19] while the Akbayan Partylist page had approximately 303,000 followers.[20]

Cendaña's statement was circulated and reported by several media outlets including Rappler,[21] Manila Bulletin,[22] and ABS-CBN.[23]

Meanwhile, on July 28, 2025, President Ferdinand "Bongbong" R. Marcos, Jr. delivered his fourth State of the Nation Address at the Batasang Pambansa Complex in Quezon City which was attended by Gadon who currently serves as the Presidential Adviser for Poverty Alleviation.[24] When asked by various news outlets about the then recent Decision of the Court on the impeachment complaint against Vice President Duterte, Gadon openly referred to the Court as "tuta ng mga Duterte." [25]

Consequently, Atty. Mark Kristopher G. Tolentino and Atty. Rolex O. Suplico[26] (collectively, petitioners Tolentino et al.) and Atty. Ferdinand S. Topacio[27] (petitioner Topacio) filed separate Petitions for Indirect Contempt against respondents Heydarian, Cendaña, and Gadon.

In G.R. No. E-01742, petitioners Tolentino et al., as practicing lawyers and officers of the court,[28] claim that respondent Heydarian's post was not merely "commentary on appointments or a general critique of political influence." [29] Instead, it willfully portrays the Justices of the Supreme Court as "beholden to former President Rodrigo Duterte," [30] imputing "impropriety, lack of independence, and judicial bias" [31] to the High Court as an institution.

Petitioners Tolentino et al. also posit that respondent Cendaña's statement accuses the Court of enabling political protection, and that his use of the term "Supreme Coddler" insinuates bias and has the potential to undermine the legitimacy of judicial decisions which will erode the public's confidence in the Court.[32]

Petitioners Tolentino et al. further submit that the timing, language, combined reach, and impact of the statements of respondents Heydarian and Cendaña establishes a clear intent to undermine the authority of the High Court and the independence of its Justices.[33] It went beyond fair commentary, amounting to sweeping allegations of judicial corruption couched in "derisive language intended to provoke public distrust and outrage." [34]

They contend that in today's digital age, where information and misinformation alike spread with unprecedented speed, respondents Heydarian and Cendaña, as prominent public figures, deliberately misused their platforms to malign the Court.[35] Their unfounded and reckless statements, devoid of legal basis, exposed the Court to "public ridicule, suspicion, and condemnation." [36] Thus, their statements were malicious and contemptuous which constitutes improper conduct punishable under Rule 71 of the Rules of Court.[37]

On August 15, 2025, respondent Heydarian, through his counsel, filed his Comment/Opposition.[38]

Procedurally, he maintains that petitioners Tolentino et al. lack legal standing, as they have neither demonstrated personal injury nor established a proper legal interest to sustain the Petition.[39] Instead, as known Duterte supporters, their true intent in filing this case is to "silence the democratic participation of citizens"[40] with opposing political views.

On the substantive aspect, respondent Heydarian argues that the statement he made falls within his right to freedom of speech and expression, particularly in pursuit of his social obligation and profession as a political scientist, professor, and academic.[41] His statement was only made to contribute to public discourse given that the impeachment complaint is a matter of public interest.[42]

Respondent Heydarian also asserts that the present Petition for Indirect Contempt is but a disguised form of subsequent punishment, allegedly infringing upon his constitutional right to freedom of speech.[43] Applying the jurisprudential tests—the dangerous tendency, balancing of interests, and clear and present danger doctrines—his statement qualifies as constitutionally protected speech and should not be subject to any form of punishment.[44]

Moreover, respondent Heydarian argues that his statement cannot be deemed contemptuous as it merely made a factual assertion, one that is irrefutable, true, and publicly verifiable.[45] He further contends that his single sentence should not be read in isolation, but in the context of his other statements on the same subject, pointing out that in the same X (formerly Twitter) thread, he also stated:

Nevertheless, the decision was unanimous and it would be unfair to automatically cast judgment just because of appointment patterns.[46]

Respondent Heydarian contends that by selectively omitting portions of his statement, petitioners Tolentino et al. are the ones misleading the Court and thereby engaging in a contumacious act.[47] To construe his words as suggesting that the Justices of the High Court are beholden to their appointing authority is to penalize him based solely on petitioners' subjective inference and interpretation.[48]

Lastly, respondent Heydarian emphasizes that petitioners Tolentino et al. relied on jurisprudence that is either nonexistent or erroneously cited.[49] Thus, as officers of the court, they should be required to explain why they sought to mislead and misguide this Court.[50]

On August 22, 2025, respondent Cendaña, through his counsel, filed his Comment.[51] Citing *ABS-CBN v. Ampatuan*,[52] respondent Cendaña argues that the Petition is fatally defective for failing to allege the essential mental element: That the statement was made with the specific intent to impede, obstruct, or degrade the administration of justice.[53]

With respect to the use of the term "Supreme Coddler," respondent Cendaña maintains that it cannot be construed as an intent to demean the authority of the Court.[54] He stresses that jurisprudence has made clear that mere snide remarks or sarcastic innuendoes do not amount to the level of contumely punishable under Rule 71 of the Rules of Court.[55]

Respondent Cendaña also contends that his isolated use of the term "Supreme Coddler" does not meet the threshold of imminence required under the clear and present danger test.[56] To adopt petitioners Tolentino et al.'s speculation would be to imply that the Court is so fragile or thin-skinned that it could be destabilized by a single critical remark.[57]

Respondent Cendaña further asserts that petitioners Tolentino et al. failed to establish, whether qualitatively or quantitatively, the alleged reach and impact of the purported contumacious statements, as well as their supposed effect on public confidence in the Judiciary.[58] Thus, he insists that the Petition failed to state a cause of action as prescribed in *ABS-CBN* and must be dismissed.[59]

While respondent Cendaña acknowledges that his exercise of the right to freedom of speech and expression has its limits, the alleged contumacious statement was "a legitimate expression of opinion made in good faith"[60] on a matter of significant interest to the public.[61]

Moreover, respondent Cendaña maintains that as a duly elected member of the House of Representatives, he is fully within his constitutional prerogative to scrutinize and comment on judicial conduct, especially on matters imbued with public interest.[62] He underscores that impeachment proceedings are, by their very nature, matters of paramount public concern, as they involve the accountability of high-ranking public officials. Consequently, he argues that citizens must be free to speak openly and with vigor on such issues, without fear of sanction or punishment.[63]

He further asserts that the present Petition is nothing more than a harassment suit intended to silence Duterte critics and discourage those who dare to speak out on issues of public interest.[64]

Finally, respondent Cendaña underscores that the jurisprudence cited in the Petition cannot be found in any official or published records of the Supreme Court.[65]

In G.R. No. E-01747, petitioner Topacio, as a taxpayer and a practicing member of the Philippine Bar,[66] claims that respondent Gadon's public statements are considered improper conduct as it "tends to undermine the confidence of the people in the honesty and integrity of the court and its members[.]"[67]

He further emphasizes that as a public official, respondent Gadon's words carry amplified weight, magnifying the damage inflicted and the disrespect shown towards the dignity of the Court.[68]

On August 19, 2025, respondent Gadon, by himself, filed his Comment.[69] Procedurally, he avers that the Petition states no cause of action as "[t]he general public is already aware of the biases of the Supreme Court. . . . that would damage, ruin, or cast doubts"[70] to its integrity.[71]

On the substantive aspect, respondent Gadon argues that he was merely exercising his right to freedom of expression.[72] He maintains that he never accused the Court of corruption or of accepting bribes from the Dutertes.[73] Rather, he asserts that his statements were simply an expression of frustration with what he perceived as the Court's countless bias in favor of Vice President Duterte.[74]

Respondent Gadon further contends that despite the numerous hearings conducted in the House of Representatives where Vice President Duterte was directed to appear, the Court nevertheless ruled that she had been denied due process—a conclusion that was met with objections from legal luminaries and law professors.[75]

Lastly, he asserts that petitioner Topacio filed the present Petition merely as a publicity stunt, intended to attract attention and advance his legal career at the expense of controversial personalities.[76] He thus prays that petitioner Topacio be sanctioned and fined in the amount of PHP 1,000,000.00 for abusing the processes of this Court for personal publicity.[77]

The Court consolidated[78] the Amended Petition in G.R. No. E-01742 and the Verified Petition in G.R. No. E-01747, noting that they involve substantially identical issues.

The issue for this Court's resolution is whether respondents Richard J. Heydarian, Hon. Percival Cendaña, and Secretary Lorenzo "Larry" Gadon should be cited for indirect contempt of court.

This Court dismisses the Petitions.

## I

The Judiciary settles actual controversies involving enforceable rights and determines if any branch or instrumentality of the government gravely abused its discretion amounting to lack or excess of jurisdiction.[79]

Our judicial system is designed to provide a peaceful and orderly means of resolving disputes by entrusting the administration of justice to the courts. It ensures that grievances are addressed through established legal processes rather than through violence,[80] mob rule, or extrajudicial means. In this way, the people are assured that their rights can be vindicated and conflicts settled within the framework of law.

At the heart of fulfilling this constitutional role lies the principle of judicial independence:

Under the Judiciary's unique circumstances, independence encompasses the idea that individual judges can freely exercise their mandate to resolve justiciable disputes, while the judicial branch, as a whole, should work in the discharge of its constitutional functions free of restraints and influence from the other branches, save only for those imposed by the Constitution itself. Thus, judicial independence can be broken down into two distinct concepts: decisional independence and institutional independence. Decisional independence refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law. On the other hand, institutional independence "describes the separation of the judicial branch from the executive and legislative branches of government." Simply put, institutional independence refers to the collective independence of the judiciary as a body.

In the case *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya* Dated September 18, 19, 20 and 21, 2007, the Court delineated the distinctions between the two concepts of judicial independence in the following manner:

One concept is individual judicial independence, which focuses on each particular judge and seeks to insure his or her ability to decide cases with autonomy within the constraints of the law. A judge has this kind of independence when he can do his job without having to hear — or at least without having to take it seriously if he does hear — criticisms of his personal morality and fitness for judicial office. The second concept is institutional judicial independence. It focuses on the independence of the judiciary as a branch of government and protects judges as a class.

A truly independent judiciary is possible only when both concepts of independence are preserved — wherein public confidence in the competence and integrity of the judiciary is maintained, and the public accepts the legitimacy of judicial authority. An erosion of this confidence threatens the maintenance of an independent Third Estate.

Recognizing the vital role that the Judiciary plays in our system of government as the sole repository of judicial power, with the power to determine whether any act of any branch or instrumentality of the government is attended with grave abuse of discretion, no less than the Constitution provides a number of safeguards to ensure that judicial independence is protected and maintained.[81] (Citations omitted)

To safeguard judicial independence, the courts are vested with the inherent and indispensable authority to punish acts of contempt.[82] This power is essential to preserving the courts' dignity, integrity, and the effective administration of justice.[83]

Contempt of court is any act that defies the court's authority, justice, or dignity.[84] It includes disobedience to court orders and conduct that tends to bring the court into disrepute, interfere with the administration of justice, or prejudice litigants and witnesses during proceedings.[85] Contempt of court is "generic, embracing within its legal signification a variety of different acts." [86]

Our Rules of Court classifies contempt into two kinds: direct and indirect. Rule 71, Section 1 specifies the

circumstances under which a person may be held liable for direct contempt:

SECTION 1. Direct contempt punished summarily. — A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court and punished by a fine not exceeding two thousand pesos or imprisonment not exceeding ten (10) days, or both, if it be a Regional Trial Court or a court of equivalent or higher rank, or by a fine not exceeding two hundred pesos or imprisonment not exceeding one (1) day, or both, if it be a lower court.

A finding of direct contempt is summary in nature, as it requires no further evidence beyond the judge's own observation of the contumacious act committed in their presence.[87]

Additionally, Rule 71, Section 3 provides the grounds for indirect contempt:

SECTION 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

- (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
- (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
- (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;
- (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) Failure to obey a subpoena duly served;
- (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

Indirect contempt is "perpetrated outside of the sitting of the court." [88] The punishable acts are "beyond the personal knowledge or perception of a judge." [89] Thus, indirect contempt proceedings are required to be initiated either *motu proprio* by the court against which the contempt was committed or through a verified petition, with due process accorded to the respondent. [90]

Contempt proceedings are classified as criminal or civil, depending on the objective for which the court exercises its inherent authority. *People v. Godoy* [91] meticulously laid down the fundamental distinctions between civil and criminal contempt:

A. As to the Nature of the Offense.

A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt consists in failing to do something ordered to be done by a court

in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.

A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.

It has further been stated that intent is a necessary element in criminal contempt; and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.

#### B. As to the Purpose for which the Power is Exercised

A major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised. Where the primary purpose is to preserve the court's authority and to punish for disobedience of its orders, the contempt is criminal. Where the primary purpose is to provide a remedy for an injured suitor and to coerce compliance with an order, the contempt is civil. A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court; private parties have little, if any, interest in the proceedings for punishment. Conversely, if the contempt consists in the refusal of a person to do an act that the court has ordered him to do for the benefit or advantage of a party to an action pending before the court, and the contemnor is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court; the party in whose favor that judgment was rendered is the real party in interest in the proceedings. Civil contempt proceedings look only to the future. And it is said that in civil contempt proceedings, the contemnor must be in a position to purge himself.

#### C. As to the Character of the Contempt Proceeding

It has been said that the real character of the proceedings is to be determined by the relief sought, or the dominant purpose, and the proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial.

Criminal contempt proceedings are generally held to be in the nature of criminal or quasi-criminal actions. They are punitive in nature, and the Government, the courts, and the people are interested in their prosecution. Their purpose is to preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders. Strictly speaking, however, they are not criminal proceedings or prosecutions, even though the contemptuous act involved is also a crime. The proceeding has been characterized as *sui generis*, partaking of some of the elements of both a civil and criminal proceeding, but really constituting neither. In general, criminal contempt proceedings should be conducted in accordance with the principles and rules applicable to criminal cases, in so far as such procedure is consistent with the summary nature of contempt proceedings. So it has been held that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt, that the accused is to be afforded many of the protections provided in regular criminal cases, and that proceedings under statutes governing them are to be strictly construed. However, criminal proceedings are not required to take any particular form so long as the substantial rights of the accused are preserved.

Civil contempt proceedings are generally held to be remedial and civil in their nature; that is, they are proceedings for the enforcement of some duty, and essentially a remedy for coercing a person to do the thing required. As otherwise expressed, a proceeding for civil contempt is one instituted to preserve and enforce the

rights of a private party to an action and to compel obedience to a judgment or decree intended to benefit such a party litigant. So a proceeding is one for civil contempt, regardless of its form, if the act charged is wholly the disobedience, by one party to a suit, of a special order made in behalf of the other party and the disobeyed order may still be obeyed, and the purpose of the punishment is to aid in an enforcement of obedience. The rules of procedure governing criminal contempt proceedings, or criminal prosecutions, ordinarily are inapplicable to civil contempt proceedings. It has been held that a proceeding for contempt to enforce a remedy in a civil action is a proceeding in that action. Accordingly, where there has been a violation of a court order in a civil action, it is not necessary to docket an independent action in contempt or proceed in an independent prosecution to enforce the order. It has been held, however, that while the proceeding is auxiliary to the main case in that it proceeds out of the original case, it is essentially a new and independent proceeding in that it involves new issues and must be initiated by the issuance and service of new process.

In general, civil contempt proceedings should be instituted by an aggrieved party, or his successor, or someone who has a pecuniary interest in the right to be protected. In criminal contempt proceedings, it is generally held that the State is the real prosecutor.

Contempt is not presumed. In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the Charges beyond reasonable doubt. In proceedings for civil contempt, there is no presumption, although the burden of proof is on the complainant, and while the proof need not be beyond reasonable doubt, it must amount to more than a mere preponderance of evidence. It has been said that the burden of proof in a civil contempt proceeding lies somewhere between the criminal "reasonable doubt" burden and the civil "fair preponderance" burden.[92] (Citations omitted)

In line with this distinction, Rule 71, Section 3(d) of the Rules of Court[93] makes clear that "any improper conduct, whether directly or indirectly, tends to impede, obstruct, or degrade the administration of justice constitutes criminal contempt." [94]

Courts regulate contemptuous speech through the imposition of sanctions for indirect contempt under Rule 71, Section 3(d) of the Rules of Court. Considered as improper conduct, these types of speech include: (1) violation of the sub judice rule;[95] (2) publications violating the confidentiality of administrative proceedings;[96] and (3) degrading comments or criticisms that put the courts in disrepute.[97]

The sub judice rule "restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice." [98] This regulation extends beyond the parties of a pending case, including members of the Bar and Bench, litigants, and witnesses, but also of the public at large, encompassing even the media.[99] As a general rule, discussion on the merits of a pending case is not permitted.[100]

This prohibition covers the disclosure of pleadings filed, remarks on the credibility of witnesses, evaluations of the evidence submitted, assessments of its relevance, and any other matter presented during trial for the judge's consideration.[101] The reason behind the sub judice rule is "to protect against the dangers of the publication to directly influence a judge or indirectly through public opinion in resolving a particular case." [102] After all, an accused is entitled to no less than the full protection of the Constitution—the right to a fair trial before an impartial tribunal, free from the taint of external influence, media publication, or prejudicial publicity.[103]

Statements violating the confidentiality of disbarment proceedings likewise constitute indirect contempt. Disbarment proceedings are governed by the principle of confidentiality.[104] Rule 139-B, Section 18 of the Rules of Court provides:

Section 18. Confidentiality. — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

The confidentiality of disbarment proceedings is not intended to shield lawyers from accountability for alleged misconduct. Rather, it reflects the recognition that, as officers of the court, lawyers are held to the highest standards of integrity and are subject to strict regulation to preserve the dignity of the profession.[105] The confidentiality rule also serves to prevent the misuse of disbarment proceedings as a weapon to tarnish a lawyer's name in the public sphere.[106] For this reason, the general rule is that the premature or unauthorized disclosure of such proceedings may itself constitute contempt of court.[107]

Finally, degrading comments or criticisms that put the courts in disrepute are deemed as acts of indirect contempt.

The Court welcomes sober criticisms and critical input regarding its decisions and policies. These help us evolve and carry our constitutional mandate.[108] However, its exercise must be bona fide, and should not go beyond the walls of decency and propriety:

But it is the cardinal condition of all such criticism that it shall be [bona fide], and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.[109]

In indirect contempt cases, there must be a clear showing that the ultimate purpose of the speaker is to "impede, obstruct, or degrade the administration of justice." [110]

Thus, even if there is no pending case, statements are contemptuous if they are of such character as to degrade the administration of justice, undermine public confidence in the courts, or otherwise obstruct the performance of judicial functions.[111]

The rationale was discussed in the recent case of *Re: Post of Atty. Erwin Erfe on Social Media Accusing the Court of Judicial Tyranny*: [112]

[T]he importance of maintaining the people's trust in the Judiciary, particularly, the Court. If the public loses their confidence in the Court, which is the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and believe that they cannot expect justice from the Court, they might be driven to take the law into their hands, and disorder and perhaps chaos might be the result.[113] (Citations omitted)

Primarily, it is to protect the integrity of the Judiciary:

For sure, judicial criticism can be constructive, uncovering and addressing a problem that merits public attention. Public awareness, debate, and criticism of the courts ensure that people are informed of what they are doing that have broad implications for all citizens. Informed discussion, comment, debate and disagreement from lawyers, academics, and public officials have been hallmarks of a great legal tradition and have played a vital role in shaping the law.

But there is an important line between legitimate criticism and illegitimate attack upon the courts or their judges. Attacks upon the court or a judge not only risk the inhibition of all judges as they conscientiously endeavor to discharge their constitutional responsibilities; they also undermine the people's confidence in the courts.

Personal attacks, criticisms laden with political threats, those that misrepresent and distort the nature and context of judicial decisions, those that are misleading or without factual or legal basis, and those that blame the judges for the ills of society, damage the integrity of the judiciary and threaten the doctrine of judicial independence. These attacks do a grave disservice to the principle of an independent judiciary and mislead the public as to the role of judges in a constitutional democracy, shaking the very foundation of our democratic government.

Such attacks on the judiciary can result in two distinct - yet related - undesirable consequences. First, the criticism will prevent judges from remaining insulated from the personal and political consequences of making an unpopular decision, thus placing judicial independence at risk. Second, unjust criticism of the judiciary will erode the public's trust and confidence in the judiciary as an institution. Both judicial independence and the public's trust and confidence in the judiciary as an institution are vital components in maintaining a healthy democracy.[114] (Citations omitted)

Thus, contempt proceedings are meant to preserve judicial independence and the public's trust and confidence in the Judiciary.

## II

Nonetheless, the interest of judicial independence and its administration of justice is balanced with the Court's duty to uphold the freedoms of speech, expression, and the press.

The protection of free expression goes back to after the declaration of independence against Spanish colonial rule. The 1899 Malolos Constitution which stated that no Filipino shall be deprived "[o]f the right to freely express his [or her] ideas or opinions, orally or in writing, through the use of the press or other similar means[.]"[115] However, the Malolos Constitution was short-lived, as the Philippines was occupied by the United States of America. During the American regime, the Philippine colonial government transplanted the American first amendment clause to protect free speech in the Philippines. It was carried through our organic acts from the Philippine Bill of 1902 to the 1973 Constitution.[116]

The 1987 Constitution expanded the protection of these fundamental freedoms in explicitly including freedom of expression in the Bill of Rights. Article III, Section 4 reads:

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.

These are distinct but indivisible rights crucial to the flourishing and maintenance of our fragile democratic society. These rights originate from the first postulate and the most important state policy that "[s]overeignty resides in the people and all government authority emanates from them."[117]

An appreciation of the scope and limits of these rights—as well as the history, context, and evolution of the tools used to assess restrictions on them—are essential to properly navigate the boundaries of its exercise in relation to the courts' equally compelling interest in ensuring the unfettered administration of justice.

Freedom of expression guarantees "the dignity of individual thought." [118] It involves the freedom to think for oneself and exercise agency over one's life to realize their potential regardless of the dominant norms.[119] Broad in scope, this freedom covers:

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.[120] (Emphasis supplied)

Freedom of speech is often discussed with free expression. While these are distinct rights, these are inseparable. Speech serves as a vehicle for one's ideas, thoughts, and: beliefs within a person's mind, which are expressed in a

physical or virtual space. It is indispensable to the exercise of "nearly every other form of freedom." [121]

Freedom of the press facilitates the exercise of free speech and expression. It is the people's weapon in exposing the abuses of the State, and their coverage of public affairs held the citizens to keep the government responsible and efficient. [122] Thus, they have the "(1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation." [123]

Finally, the right to assemble and petition the government for redress of grievance is also one of the freedoms safeguarded under Article III, Section 4 of the Constitution. It is a cognate right and a complement to these freedoms, the rights to peaceably assemble, and petition the government are derived from the exercise of these fundamental rights. [124] It is exercised in solidarity with others as to issues affecting the collective.

The freedoms of speech, expression, and the press are given the highest and most preferential status to enable uninhibited and robust debate, especially on public matters. [125] At the core of the free exercise of these rights is the affirmation of a person's dignity, their faith in our democratic systems manifested through their participation in public affairs. [126] This is only possible when the citizens are fully enabled and empowered to comment on the conduct of public officers, and have the "liberty to discuss publicly and truthfully any matter of public interest without censorship or punishment." [127] In *Chavez v. Gonzales*: [128]

Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence. When atrophied, the right becomes meaningless. The right belongs as well — if not more — to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us. [129] (Emphasis supplied, citations omitted)

However, one's freedom to speak is not absolute. There are certain types of speech which are not covered by the guarantees of the free speech clause. The Supreme Court of the United States (SCOTUS) ruling in *Chaplinsky v. New Hampshire* [130] was adopted in Philippine jurisprudence, where speech such as libel, lewdness, obscenity, profanity, insults, and other "fighting words" [131] which causes harm or tends to disturb the peace are deemed as low-value speech. [132] In *MVRS Publications Inc. v. Islamic Da'Wah Council of the Philippines, Inc.*, [133] the Court questioned the applicability of this doctrine, emphasizing the value of neutrality in assessing free speech cases in the Philippines. [134]

Restraints on the exercise of these fundamental rights are assessed based on the relevant interests involved. The validity of the intrusion is usually assessed based on several tests adopted from the United States. Chavez summarizes the three tests that courts use in determining the validity of restraints: (1) clear and present danger; (2) dangerous tendency; and (3) balancing of interest. [135] Recently, the Court also applied the *Brandenburg* test in relation to the Court's exercise of its power to punish contemptuous speech. [136]

### III

Our framework in resolving free speech cases originated from the rulings of the SCOTUS. Their doctrines were transplanted, applied, and developed in Philippine jurisprudence. Tracing the development of these tests is necessary to find the boundaries between the exercise of the freedom of speech and expression of the respondents vis-à-vis the Court's interest in the administration of justice through the exercise of its contempt power.

The clear and present danger test was "originally designed to determine the latitude which should be given to speech that espouses anti-government action." [137] As will be discussed below, this is the dominant test in indirect contempt for criticisms which tends to put the Court in disrepute.

The doctrine was first introduced in the SCOTUS ruling in *Schenck v. U.S.* [138] in 1919. Petitioners as members of the Socialist party were charged with violation of the Espionage Act of 1917 for causing and attempting to cause insubordination when they printed, circulated, and mailed thousands of leaflets opposing the conscription during World War I. In affirming the conviction, the SCOTUS laid the foundation for clear and present danger, which heavily relied on the circumstances when the publications were made and distributed:

We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. 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. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in § 4 punishes conspiracies to obstruct as well as actual obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success, alone warrants making the act a crime. [139] (Emphasis supplied, citations omitted)

The most influential conception on the protection of free speech came from the dissent of Justice Holmes in *Abrams v. United States*, [140] where the concept of the marketplace of ideas was introduced:

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man [or woman] says that he [or she] has squared the circle, or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men [or women] 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. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the Government that the First Amendment left the common law as to seditious libel in force. History seems to me against the notion. I had conceived that the United States through many years had shown its repentance for the Sedition Act of 1798, by repaying fines that it imposed. Only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, "Congress shall make no law . . . abridging the freedom of speech." Of course I am speaking only of expressions of opinion and exhortations, which were all that were uttered here, but I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States. [141] (Emphasis supplied, citations omitted)

Similar to Schenk, the majority in Abrams convicted the defendants for publishing 5,000 inflammatory leaflets encouraging the resistance against the war and the stoppage of the production of weapons and ammunitions by calling a general strike of workers producing them.[142]

In *Gitlow v. New York*,<sup>[143]</sup> a member of the Left Wing Section of the Socialist Party was convicted with criminal anarchy after publishing its manifesto and other materials adopted during their party's conference in New York. The SCOTUS upheld the constitutionality of the law, ruling that the freedoms of speech and of the press do not deprive the State of its "primary and essential right of self-preservation:"<sup>[144]</sup>

That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen. The State cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the State is acting arbitrarily or unreasonably when in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipency. In *People v. Lloyd*, *supra*, p. 35, it was aptly said: "Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is a present and imminent danger of the success of the plan advocated. If the State were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law."<sup>[145]</sup> (Emphasis supplied)

*Whitney v. California*<sup>[146]</sup> affirmed the validity of the State's exercise of police power and sustained Whitney's conviction for five counts of criminal syndicalism. In that case, Whitney organized the California branch of the Communist Labor Party of America and participated in its activities. Among the party's objectives was "to create a unified revolutionary working class movement"<sup>[147]</sup> to overthrow the capitalist rule, obtain political power, and install a working-class government. Guided by the ruling in *Gitlow*, the SCOTUS held:

That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom, and that a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means, is not open to question.

By enacting the provisions of the Syndicalism Act, the State has declared, through its legislative body, that to knowingly be or become a member of or assist in organizing an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes involves such danger to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute, and it may not be declared unconstitutional unless it is an arbitrary or unreasonable attempt to exercise the authority vested in the State in the public interest.<sup>[148]</sup> (Emphasis supplied, citations omitted)

Justice Brandeis wrote a separate concurring opinion in *Whitney* defining further the standard for clear and present danger:

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.[149] (Emphasis supplied)

In *Bridges v. California*,<sup>[150]</sup> the SCOTUS applied the clear and present danger test as regards the federal court's exercise of contempt power. It held that due to the censorial nature of contempt, there must be a showing of a substantive evil of disrespecting the Judiciary or causing disorder to the fair administration of justice:

No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression. Yet, it would follow as a practical result of the decisions below that anyone who might wish to give public expression to his views on a pending case involving no matter what problem of public interest, just at the time his [or her] audience would be most receptive, would be as effectively discouraged as if a deliberate statutory scheme of censorship had been adopted. Indeed, perhaps more so, because under a legislative specification of the particular kinds of expressions prohibited and the circumstances under which the prohibitions are to operate, the speaker or publisher might at least have an authoritative guide to the permissible scope of comment, instead of being compelled to act at the peril that judges might find in the utterance a "reasonable tendency" to obstruct justice in a pending case.

This unfocused threat is, to be sure, limited in time, terminating as it does upon final disposition of the case. But this does not change its censorial quality. An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgment of freedom of expression. And to assume that each would be short is to overlook the fact that the "pendency" of a case is frequently a matter of months or even years rather than days or weeks.'

For these reasons we are convinced that the judgments below result in a curtailment of expression that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary; and disorderly and unfair administration of justice. The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste," on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word "trial" connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through

the use of the meeting-hall, the radio, and the newspaper. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment.[151] (Emphasis supplied)

Significantly, in *Brandenburg v. Ohio*,[152] the SCOTUS overturned *Whitney* because it upheld a statute criminalizing the advocacy of the use of violence or force in effecting change. Here, Ohio's Criminal Syndicalism Act was invalidated, leading to the acquittal of a Ku Klux Klan leader who held a rally where he advocated the use of violence against Black and Jewish people. In creating the incitement test, the SCOTUS held:

The Ohio Criminal Syndicalism Statute was enacted in 1919. From 1917 to 1920, identical or quite similar laws were adopted by 20 States and two territories. In 1927, this Court sustained the constitutionality of California's Criminal Syndicalism Act, Cal. Penal Code §§ 11400-11402, the text of which is quite similar to that of the laws of Ohio. The Court upheld the statute on the ground that, without more, "advocating" violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it. But *Whitney* has been thoroughly discredited by later decisions. These later decisions have fashioned the principle that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. As we said in *Noto v. United States*, 367 U. S. 290, 297-298 (1961), "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control.[153] (Emphasis supplied, citations omitted)

In *United States v. O'Brien*,[154] defendant and three others burned their military service registration certificates before a crowd attempting to influence them to adopt their anti-war beliefs. They were convicted for violating the Universal Military Training and Service Act of 1948 for destroying and mutilating their certificates. In affirming their conviction, the SCOTUS held that:

We cannot accept the view that an apparently limitless variety of conduct can be labeled "speech" whenever the person engaging in the conduct intends thereby to express an idea. However, even on the assumption that the alleged communicative element in *O'Brien's* conduct is sufficient to bring into play the First Amendment, it does not necessarily follow that the destruction of a registration certificate is constitutionally protected activity. This Court has held that when "speech" and "nonspeech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong." Whatever imprecision inheres in these terms, we think it clear that a government 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 incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest. We find that the 1965 Amendment to § 12 (b)(3) of the Universal Military Training and Service Act meets all of these requirements, and consequently that *O'Brien* can be constitutionally convicted for violating it.

....

It is equally clear that the 1965 Amendment specifically protects this substantial governmental interest. We perceive no alternative means that would -more precisely and narrowly assure the continuing availability of issued Selective Service certificates than a law which prohibits their [willful] mutilation or destruction. Compare *Sherbert v. Verner*, 374 U. S. 398, 407-408 (1963), and the cases cited therein. The 1965 Amendment prohibits such conduct and does nothing more. In other words, both the governmental interest and the operation of the 1965 Amendment are limited to the noncommunicative aspect of O'Brien's conduct. The governmental interest and the scope of the 1965 Amendment are limited to preventing harm to the smooth and efficient functioning of the Selective Service System. When O'Brien deliberately rendered unavailable his registration certificate, he [willfully] frustrated this governmental interest. For this noncommunicative impact of his conduct, and for nothing else, he was convicted.[155] (Emphasis supplied, citations omitted)

The foregoing cases are only some of the influential SCOTUS decisions in forging the tools used in assessing free speech cases in our jurisdiction. Having been transplanted in our jurisprudence, the application of these doctrines continues to change with the demands of modernity.

## IV

We now turn to the evolution of the application of these analytical tools in Philippine jurisprudence. The following discussion will show that there is no singular test that applies across all challenges involving freedom of speech and expression.

The applicable test depends on the facts, who the speaker is, the speech involved, the content of the speech, how their message was delivered and received, its general impact on their audience, targeted or otherwise, and the medium in which they conveyed their message. Similarly, emerging factors such as changes in society and technological advancements should be considered in the continuing development of these tools to better protect fundamental freedoms.

### IV (A)

Like the United States, early free speech cases in the Philippines adhered to the dangerous tendency doctrine in *Gitlow*.

This is evident in the early decisions of the Court upholding convictions for sedition in *People v. Evangelista*[156] and in *People v. Feleo*,[157] citing *People v. Nabong*. [158] Feleo was making a speech that was alleged to be seditious in nature and was arrested thereafter. His lawyer, Nabong, criticized the constabulary and called for the overthrow of the government. In upholding all their convictions, the Court found Nabong's speech to be seditious, looking into the plain meaning of his words to identify the purpose of the speaker.[159]

In *Evangelista v. Earnshaw*, [160] the mayor of Manila denied all kinds of meeting of the Communist Party in the city, opining that their organization was illegal due to its primary purpose. The Court affirmed the mayor's actions, finding that the advocacies of the organization are seditious in nature because of its revolutionary propaganda as shown in its constitution and by-laws. Citing *Gitlow*, the Court held that the very nature of the utterances of its members are dangerous to peace and order.[161]

The dangerous tendency test prevailed during the infancy of free speech cases in the Philippines. In later cases, however, the Court demonstrated its preference for the clear and present danger test as introduced in *Schenck*.

#### IV (B)

As early as 1948, in *Primicias v. Fugoso*,<sup>[162]</sup> the Court recognized the developments of the clear and present danger doctrine in SCOTUS jurisprudence. While not referring to the actual doctrine itself, the ponente referred to the concurring opinion of Justice Brandeis in *Whitney* and emphasized that the fear of serious injury is not enough. There must be a serious evil that is imminent to allow the state to prevent the exercise of a peaceful assembly.<sup>[163]</sup>

In 1959, the Court formally adopted the clear and present danger standard in Philippine jurisprudence through *Cabansag v. Fernandez*.<sup>[164]</sup> While the doctrine was initially used in sedition, it was applied as a test in determining the validity of a judge's exercise of contempt power.

In *Cabansag*, the petitioner wrote a letter of grievance to President Ramon Magsaysay's Presidential Complaints and Action Commission, complaining about the Pangasinan Court of First Instance's delay in resolving an ejectment case. The judge declared the petitioner in contempt of court as the letter supposedly placed the court in disrepute and degraded its administration of justice.

Applying both the clear and present danger test and the dangerous tendency test in determining the boundaries between freedom of expression and independence of the Judiciary, the Court reversed the finding of contempt:

Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. These are the "clear and present danger" rule and the "dangerous tendency" rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

....

The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, While guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt.

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.<sup>[165]</sup> (Citations omitted, emphasis supplied)

In *Cabansag*, the Court reversed the citation for contempt because the language and context in the letter were made to seek redress for *Cabansag's* grievance. There was no intent to ridicule the court or belittle its reputation.<sup>[166]</sup>

The preference of using the clear and present danger test in challenges involving free speech in our jurisdiction

was affirmed in *In re Gonzales v. Commission on Elections*.<sup>[167]</sup> Noting the clarifications on the standards of the clear and present danger test, the Court incorporated that there must be a causal connection between the speech and the substantial evil which the State has the right to prevent. More importantly, the character of the danger must be imminent, probable, and "very likely inevitable."<sup>[168]</sup>

While failing to reach the required vote in *In re Gonzales* to declare the unconstitutionality of the assailed provisions, the Court adopted a line of SCOTUS cases integrating the overbreadth and vagueness doctrine in Philippine jurisprudence:

It is a well-settled principle that stricter standards of permissible statutory vagueness may be applied to a statute having inhibiting effect on speech; a man [or woman] may the less be required to act at his peril here, because the free dissemination of ideas may be the loser. Where the statutory provision then operates to inhibit the exercise of individual freedom affirmatively protected by the Constitution, the imputation of vagueness sufficient to invalidate the statute is inescapable. The language of Justice Douglas, both appropriate and vigorous, comes to mind: "Words which are vague and fluid .. may be as much of a trap for the innocent as the ancient laws of Caligula." Nor is the reason difficult to discern: "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanction may deter their exercise almost as potently as the actual application of sanctions."

....

In a 1968 opinion, the American Supreme Court made clear that the absence of such reasonable and definite standards in a legislation of its character is fatal. Where, as in the case of the above paragraphs, the majority of the Court could discern "an overbreadth that makes possible oppressive or capricious application" of the statutory provisions, the line dividing the valid from the constitutionally infirm has been crossed. Such provisions offend the constitutional principle that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

It is undeniable, therefore, that even though the governmental purposes be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. For precision of regulation is the touchstone in an area so closely related to our most precious freedoms.<sup>[169]</sup> (Emphasis supplied, citations omitted)

Synthesizing the various concepts of free speech in the Philippines, Chavez provided a framework in analyzing the validity of state limitations on the exercise of these fundamental freedoms. When confronted with restrictions on the exercise of these fundamental rights, all the relevant interests must be considered in relation to the circumstances of the case. Censorship can take many forms. It can either be prior restraint or subsequent punishment of a speech where the actual content and subject matter of the speech or only the incidents of its exercise, such as the time, place, and manner, are being regulated.<sup>[170]</sup>

Prior restraint is burdened with a heavy presumption of invalidity.<sup>[171]</sup> It exists when there is government restriction in advance of actual publication or dissemination of a speech or an utterance.<sup>[172]</sup> On the other hand, subsequent punishment is also a form of content-based regulation based on the communicative impact of a speech where the speaker is exposed to liability after utterance or publication.<sup>[173]</sup> This classification is relevant in determining the appropriate tools in ruling on restricting the exercise of these fundamental freedoms:

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.

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.

Thus, when the prior restraint partakes of a content-neutral regulation, it is subjected to an intermediate review. A content-based regulation, however, bears a heavy presumption of invalidity and is measured against the clear and present danger rule. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague.[174] (Emphasis supplied, citations omitted)

In Chavez, the National Telecommunications Commission (NTC) issued a warning to media platforms against the broadcasting of a wiretapped conversation allegedly between President Gloria Macapagal and a high commissioner of the Commission on Elections (COMELEC) in relation to the 2004 national and local elections.[175] Similarly, the Department of Justice (DOJ) conducted a press briefing that media organizations airing the recording will also be investigated.[176] Thus, the Court struck down the statements of NTC and DOJ as prior restraint on the freedom of the press.[177] The violation of the Anti-Wiretapping Act, by itself, did not satisfy the heavy burden of clear and present danger nor did the resulting chilling effect brought about by the acts of the agencies within the Executive branch of government.[178]

The clear and present danger test was also used to determine whether to punish unfair criticisms against the courts.[179] These comments should be bona fide and should not transcend the bounds of decency nor attack the decisional and institutional independence of the courts.[180] Otherwise, the speaker can be found guilty of committing indirect contempt akin to libel for comments found to be malicious.[181]

In *Marantan v. Diokno*,<sup>[182]</sup> the Court applied the clear and present danger test in determining whether the press conference held during the pendency of respondents' case violated the sub judice rule. In refusing to subsequently punish their utterance, the Court affirmed that in borderline cases, the freedom of public comment weighs heavily against the possibility of influencing pending cases. More importantly, the drastic and extraordinary power of contempt "should not be resorted to unless necessary in the interest of justice."<sup>[183]</sup>

While the clear and present danger test has been the dominant tool, it is not the only test applied in evaluating the validity of restrictions on the exercise of these freedoms, especially when there are other substantial state interests considered.

#### IV (C)

In his concurring and dissenting opinion in *In re Gonzales*, Justice Ruiz Castro introduced the balancing of interest test as formulated in the SCOTUS case of *American Communications Association v. Douds*.<sup>[184]</sup> He noted that the clear and present danger and the dangerous tendency tests were used to restrict speech based on public order and security. However, for other interests that the State has a right to control, balancing, these interests as against the exercise of fundamental freedoms is more appropriate:

In enunciating a standard premised on a judicial balancing of the conflicting social values and individual interests competing for ascendancy in legislation which restricts expression, the court in *Douds* laid the basis for what has been called the "balancing-of-interests" test which has found application in more recent decisions of the U.S. Supreme Court. Briefly stated, the balancing test requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.

In the actual application of the "balancing-of-interests" test, the crucial question is: how much deference should be given to the legislative judgment? It does not seem to me enough to say that this Court should not concern itself with the wisdom of a particular legislative measure but with the question of constitutional power. I believe that we cannot avoid addressing ourselves to the question whether the point of viable equilibrium represented by the legislative judgment embodied in R.A. 4880 is an appropriate and reasonable one, in the light of both the historic purpose of the constitutional safeguards of speech and press and assembly and the general conditions obtaining in the community.

Although the urgency of the public interest sought to be secured by Congressional power restricting the individual's freedom, and the social importance and value of the freedom so restricted, "are to be judged in the concrete, not on the basis of abstractions," a wide range of factors are necessarily relevant in ascertaining the point or line of equilibrium. Among these are (a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation; (b) the specific thrust of the restriction, i.e., whether the restriction is direct or indirect, whether or not the persons affected are few, (c) the value and importance of the public interest sought to be secured by the legislation — the reference here is to the nature and gravity of the evil which Congress seeks to prevent; (d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such public interest; and (e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom.<sup>[185]</sup> (Emphasis supplied, citations omitted)

Justice Ruiz Castro's concurring and dissenting opinion was adopted in the main ruling in *Lagunzad v. Vda de Gonzales*.<sup>[186]</sup> The Court used the balancing test where the right of the producer to express through his film was considered with the widow's right to privacy.<sup>[187]</sup> Here, the parties executed a licensing agreement where the producer agreed to pay royalties to the widow of the movie's main subject. However, because the producer failed to comply with the agreement, the Court ordered its enforcement.<sup>[188]</sup>

Noting that the clear and present danger doctrine "is not a magic incantation which dissolves all problems and

dispenses with analysis and judgment in the testing of the legitimacy of claims to free speech,"[189] the Court also used the balancing of interest test in *Zaldivar v. Sandiganbayan*.<sup>[190]</sup> In a separate Resolution<sup>[191]</sup> involving a separate incident in the same case, a Sandiganbayan special prosecutor released a statement commenting that only the rich and influential people were given preferential treatment by the Court.<sup>[192]</sup> He also filed impeachment cases against 13 associate justices.<sup>[193]</sup> He was found guilty of contempt and administratively liable for his intemperate language and disrespect of the Court.<sup>[194]</sup>

The O'Brien standard was also incorporated<sup>[195]</sup> in *Adiong v. COMELEC*,<sup>[196]</sup> where the Court invalidated the COMELEC's prohibition of posting of campaign decals on private property. Applying the balancing of interest and clear and present danger tests, the Court held that the regulation curtailed one's freedom to express their political preferences. It swept unnecessarily into protected freedoms while failing to demonstrate substantial state interest.<sup>[197]</sup>

Thus, the balancing test is usually employed when courts must weigh the exercise of basic freedoms against the "government's promotion of fundamental public interest or policy objectives."<sup>[198]</sup> This analytical lens is usually "deemed appropriate for restrictions on speech which are content-neutral."<sup>[199]</sup>

#### IV (D)

The incitement test is not commonly used in free speech challenges in our jurisdiction. As discussed earlier, this test originated from adjustments to the clear and present danger doctrine laid out in *Brandenburg*. Aside from restoring the requirement of imminence, it added intent and likelihood to incite lawlessness before an exercise of speech can be punished.<sup>[200]</sup> Thus, under the incitement test, speech or expression may only be restricted if it is "directed to inciting or producing imminent lawless action; and is likely to incite or produce such action."<sup>[201]</sup> This test thus looks at the intent, the circumstances, and the likely effect of the speech and expression.

*Brandenburg* was first adopted in the Philippines in *Salonga v. Paño*.<sup>[202]</sup> In that case, petitioner, a member of the opposition, was charged due to his alleged membership in different subversive organizations. He was also charged for his statements which allegedly suggested the possibility of a violent struggle if no reforms were made. In dismissing the complaint, the Court held that there was no evidence linking the petitioner to these groups. More importantly, he cannot be penalized for expressing his political thoughts:

This Court is particularly concerned when allegations are made that restraints have been imposed upon mere criticisms of government and public officials. Political discussion is essential to the ascertainment of political truth. It cannot be the basis of criminal indictments.

The United States Supreme Court in *Noto v. United States* (367 U.S. 290) distinguished between the abstract teaching of the moral propriety or even moral necessity for a resort to force and violence and speech which would prepare a group for violent action and steel it to such action. In *Watts v. United States* (394 U.S. 705), the American court distinguished between criminal threats and constitutionally protected speech.

It stated:

"We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *New York Times Co. v. Sullivan* (376 U.S. 254). The language of the political arena, like the language used in labor disputed is often vituperative, abusive, and inexact. We agree with petitioner that his only offense was a kind of very crude offensive method of stating a political opposition to the President.

In the case before us, there is no teaching of the moral propriety of a resort to violence, much less an advocacy of force or a conspiracy to organize the use of force against the duly constituted authorities. The alleged remark about the likelihood of violent struggle unless reforms are instituted is not a threat against the government. Nor is it even the uninhibited, robust, caustic, or unpleasantly sharp attack which is protected by the guarantee of free speech. Parenthetically, the American case of *Brandenburg v. Ohio* (395 U.S. 444) states that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. The words which petitioner allegedly used according to the best recollections of Mr. Lovely are light years away from such type of proscribed advocacy.[203] (Emphasis supplied, citations omitted)

The *Brandenburg* test was again invoked in the Court's ruling in *Calleja v. Executive Secretary*,[204] which involved a facial challenge against the validity of the Anti-Terrorism Act of 2020 (ATA). In *Calleja*, the Court held that this doctrine is the "latest iteration of the clear and present danger rule." [205] While upholding the main proviso of Section 4 of the law, the Court struck down the "not intended clause" [206] for being overbroad and vague, potentially causing a chilling effect against the exercise of free speech.

Recognizing that the interest of the state to protect itself from armed attack, the Court, in *Calleja*, upheld the constitutionality of Section 9 on "inciting to commit terrorism." [207] The provision is narrowly tailored to achieve compelling state interest and incorporates the strict *Brandenburg* guidelines. The Court also noted that the high standards and detailed parameters of restricting speech as defined in the Implementing Rules and Regulations of the ATA set possible guidelines on whether any speech or expression critical of the government may be punished under the law:

Notably, aside from a compelling state interest, the strict scrutiny test, which applies to content-based speech restrictions, requires the necessity and proportionality of the means used to curtail the exercise of free speech rights. Under Section 9 of the ATA, inciting is committed by any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of the acts specified in Section 4. While the terms "inciting" or "incitement" are not themselves defined in the ATA, reference can be made to the Senate deliberations which shows that Section 9 was intended to operate only within a narrow and confined area of speech where restrictions are permitted, and only within the confines of the intent-purposes parameters of Section 4.

....

Thus, based on this legislative intent, statements may only be penalized under Section 9 if the speaker clearly intended the hearers to perform any of the punishable acts and for the purposes enumerated under Section 4.

The foregoing legislative characterization of incitement appears to reflect the international understanding of "incitement" as "a direct call to engage in terrorism, with the intention that this will promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring." It also appears to heed the United Nations Secretary General's recommendation for states to prosecute direct incitement to terrorism only if it "directly encourages the commission of a crime, is intended to result in criminal action, and is likely to result in criminal action" in order for states to comply with the international protection of freedoms of expression. Moreover, they appear to incorporate the imminence (i.e., directed to inciting imminent lawless action) and likelihood (i.e., likely to incite such action) elements of *Brandenburg*.

Based on the foregoing construction, the Court thus finds that speech or statements can be penalized as inciting under Section 9 only if they are: (1) direct and explicit — not merely vague, abstract, equivocal — calls to engage in terrorism; (2) made with the intent to promote terrorism; and (3) directly and causally responsible for increasing the actual likelihood of terrorist attacks. To the Court's mind, these parameters have been largely

incorporated in the detailed guidelines found in Rule 4.9 of the IRR for the prosecution of incitement under Section 9, thus:

There is incitement to commit terrorism as defined in Section 4 of the Act when a person who does not take any direct part in the commission of terrorism incites others to the commission of the same in whatever form by means of:

- speeches;
- proclamations;
- writings;
- emblems;
- banners; or
- other representations.

and the incitement is done under circumstances that show reasonable probability of success in inciting the commission of terrorism.

In determining the existence of reasonable probability that speeches, proclamations, writings, emblems, banners, or other representations would help ensure success in inciting the commission of terrorism, the following shall be considered:

a. Context

Analysis of the context should place the speech, proclamations, writings, emblems, banners, or other representations within the social and political context prevalent at the time the same was made and/or disseminated;

b. Speaker/actor

The position or status in the society of the speaker or actor should be considered, specifically his or her standing in the context of the audience to whom the speech or act is directed;

c. Intent

What is required is advocacy or intent that others commit terrorism, rather than the mere distribution or circulation of material;

d. Content and form

Content analysis includes the degree to which the speech or act was provocative and direct, as well as the form, style, or nature of arguments deployed in the speech, or the balance struck between the arguments deployed;

e. Extent of the speech or act

This includes such elements as the reach of the speech or act, its public nature, its magnitude, the means of dissemination used and the size of its audience; and

f. Causation

Direct causation between the speech or act and the incitement.

These guidelines are conspicuously similar to the Rabat Plan of Action which refers to an internationally-recognized high threshold for defining restrictions on freedom of expression. The six-part

threshold test takes into consideration the following factors: (1) the social and political context, (2) status of the speaker, (3) intent to incite the audience against a target group, (4) content and form of the speech, (5) extent of its dissemination and (6) likelihood of harm, including imminence.

Together, the foregoing guidelines serve as an effective safeguard which ensures that not all forms of provocation or passionate advocacy or criticism against the Government shall be penalized as incitement under the law. The context, speaker, intent, content and form, and the extent of the speech or act shall all be considered to ensure that the incitement is not only grave, but may very well be imminent. For example, when a humble teacher posts on social media that he will give fifty million pesos to the one who kills the President, he may not be punished for inciting to commit terrorism in the absence of a showing that the statements made were clearly directed to inciting an imminent act of terrorism and is likely to lead to terrorism. The position of the speaker also appears not likely to influence others to commit terrorism.[208] (Emphasis supplied, citations omitted)

More recently, the incitement test was applied in *Re: Statements Made by Lorraine Marie T. Badoy Allegedly Threatening Judge Marlo A. Magdoza-Malagar*,[209] where respondent posted several statements on social media against a judge for ruling against the DOJ in its petition to proscribe the Communist Party of the Philippines-New People's Army as a terrorist group. In the statements, Badoy threatened to harm the judge and cast doubt on whether she was the one who wrote her decision. Badoy even threatened to bomb the offices of judges who are friendly with terrorist organizations. The Court found clear and present danger in her statements constituting unwarranted attacks against the Court's dignity and independence. The Court also used the Brandenburg test since Badoy also incited lawless action:

Finally, when the speech may incite lawless action, the Brandenburg test, as recently used in *Calleja v. Executive Secretary*, is used. This test determines whether a speech or expression is constitutionally protected or if it "has a reasonable probability or likelihood of producing such lawless action." A speech that falls under the latter must be: "(1) directed to inciting or producing imminent lawless action; and (2) is likely to incite or produce such action."

....

An incitement to commit lawless violent action and is likely to cause such violent action causing death or injury is not covered by the constitutional privilege of protected speech. As shown by past experiences here and abroad, when such incitement to cause lawless violent action is done through social media by its influencers, the imminence is high that it will actually be committed by those so provoked.

Thus, respondent's posts must not be treated lightly. Her statements, though unsubstantiated, have the power to spark a deluge of assaults against the Judiciary and its members. Owing to her status as an online personality with more than 166,000 Facebook followers, respondent should have observed the high standard expected of her.

Respondent's assertion that she was merely exercising her freedom of expression cannot exculpate her from liability. "Liberty of speech must not be confused with abuse of such liberty." As earlier discussed, the ferocity with which she responded to the trial court's ruling can in no way be considered as a legitimate exercise of her constitutional right.

Respondent's statements were beyond objective criticism of the decision, but were explicit declarations that the court was personally motivated to rule in favor of the winning party, that the court of law was weaponized to inflict harm on the public, and that the decision was written by private citizens connected with the CPP-NPA-NDF. Her clear threats against Judge Magdoza-Malagar and other members of the Judiciary leave no doubt that she was imbued with bad faith in making her post. In so doing, respondent jeopardized the Judiciary by sowing distrust and impairing the public's confidence in the honesty, integrity, and impartiality of

those donning judicial robes. She was not merely advancing her advocacy when she made those incendiary statements on social media; she effectively made a call to action against Judge Magdoza-Malagar and the entire Judiciary. This, we cannot allow.[210] (Citations omitted)

The foregoing tests are analytical tools that guide the Courts in navigating the boundaries of fundamental freedoms of speech, expression, and the press. There is no singular approach in assessing when a state interest clashes with the exercise of these primordial liberties. Thus, we are called to assess all the relevant circumstances, starting with the nature of the speech or expression involved.

## V

The use of the incitement test reflects this Court's acknowledgment that the content of the speech is not the sole determinant of whether the speech is protected. Other components of the speech must be considered. Thus, we look not only at what was literally stated. We consider the speaker's intention and the speech's effect on the intended audience and whoever may be listening to their message. In doing so, we acknowledge the importance of language and gain a deeper understanding on how this Court should further navigate the restrictions that may be imposed on this fundamental right.

Language is a reflection of our reality. Reality is captured through thought. We perceive and experience the world around us through our senses and capture them in our consciousness.[211] Information gathered from our environment is then processed through various cognitive processes as thoughts.

Thoughts may not necessarily capture the entire reality. An individual possesses a multitude of thoughts, and some may be more dominant than others, especially if these have an underlying affectation or emotion. An individual's perception may be limited or distorted. Nonetheless, there is no other way to capture or identify thoughts without language.

Language is the tool by which thoughts are expressed, transmitted, and communicated to others.[212] Described as the "real medium of human being,"[213] language is not merely a tool of thinking, knowing, and interpreting the world but a condition of humanity's existence.[214] It is how one lives, sees, and knows the world, because it is a "vital carrier of meaning"[215] and the medium for any social interaction.[216]

Ferdinand de Saussure views "language as the norm of all other manifestations of speech." [217] Language is a system of signs corresponding to certain ideas adopted by society that facilitates the faculty of speech.[218] The "meaning, sense, and structure [of language] come from conventional practice." [219] Linguistics or the study of language is concerned with how basic units of words relate to the abstract system that determines their meaning and their possible combinations to form intelligible phrases or sentences.[220]

Laws are an embodiment of the thoughts of a collective, expressed through language.[221] Law is the language of how society creates and maintains order and protects the structures it is founded upon to sustain itself.[222] Scholars describe law as an act of translating ordinary language in a parlance to be used in a legal system.[223] Law, as specie of language, "has a limited subject-matter and its own special grammatical rules, as it differs from ordinary language not only in lexicon but also in terms of morphology, syntax or semantics." [224]

While law is a language mainly spoken by the legal community, including legal authorities, it binds everyone. Laws are composed texts—words laden with normative pronouncements. However, laws also perform various communicative actions having the "capacity to enact, to execute an action, such as prohibition, permission, obligations and so forth. They not only describe the state of affairs but also have the ability to change the mentioned state." [225]

In his influential work, J. L. Austin (Austin) introduced the concept of speech, or the use of language, as an act.[226] Austin identified two categories of speech acts, namely constative and performative utterances. Constative speech describes things or statements which can be verified as either true or false.[227] On the other hand, performative speech does not only state something, but in "uttering of the sentence is, or is a part of, the doing of an action[.]"[228]

Performative utterances do not merely describe an action but the act of speaking, their effect or result is achieved due to "specific conventions linking the words to institutional or institutionalized procedures." [229] An example of a performative utterance is stating "I do" in a marriage ceremony where the couple take each other as spouses.[230] However, there are requirements before an utterance can be considered to have the desired effect, which Austin refers to as felicity conditions:

(A.1)

There must exist an accepted conventional procedure having a certain conventional effect, that procedure to include the uttering of certain words by certain persons in certain circumstances, and further,

(A.2)

the particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked.

(B.1)

The procedure must be executed by all participants both correctly and

(B.2)

completely.

(T.1)

Where, as often, the procedure is designed for use by persons having certain thoughts or feelings, or for the inauguration of certain consequential conduct on the part of any participant, then a person participating in and so invoking the procedure must in fact have those thoughts or feelings, and the participants must intend so to conduct themselves, and further

(T.1)

must actually so conduct themselves subsequently.[231]

While Austin has an expanded discussion on the effects when any of these felicity conditions are present, suffice it to say that an utterance will have the intended effect given the appropriate context and execution of the act. The mental element, or intent of the speaker, is also a relevant consideration on whether the intended effect will be achieved.

Austin also discusses the three components of speech or utterances: (i) locutionary acts; (ii) illocutionary acts; and (iii) perlocutionary acts.[232]

Locutionary acts pertain to the act of making an utterance that has meaning and is understandable.[233] Simply put, it is the statement that is uttered. Illocutionary acts refer to what is intended by the speaker in their utterance,

or what they perform by speaking.[234] It is how they wish to be understood by their audience. It is using language for a purpose. In an illocutionary act, the context behind what is spoken matters. Perlocutionary acts are what produces an effect on the audience.

We first distinguished a group of things we do in saying something, which together we summed up by saying we perform a locutionary act, which is roughly equivalent to uttering a certain sentence with a certain sense and reference, which again is roughly equivalent to 'meaning' in the traditional sense. Second, we said that we also perform illocutionary acts such as informing, ordering, warning, undertaking, &c., i.e. utterances which have a certain (conventional) force. Thirdly, we may also perform perlocutionary acts: what we bring about or achieve by saying something, such as convincing, persuading, deterring, and even, say, surprising or misleading. Here we have three, if not more, different senses or dimensions of the 'use of a sentence' or of 'the use of language' (and, of course, there are others also). All these three kinds of 'actions' are, simply of course as actions, subject to the usual troubles and reservations about attempt as distinct from achievement, being intentional as distinct from being unintentional, and the like.[235]

To illustrate, if the locutionary act is saying "Fire!" in a theater, the illocutionary act may be that the speaker is intending for the people in the theater to evacuate. The perlocutionary act causes the people in the theater to be afraid and evacuate.

Our understanding of the freedom of speech and expression should evolve to consider these components of speech acts. Austin's work is relevant in shifting the discourse from viewing language as a representation of reality to understanding its binding effects in "establishing mutual obligations and relationships, and performing socially significant acts which change the state of the social world." [236] In determining whether speech or expression is protected, interpreting it should no longer be limited to semantics, where the words are understood solely by their meaning and signification. All elements of the language should be looked at. Speech should be seen as an act, performed with an intention, set in a context, and producing an effect.

### V (A)

Given these considerations, some types of speech are more protected than others, such as political speech. In Chavez:

Thus, all speech are not treated the same. Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech, may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech. We have ruled, for example, that in our jurisdiction slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized.[237]

Political speech is accorded the greatest degree of protection and is placed on the highest rung in the hierarchy of protected expressions.[238] Contrary to commercial or obscene speech, political speech "occupies a preferred rank within our constitutional order, it being a direct exercise of the sovereignty of the people." [239]

This Court has recognized political speech as "both intended and received as a contribution to public deliberation about some issue, foster[ing] informed and civic-minded deliberation." [240]

It is crucial in a democracy for an electorate to have the freedom to discuss public issues and participate in matters relating to politics and society; this includes criticisms and demands to hold the government accountable. Political speech is the "lifeblood of democracy;" [241] it is an avenue through which its citizens can "confront its

government on a more or less equal footing." [242] In *The Diocese of Bacolod v. Commission on Elections*: [243]

Proponents of the political theory on "deliberative democracy" submit that "substantial, open, [and] ethical dialogue is a critical, and indeed defining, feature of a good polity." This theory may be considered broad, but it definitely "includes [a] collective decision making with the participation of all who will be affected by the decision." It anchors on the principle that the cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state's affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people. On this note, the theory on deliberative democracy may evolve to the right of the people to make government accountable. Necessarily, this includes the right of the people to criticize acts made pursuant to governmental functions. [244] (Citations omitted)

Political speech is valuable, not harmful, to a democracy. In his book, *Freedom of Speech*, media law professor Eric Barendt writes:

Political speech is immune from restriction, because it is a dialogue between members of the electorate and between governors and governed, and is, therefore, conducive, rather than inimical, to the operation of a constitutional democracy. The same is not so obviously true of other categories of 'speech,' for which the protection of the free speech may be claimed — pornography or commercial advertising. [245]

Political speech is protected because its exercise shapes the caliber of discussions and conversations among citizens:

Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society. [246]

The protection for political speech is also seen in how fair commentaries on matters of public interest are treated as privileged communications. In *Borjal v. Court of Appeals*: [247]

Indisputably, petitioner Borjal's questioned writings are not within the exceptions of Art. 354 of The Revised Penal Code for, as correctly observed by the appellate court, they are neither private communications nor fair and true report [sic] without any comments or remarks. However this does not necessarily mean that they are not privileged. To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Caete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.

The concept of privileged communications is implicit in the freedom of the press. As held in *Elizalde v. Gutierrez* and reiterated in *Santos v. Court of Appeals* —

To be more specific, no culpability could be imputed to petitioners for alleged offending publication without doing violence to the concept of privileged communications implicit in the freedom of the press. As was so well put by Justice Malcolm in *Bustos*: Public policy, the welfare of society, and the orderly administration of government have demanded protection of public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.

The doctrine formulated in these two (2) cases resonates the rule that privileged communications must, *sui generis*, be protective of public opinion. This closely adheres to the democratic theory of free speech as essential to collective self-determination and eschews the strictly libertarian view that it is protective solely of self-expression which, in the words of Yale Sterling Professor Owen Piss, makes its appeal to the individualistic ethos that so dominates our popular and political culture[.][248] (Emphasis supplied, citations omitted)

In *Tulfo v. People*,[249] this Court discussed that courts must be wary of imposing punishments for speech or expressions in relation to public affairs or the performance of duties of public officials. Further, court actions should not be used to curtail the constitutional rights to free speech and free press, especially in relation to public matters:

In construing libel laws, regard must always be made to the guarantees provided by our Constitution. Criminal prosecutions for libel must undergo the rigorous and exacting standard of ensuring that they do not violate the right to free expression and the press. Our libel laws must not be broadly construed as to deter comments on public affairs and the conduct of public officials. Courts must examine libel cases involving a public officer's exercise of official functions within the context of these constitutional guarantees.[250] (Citations omitted)

This also applies to members of the Judiciary because as public officers, judges and justices are not immune from criticisms. This also proceeds from the constitutional guarantee of accountability that a "public office is a public trust." [251] The Judiciary, as one of the three pillars of the government, is "rooted in the soil of democratic society, nourished by the periodic appraisal of the citizens whom it is expected to serve." [252]

In *United States v. Bustos*,[253] the Court recognized the public's interest in the administration of justice, which extends to the exercise of the primordial right to comment and criticize judicial conduct:

The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy.

The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all know of any official dereliction on the part of a magistrate or the wrongful act of any public officer to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism." [254] (Emphasis supplied, citations omitted)

Considering the crucial role of political speech in our democracy, government restrictions on political speech should be viewed warily. This covers speech against the Judiciary as any criticism towards it is an exercise of one's political right. As a highly protected form of speech, we should be careful before wielding our inherent

power to punish for contempt.

## VI

The characterization of the speech, whether its nature as fact or opinion, is also relevant in considering the protection accorded to the exercise of this fundamental freedom.

Facts are anything capable of exact knowledge,[255] or those which can be objectively established or verified.[256] On the other hand, opinions "proceed from impressions, depend on perception, and are products of personal interpretation and belief"[257] about places, persons, things, or events, that cannot be determined or objectively verified, but are usually based on a fact.

Freedom of speech and expression covers the statement of both facts and opinions. Stating a fact or expressing an opinion formed with "reasonable degree of care and on reasonable grounds"[258] cannot be punished even if it is critical and harsh.

Liability is attached when the statement is not only derogatory but also false.

### VI (A)

Speeches that exceed the boundaries of legitimate criticism are akin to libel,[259] as defined and punished under Articles 353 and 355 of the Revised Penal Code.

In *People v. Castelo*,[260] this Court applied the doctrine of qualified privilege communications under Article 354 of the Revised Penal Code in evaluating the propriety of a judge's citation of indirect contempt against a news editor who published a story about an attempted extortion in a case pending in his sala. Castelo also noted the similarities between contempt and libel proceedings:

While the present case involves an incident of contempt the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Therefore, this principle regarding privileged communications can also be invoked in favor of appellant.[261]

Thus, defamatory statements expressed with malice—done knowing that it was false, or absent a good intention and justifiable motive—are actionable.[262]

In the same vein, the malicious spreading of false or harmful statements has no free speech value and cannot be deemed to be protected speech.

There are three categories of harmful statements: (i) misinformation; (ii) disinformation; and (iii) mal-information.[263]

Misinformation is the sharing of false information with no intention to cause harm. It is possible that the false information was shared without any awareness of its falsity, and the person making the statement is in fact convinced they are sharing true or correct information. Meanwhile, mal-information is the sharing of that which may be true or correct but it is being done to hurt or harm another person or entity. Disinformation, on the other hand, is wrong information deliberately shared with knowledge of its falsity. It is usually done to further an agenda.[264]

As will be discussed further below, the spread and proliferation of wrong or harmful information on digital platforms have been a growing global concern.[265] Due to the speed and scale by which these types of

information are shared through cyberspace, the spread of misinformation, disinformation, and mal-information have real and lasting consequences that affect not only the subject of the statements, but also the collective consciousness which results in changes in behavior and beliefs, thus altering reality.[266]

While the sharing of misinformation and mal-information may be defensible in some instances, disinformation should be restricted and penalized once false content, malicious intent, and harmful effect is established. Disinformation must be treated as having no free speech value and categorized in the same way as other unprotected speech, such as hate speech or obscene speech.

## VI (B)

As mentioned, opinions generally fall under protected speech. However, a line must be drawn if the expressed opinion can be considered as hate speech.

There is no universally accepted definition of hate speech.[267] Scholars argue that at the very least, hate speech consists of "symbolism, linguistic or otherwise, that expresses intense antipathy toward some group or toward an individual on the basis of membership in some group." [268] As a subjective experience, the listener of the utterance assesses whether the intention of the speaker is hateful towards a particular target individual or group.[269] Thus, hate speech is considered as a specie of a speech act which has the following themes:

- (1) targeting a group or individual as a member of a group, (2) content in the message that expresses hatred, (3) the speech causes harm, (4) the speaker intends harm or bad activity, (5) the speech incites bad actions beyond the speech itself, (6) the speech is either public or directed at a member of the group, (7) the context makes violent response possible, (8) the speech has no redeeming purpose.[270]

Alexander Brown breaks down the ordinary meaning of hate speech by looking at the semantics of its constituent parts, the words "hate" and "speech," and their intimate relationship.[271] He also looks at the speech and its ability to draw out emotions, feelings, or attitudes of hate in relation to the reaction of hearers, the expression of the speaker, their motives, and the effect of their speech.[272]

Defining hate speech is relevant in determining what kind of speech can be regulated. This type of speech needs to be regulated because of the harm that it brings to the group that the speech is directed upon.[273]

Thus, as in all other types of speeches, the utterance should be contextualized, with the intention, effect, and impact considered in determining if it should be restricted.

## VI (C)

Nonetheless, statements against a public official in their public capacity are still protected by the doctrine of fair comment. In *Borjal*:

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[274] (Emphasis supplied, citation omitted)

There is a higher standard for establishing malice when the speech is directed to public officers. The prosecution

must prove that the statement was made with actual malice—with knowledge of its falsity, or with reckless disregard as to its falsity.[275]

In *Daquer, Jr. v. People*, [276] this Court discussed that to be deemed as being in "reckless disregard," the accused should have doubted the truthfulness of their statement. There is no actual malice when the falsity of the statement is by mere negligence or mistake:

"Reckless disregard" is determined on a case-by-case basis. There is reckless disregard if the accused was found to have entertained serious doubts of the truth of the published statements, or if the statements were of a matter not determined to be a legitimate topic in the area. Errors or misstatements by themselves are insufficient to be considered reckless disregard, unless shown that the accused possessed a high degree of awareness of the falsity. Mere negligence is not enough:

To be considered to have reckless disregard for the truth, the false statements must have been made with a definite awareness that they are untrue. That the accused was negligent of the facts is not enough. The accused must have doubted the veracity of the statements that he or she was making. Thus, errors and inaccuracies may be excused so long as they were made with the belief that what was being stated is true.[277] (Emphasis supplied, citations omitted)

Thus, inaccurate, incorrect, or even rude or crude statements against public officers are not necessarily actionable. In *Guinguing v. Court of Appeals*: [278]

It cannot be helped if the commentary protected by the Bill of Rights is accompanied by excessive color or innuendo. Certainly, persons in possession of truthful facts are not obliged to present the same in bland fashion. These true facts may be utilized to convince the listener/reader against a particular position, or to even dissuade one against accepting the credibility of a public figure. Dry facts, by themselves, are hardly stirring. It is the commentary thereupon that usually animates the discourse which is encouraged by the Constitution as integral to the democratic way of life. This is replete in many components of our daily life, such as political addresses, televised debates, and even commercial advertisements.

As adverted earlier, the guarantee of free speech was enacted to protect not only polite speech, but even expression in its most unsophisticated form. Criminal libel stands as a necessary qualification to any absolutist interpretation of the free speech clause, if only because it prevents the proliferation of untruths which if unrefuted, would gain an undue influence in the public discourse. But in order to safeguard against fears that the public debate might be muted due to the reckless enforcement of libel laws, truth has been sanctioned as a defense, much more in the case when the statements in question address public issues or involve public figures.

In ascertaining the degree of falsity that would constitute actual malice, the Court, citing *New York Times*, has even gone so far as acknowledging:

Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy. In *Bulletin Publishing Corp. v. Noel* we held:

A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies[.][279] (Emphasis supplied, citation omitted)

In *In re Jurado*,<sup>[280]</sup> a lawyer columnist was penalized for his failure to check the veracity of his sources' information and to give the other side an opportunity to comment on the story. It also discussed the exercise of speech and expression and the right of the Judiciary and its members to maintain their honor and reputation:

Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise bona fide care in ascertaining the truth of the statements they publish. The norm does not require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the reckless disregard of private reputation by publishing or circulating defamatory statements without any bona fide effort to ascertain the truth thereof. That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines.<sup>[281]</sup> (Emphasis supplied, citation omitted)

Thus, public imputations against a public figure in their public capacity are not actionable until actual malice is proven, regardless of the nature of the speech (fact or opinion) or whether they are true or false.

## VII

Traditionally, the Court has regulated three categories of speech in the context of indirect contempt proceedings, with the scope of restriction determined by the identity of the speaker and the degree of their proximity to the courts.<sup>[282]</sup>

The first category pertains to litigants and their counsels, which are "in closest proximity to the courts as parties in judicial proceedings."<sup>[283]</sup> Their speech is placed under the most stringent restrictions because in submitting to the authority of the courts, they also accept the obligation to observe the Rules of Court and the decorum demanded in judicial proceedings, including refraining from public statements that may prejudice the fair and impartial resolution of their case.<sup>[284]</sup>

The second category covers members of the bar and the bench—lawyers and judges who, in their professional capacity, engage in public commentary and discourse about cases handled by other lawyers or about the courts themselves.

Because they are lawyers, their speech is also subject to stricter limits by virtue of their solemn oath as officers of the court and their continuing obligation under the Code of Professional Responsibility and Accountability (CPRA). Their words carry not only the weight of private opinion but also the authority and credibility of the legal profession. Thus, when lawyers speak publicly about ongoing cases, other practitioners, or the courts, they "must be careful not to exceed the limits of fair comment and criticism."<sup>[285]</sup>

The same, if not higher, ethical standards apply to justices and judges, whose very office demands that they exemplify competence, integrity, and independence.<sup>[286]</sup> The Code of Judicial Conduct explicitly requires them to remain vigilant against any attempt to compromise judicial independence.<sup>[287]</sup> As the visible embodiment of the Judiciary, justices and judges carry the greatest responsibility of upholding public confidence in the courts. Beyond merely avoiding impropriety, they must also conduct themselves in a manner that actively promotes faith

in the impartiality and authority of the judicial system.[288]

This expectation extends beyond their official functions and into their private conduct, for even the appearance of bias or impropriety can erode the credibility of the Judiciary.[289] Bound by the most stringent ethical rules, judges and justices must embody propriety, restraint, and dignity at all times, as their behavior reflects directly upon the courts they serve.[290] In short, the prestige and authority of the Judiciary rest not only on the decisions rendered, but also on the moral character and example set by those who dispense justice.[291]

Any statement that tends to erode public confidence in the administration of justice, undermine respect for judicial institutions, or compromise the integrity of pending proceedings may constitute a breach of their professional duty and expose them to disciplinary or contempt proceedings.[292]

The third category pertains to the press and the public, whose right to comment on judicial conduct is protected but not absolute. While the court's contempt power may restrict such speech, it must not be wielded so broadly as to deter press freedom or legitimate commentary on matters of public concern.[293] Only criticisms that are fair and grounded in truth fall within the mantle of protection guaranteed by free speech and free press; statements made with deliberate or reckless falsehoods forfeit such protection.[294]

The public, as spectators and consumers of information, cannot be punished for exercising their right to discuss cases of public interest, especially since ordinary citizens are not expected to know court procedures or decorum.[295] For this reason, the courts "have the least amount of interest in restricting this class of speech." [296] Even harsh or false criticisms of courts or their rulings by the public are not automatically punishable. Liability arises only when the speaker's intent amounts to advocating violence or unlawful acts or inciting imminent lawless action that threatens the administration of justice.[297]

The last category pertains to the regulation of speech on the internet.

## VIII

This Court must consider that in today's times, speech, expression, and other communications are largely conveyed through the internet, especially through social media. As such, the concept of the free marketplace of ideas as a rationale for the exercise of free speech and expression should be reexamined.

The analogy of a free marketplace of ideas was founded on the assumption that human rationality and arriving at the truth is the ultimate result of those engaged in the free trade and exchange of ideas.[298] The concept assumes that if all ideas are freely and openly expressed without any regulation, these ideas will "compete" to be accepted in society, and as a result, the truth and the best ideas will emerge. This reasoning, that "the best test of truth is its adherence to the marketplace of ideas," was accepted in our jurisdiction.[299] In *The Diocese of Bacolod*:

[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.[300] (Emphasis supplied, citations omitted)

However, this traditional view is no longer applicable in an age where digital infrastructures can manipulate behavior by altering people's perceived realities.[301] Artificial intelligence, pervasive use of algorithms, bots, and other nonhuman actors are now factors in influencing and shaping people's beliefs and consumption of information online. The impact of these modern tools, prevalently used on social media, transcends the virtual space and presents unprecedented challenges to modern democracies today.

Social media primarily allows users to create, generate, communicate, and exchange content, which may be in form of text, photos, videos, and music and is used for a wide range of purposes. It has been used to spread information, voice an opinion, search for community, share art, seek validation, market a product, find employment, learn a recipe, and so on.[302]

Because of its extensive scope and reach, much of societal interactions take place through social media:

These platforms in social media allow users to establish their own social network. It enables instantaneous online interaction, with each social networking platform thriving on its ability to engage more and more users. In order to acquire more users, the owners and developers of these social media sites constantly provide their users with more features, and with more opportunities to interact. The number of networks grows as each participant is invited to bring in more of their friends and acquaintances to use the platforms. Social media platforms, thus, continue to expand in terms of its influence and its ability to serve as a medium for human interaction. These also encourage self-expression through words, pictures, video, and a combination of these genres.

There can be personal networks created through these platforms simply for conversations among friends. Like its counterpart in the real world, this can be similar to a meeting over coffee where friends or acquaintances exchange views about any and all matters of their interest[.][303]

It is undeniable that the internet and social media, as a medium, have encouraged further the exercise of the rights to free speech and expression, including active citizen participation in social, economic, and political discussions:[304]

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.[305] (Citations omitted)

Conversely, the speed, scope, and reach of content and interactions in social media and the internet have given rise to new and pressing concerns. Digital social platforms have made it easy for messages to be taken out of context and then subsequently magnified. It is entirely possible for only a portion of a post to be shared and presented in an angle that was not intended by the original poster. It might also be shared with a broader audience beyond their actual network:

With social media, one's message in virtual conversations may be reposted and may come in different forms. On Facebook, the post can be "shared" while on Twitter, the message can be "retweeted." In these instances, the author remains the same but the reposted message can be put in a different context by the one sharing it which the author may not have originally intended. The message that someone is a thief and an idiot in friendly

and private conversation when taken out of that context will become defamatory. This applies regardless of the standing of the subject of conversation: The person called a thief and an idiot may be an important public figure or an ordinary person.

....

There are other problems created by such broad law in the Internet. The network made by the original author may only be of real friends of about 10 people. The network where his or her post was shared might consist of a thousand participants[.][306] (Emphasis supplied)

Worse, digital social platforms have also allowed the sharing and proliferating of false or misleading information.[307] The spread of disinformation, misinformation, and mal-information in cyberspace has been a growing global concern.[308]

Prior to the internet, information was shared through traditional print and broadcast media. Many relied on the press for correct and up-to-date information. They had the responsibility to be as accurate as possible, and consumers held them up to that standard. As such, the press had the burden to ensure that their reports were fact-checked, verified, and studied. Journalists are even bound by a code of ethics. In ABS-CBN:

Before the digital age, mass media was the "chief source of information on current affairs" and the "most powerful vehicle of opinion on public questions." In performing their role to disseminate information, the media has "the right to gather and the obligation to check the accuracy of[the] information they disseminate." Members of the press are bound by the high ethical standards of their profession.

In 1988, several media organizations in the Philippines voluntarily agreed to the Philippine Journalist's Code of Ethics. The first and most important ethical duty of a journalist is to "scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis." This includes the "duty to air the other side and the duty to correct substantive errors promptly." Journalists violate their Code when they fail to exercise "bona fide care in ascertaining the truth of the statements they publish." However, it must be clarified that journalists do not guarantee the truth of what they publish in exercising their right to legitimate publicity. They are given sufficient leeway and tolerance to fulfill their crucial roles in a democracy by promptly correcting substantive errors.[309] (Citations omitted)

Unlike the press, however, social media users are not bound by any code or ethical standard before sharing content.[310] In fact, the internet and social media have empowered many to post or engage with content without any accountability or moral considerations. Moreover, the sheer volume of content, the speed at which they are disseminated, and the scale by which it is shared have made it extremely difficult to hold creators or interactors answerable for what they posted.[311]

Further, the platforms' technical designs, which are configured to feed users their preferences to ensure continued use, have also made it increasingly difficult to sift through what is true or false. In *Re: Lorraine Marie T. Badoy*:

Unfortunately, while great strides were made in increasing the public's ability to publish content, the audience's ability to discern the content's veracity made no such progress. People remain susceptible to cognitive biases, i.e., confirmation and repetition biases, information overload, and attention scarcity. Readers are predisposed to unquestioningly believe new information that confirms existing prejudices and assumptions and the statements made by people they deem credible. Conversely, statements inconsistent with their beliefs or made by those who have previously uttered views contrary to theirs are disregarded.

As a result, people wade through a constant stream of information, with a great number absorbing without question what they come across when it is aligned with prior views. Dubious and unverified statements are placed on the same footing—if not more—as credible and substantiated information.

The materialization of "echo chambers" within social media, where people would only encounter others of similar opinion, contributes a great deal to the reduced exchange of ideas. These "echo chambers" create an environment free from contradiction, limiting the possibility that ideas would be tested against others. In the end, it reinforces one's belief that their sentiments are accurate and shared by the majority.[312]

Platforms are configured to gather and use data, skew the content that will be prioritized in user's feeds, accord user anonymity, and allow automation in posts. These highly contribute to the distortion and manipulation of what is consumed by social media users:[313]

Social 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[.][314] (Citations omitted)

Considering all these factors, the ideas that emerge in the marketplace of ideas of today are tampered with and are used to manipulate users in furtherance of agendas, which are masked to appear to have been generated by the users themselves. If ideas are traded and exchanged through the internet and social media in today's time, it can no longer be assumed that individuals will arrive at truths or that human rationality will prevail. Moreover, the assumption that the truth is the end goal of communication is also no longer applicable in social media. Many choose what they want to believe regardless of the truth. Others intentionally share lies or hateful content to gain notoriety.

Thus, this Court has acknowledged how online speech may interfere with the Judiciary's role in the administration of justice:

Internet publicity and the danger it presents in the administration of justice cannot be discounted. A social media post can be shared infinitely and become viral in a matter of minutes. Organized networks of disinformation thrive in anonymity and the lack of effective regulatory mechanism in social media. The proliferation of fake news is a very significant threat on the courts' legitimacy, which is anchored on the public's confidence in our administration of justice. The internet may be weaponized by those who desire to defeat public confidence against a particular target, which may include the Judiciary.

We must recognize the dangers of unregulated speech against the Judiciary on the internet and in various social media where truth suffers from decay, where facts and objective analysis are inundated by false information. This is a huge threat to democracy as it hampers the ability of citizens to make informed decisions based on facts.[315] (Citations omitted)

This Court has also ruled that a heavier burden should be placed on online personalities to ensure that their speech and expression does not contribute to the distortion of truths or the weaponizing of their influence. These personalities must be held up to the same standard as journalists and the press. In *Re: Lorraine Marie T. Badoy*:

ABS-CBN points out that absolute restriction of criticisms against the Judiciary in cyberspace is not the way to "stop the cancerous spread of disinformation online." Instead, certain online speakers should be held to the same standard expected of journalists and should be treated and penalized similarly to writers in traditional media who were found to have recklessly published falsities.

The focus is aptly put on online personalities who have a wide range of followers, as compared to others whose online presence reach only those they personally know. Their massive following signifies their influence on

social media and speaks of the weight and value of their every statement as imprinted in the audience's consciousness.

To maintain their popularity, these online personalities tend to publish a steady stream of shocking or attention-grabbing content to take advantage of their audience's negativity bias, that is, the natural human tendency to latch on to something bad rather than good. In a bid to ensure that their posts would become viral, they would make statements that produce heightened negative emotions, chasing after the dopamine rush brought about by the substantial increase in their followers and likes. The result is a proliferation of posts made to further their personal gain and popularity, without regard for the public good. Celebrities, media sources, and individuals chasing after followers will more likely spread fake news. They deliberately sensationalize a topic to shock and rouse the public, ensuring that the content go viral and lead to widespread damage.

....

In today's digital age where credibility seems to be measured by online popularity instead of experience and hard-won credentials, online personalities or influencers must be put to task for the effects of their speech, since unregulated speech online and the unabated spread of fake news pose very real consequences, even in the real world.

These online personalities have a duty to verify the truthfulness of the content they put out on the internet. It behooves them to validate the source of news through fact-checking and even through source-checking, lest they unwittingly disseminate fake news and even cause real-world harm.[316] ( Citations omitted)

Soon enough, more cases involving restrictions on online speech will arise. Thus, this Court must ensure that these are assessed considering the above circumstances.

## IX

From the preceding discussions, it is evident that the tests borrowed from the SCOTUS cases continue to evolve when applied in our jurisdiction. From a simple analogy of shouting "fire in a crowded theater," the clear and present danger doctrine emerged.[317] This doctrine has undergone several permutations and became the dominant test in free speech challenges in the Philippines. However, this doctrine is not a one-size-fits-all test in determining the validity of restriction in the exercise of free speech. In several cases, the Court has applied multiple tools and considered the following factors such as the type of speech involved, the identity of the speaker with respect to their attending responsibilities or code of conduct, their mode of communication, and likely effect or impact of the message. All of these factors are measured against the government's interest involved to censor the speech.

Petitioners pray for the Court to cite respondents in contempt of court for their "deliberate, malicious, and scandalous"[318] attack against the Court. As discussed earlier, the Court's inherent power to punish for contempt is a permissible content-based restriction in the form of subsequent punishment.[319] Unlike prior restraint, this form of limited censorship is not imposed with a heavy burden of unconstitutionality. The Court's interest in its administration of justice, particularly the preservation of the public's trust in the Judiciary and the maintenance of its independence, are compelling State interests.[320]

However, as content-based restriction, our power to restrict speech through subsequent punishment is subject to strict scrutiny.[321] The means used to curtail the exercise of free speech must only be limited to what is necessary and proportional.[322] Further, in wielding this power, the Court should be mindful that judicial independence does not exempt courts from public scrutiny.[323] Constructive comments also help us to arrive at a more just and inclusive dispensation of justice.[324] Moreover, encouraging a rich discourse where the public is free to express their informed opinions and critical thoughts are necessary for our democracy to flourish.[325]

The extent of the restriction on free speech through contempt depends on the nature of the speech involved. Here, respondents' statements qualify as political speech.[326] They are assertions on a public issue involving the Court's Decision in the impeachment case of Vice President Duterte. Our impeachment Decision is a matter of grave public importance as it pertains to accountability of public officers.[327] Respondents' statements represent their public participation in this concern.

Political speech also covers statements that confront the government, demand accountability from the government, or other expressions relating to the performance of duties of public officials. This type of speech occupies a highly protected status to keep government institutions accountable to the people as the source of all power.[328] Thus, while there is a reproving tenor to respondents' assertions, their statements are still classified as political speech.

Contempt cases generally apply the clear and present danger test to determine if the speech is punishable by the courts. Under this test, speech may be curtailed only when there exists a substantive and imminent threat to the administration of justice—one that poses a serious and imminent danger of obstructing the performance of judicial functions or undermining public confidence in the courts.[329]

However, since the speeches in question in these Petitions are political in nature, and are accorded the greatest degree of protection, we apply the stricter test: the incitement test. This is also in recognition of the pronouncement in the majority opinion in *Calleja* where the Court recognized that "[t]he latest iteration of the clear and present danger rule is the 'Brandenburg test[.]'"[330]

Thus, we determine first whether the statements are directed to inciting or producing imminent danger of urging the public to lose trust in the Judiciary and its administration of justice. Do the statements urge the public to lose trust in the Judiciary and its administration of justice? Can an intent to impede, obstruct, or degrade the administration of justice be inferred from the speaker's statements? Finally, are the statements likely to produce the effect intended by the speaker?[331]

Recognizing that the incitement test proceeds from a question of "proximity and degree"[332] that was first articulated in *Schenck* is crucial in its application. In relation to contempt, the proximity of the speaker to the courts and degree of authority given and exercised by the speaker in society are relevant, with this directly bearing upon the potential influence and reach of their words.[333] The greater the authority, prominence, or credibility of the speaker, the higher the likelihood that the audience will be persuaded or moved to act upon the message conveyed. Thus, the statements made by public figures,[334] mass media personalities, or those with substantial social media followings must be examined with greater circumspection, as their words carry a weight and immediacy that may incite action among their listeners.

The danger of incitement weakens when the speaker does not occupy any position of public power or social influence, especially if the statement is merely an expression of opinion without any call to action. Therefore, the Court must consider not only the content of the expression, but also the speaker's standing in society and the degree to which their speech can mobilize others toward acts that threaten the administration of justice.

In determining the boundaries of our interest in the maintenance of the public's trust in the Judiciary and upholding their exercise of political speech, this Court must carefully navigate whether the political speech of respondents in relation to our ruling in *Duterte* can be subsequently punished for indirect contempt.

By examining the content of each respondents' political speech—assessing the identity of the speaker, their intent, the circumstances, and the likely effect of their speech—we find that respondents' statements are constitutionally protected freedoms. Thus, we are constrained to dismiss the Petitions.

## X

Petitioners Tolentino et al., filed their action against respondents Heydarian and Cendaña as practicing lawyers and officers of the court.[335] Similarly, petitioner Topacio filed his action against Gadon as a taxpayer and practicing member of the Philippine Bar.[336]

Respondent Heydarian maintains that petitioners Tolentino et al. do not possess the required legal standing, since they have not demonstrated any personal injury nor established a proper legal interest to sustain the Petition.[337]

Respondent Cendaña further points that the Petition is fatally defective for failing to allege an essential mental element—that the statement was made with the specific intent to impede, obstruct, or degrade the administration of justice.[338]

Both respondents Heydarian and Cendaña claim that the action against them is simply intended to silence Duterte critics and discourage those who dare to speak out on issues of public interest.[339]

As against petitioner Topacio, respondent Gadon maintains that the Petition lacks cause of action as "the general public is already aware of the biases of the Supreme Court. . . that would damage, ruin, or cast doubts"[340] to its integrity.[341] He avers that the Petition was filed as a publicity stunt, intended to attract attention and advance Topacio's legal career at the expense of controversial personalities.[342]

Petitioners have legal standing.

Legal standing or locus standi is defined as a "personal and substantial interest in the case such that [they have] sustained, or will sustain, direct injury as a result of its enforcement." [343] Interest means "material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." [344] The interest needs to be substantial, not a "mere expectancy or a future, contingent, subordinate, or consequential interest." [345]

The interest must also be personal, such as a direct injury, to ensure that a party bringing the case has personal stake in its outcome, and thus, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [346] Therefore, legal standing requires that the petitioner possess "a personal stake in the outcome of the controversy." [347]

To satisfy the requirement of legal standing, Rule 71, Section 4 of the Rules of Court provides that proceedings for indirect contempt may only be initiated either *motu proprio* or upon motion by the court against which the contempt was committed, or through a verified petition accompanied by supporting particulars and certified true copies of the relevant documents. This safeguard ensures that contempt actions are not frivolously or indiscriminately filed without a legitimate and substantial interest in the matter.

Lawyers are officers of the court, having taken an oath to "uphold the Constitution, defend the rule of law, and promote justice for all." [348] They are not just tasked to observe and maintain the respect due to the courts, but must also ensure that other people observe the same respect, including those who are not in the legal profession. [349] As stewards of the rule of law and indispensable partners of the Court in the administration of justice, lawyers also carry the paramount responsibility of safeguarding and strengthening public trust in the Judiciary. [350]

In *Re: Lorraine Marie T. Badoy*, lawyers' standing as officers of the court was recognized as they "have a material interest in the outcome of the contempt charge:" [351]

Further, as guardians of the rule of law and the indispensable partners of this Court in administering justice, lawyers must help maintain public confidence in the Judiciary. A well-functioning society depends in part on a

high level of trust in the legal system. *Lumapas v. Tamin* warns that if the people believe they cannot expect justice from the courts, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result. Courts exist to promote justice.[352] (Citations omitted)

During the deliberations of this case, Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa) maintained that petitioners have legal standing to defend attacks on the Court's independence and integrity as members of the Bar and officers of the court.

Apart from the inherent contempt power of courts, which can be exercised *motu proprio* or upon motion, we also rely on the legal profession to file petitions on behalf of judges and justices who are subjected to contemptuous conduct. It is their duty as officers of the Court to uphold the Constitution and the laws of the land, and to assist in the administration of justice.[353]

## XI

However, even if petitioners have legal standing, we still find that they failed to sufficiently state a cause of action for indirect contempt. In *ABS-CBN*, the Court outlined the necessary allegations for indirect contempt petitions:

First, public statements were made regarding the merits of the case while it is pending before the courts. The petition must clearly state the contemptible conduct and reproduce the content of the speech ought to be punished.

Second, since intent is necessary in criminal contempt, the required mental element of the speaker who uttered the contemptuous speech in a judicial proceeding must be specifically alleged. It must appear from the story that the "ultimate purpose" of its publication is to impede, obstruct or degrade the administration of justice. This is inferred from the totality of the story, the context of its publication, the wording used, the manner of reporting, and other relevant factors which may be derived from the story.

Third, the clear and present danger of the utterance to the court's administration of justice must be alleged, specifically identifying the importance and saliency of the information on the ability of courts to make an impartial decision. There must be a showing of the serious and imminent threat of an utterance on the court's administration of justice for it to be subject to subsequent punishment.

Finally, the effect of the speech on the administration of justice must be shown, particularly, that the utterance will influence the court's independence in ruling on a case, which will, in turn, affect public confidence in the Judiciary.[354] (Citations omitted)

Incidentally, these allegations also describe the requirements needed to pass the incitement test before political speech can be subsequently punished, these are: (1) the speech that directs the public and incites them to lose trust in the independence of the Judiciary; (2) the intent of the speaker to impede, obstruct, or degrade the administration of justice be inferred from the speaker's statements and other circumstances; and (3) the likelihood and imminence of the statements to produce the intended effect of the speaker.

A review of the Petitions reveals that the allegations are nothing more than hollow assertions, which are devoid of factual or legal substance. The Petitions do not demonstrate a direct and substantial link between the impugned statements and any actual tendency of inciting the public to, likely and imminently, obstruct, degrade, or interfere with the orderly administration of justice.

As to respondents Heydarian and Gadon, we find that petitioners in G.R. Nos. E-01742 and E-01747 failed to establish all the allegations of an indirect contempt that satisfies the incitement test. This Court also rules that the required intent to impede, obstruct, or degrade the administration of justice was not sufficiently alleged against respondent Cendaña in G.R. No. E-01742.

The consolidated Petitions miserably failed to meet the threshold for an actionable charge of indirect contempt. They are replete with sweeping conclusions that the statements constituted improper conduct. The Petitions also lack concrete allegation which establishes the requisite mental element or intent necessary to sustain a contempt citation. Aside from bare assertions, the likelihood and imminence of the supposed intent of respondents was not shown.

In contempt proceedings, the Court's punitive power must be exercised with utmost restraint and only upon strict compliance with the procedural and substantive requisites—particularly those demonstrating the speaker's intent, the context of the utterance, and its clear and imminent tendency to obstruct or degrade the administration of justice. Absent such specific and substantiated allegations, the Court cannot, without infringing constitutional guarantees, punish speech that otherwise falls within the ambit of protected expression.

### XI (A)

Petitioners Tolentino et al. claim that respondent Heydarian's post willfully portrays the Justices of the Supreme Court as "beholden to former President Rodrigo Duterte," imputing "impropriety, lack of independence, and judicial bias" to the High Court as an institution.[355]

Respondent Heydarian's statement in X (formerly Twitter) reads:

FACT: DUTERTE had APPOINTED as many as 13 out of 15 SUPREME COURT justices by 2022!![356]  
(Emphasis in the original)

This Court notes that while respondent Heydarian is a political scientist, professor, academic, and a journalist,[357] his statement is released as part of the public. As discussed, speech or expression exercised by citizens relating to cases of public interest is accorded a high degree of protection and is not automatically punishable, even if it is harsh or inaccurate. It would have to be advocating lawless action that threatens the administration of justice before the speaker can be held liable.[358]

Respondent Heydarian posted his statement on his verified account on X and on his official Facebook page.[359] As of writing, he has 128,000 followers on X[360] and over 300,000 on Facebook.[361] As of February 11, 2026, the post generated 218,300 views, 2,100 likes, 270 comments, and 350 reposts.[362]

These numbers are substantial enough to consider respondent Heydarian as an online personality. Online personalities have the "duty to verify the truthfulness of the content they put out on the internet"[363] to ensure they do not contribute to the distortion of truths or weaponize their influence on social media.[364] This Court also notes that respondent Heydarian is bound by the Code of Ethics as a member of the press. He is expected to report with accuracy, fairness, accountability, and transparency.[365]

From the text itself, respondent Heydarian's statement does not suggest any inciting or rallying to commit lawlessness. There is also no likelihood that it shall produce imminent lawlessness. Clearly, the form, style, and nature of respondent Heydarian's statements are not provocative or direct enough to be a call to commit crimes or to disregard the laws.

Further, respondent Heydarian's statements are not contemptuous enough to be deemed as "improper conduct tending directly or indirectly to impede, obstruct, or degrade the administration of justice."[366]

First, it is a statement of a fact—an objectively verifiable truth.[367] As such, it is not actionable. Evaluating the locutionary component of respondent Heydarian's statement, we saw that he was merely stating a constative utterance, which is simply descriptive and can be independently verified. As to its illocutionary aspect, assuming that there was any imputation of malice in the factual statement, it is a fair commentary as it is grounded in truth

and facts.[368]

Second, respondent Heydarian's first post should be read together with this second post in the same thread on X where he said:

Nevertheless, the decision was unanimous, and it would be unfair to automatically cast judgment just because of appointment patterns.[369]

Here, he invites his followers to consider the nuances behind this Court's Decision. This cements respondent Heydarian's statements as bona fide and falling within fair commentary on a matter of public interest; it also dispels any sign of bad faith or malice. Assuming that it contains an insinuation of bias, his statements are still respectful to the authority of the Court. Thus, as to its perlocutionary act, there is no effect which allows us to wield our contempt power against respondent Heydarian.

As a member of the academe, we urge respondent Heydarian to approach the composition of the Court with a deeper and more nuanced understanding by recognizing that judicial decisions are not determined by the manner of appointment, but by careful deliberation and reasoned judgment. Differences of perspective are inevitable, yet the strength and beauty of a collegial Court lies in the respectful airing of diverse opinions. It is through such considered dialogue and exchange of ideas that justice is ultimately served, and public confidence in the Judiciary is upheld. We expect the academic community to provide the Court with more critical commentaries of our decisions.

## XI (B)

As to respondent Cendaña, petitioners Tolentino et al. argue that he accuses the Court of enabling political protection, and that his use of the term "Supreme Coddler" insinuates bias and has the potential to undermine the legitimacy of judicial decisions which will erode the public's confidence in the Court.[370]

Respondent Cendaña's video statement on his official Facebook page and on the official Facebook page of Akbayan Partylist reads:[371]

Gaya ng makulimlim na panahon, madilim din ang ating demokrasya. Binalewala ng Supreme Court ang Konstitusyon, binalewala ang sarili nilang mga desisyon, binalewala ang separation of powers para lang protektahan ang Bise Presidente. Nireduce ng Supreme Court ang kanyang sarili bilang Supreme Coddler of the Philippines.

The dismissal of the impeachment sets a dangerous precedent. Lahat ng tiwaling pulitiko pwedeng magtago sa likod ng Supreme Court at takasan ang pananagutan sa sambayanan. A disastrous day for Philippine democracy.[372]

Applying now the incitement test to Cendaña's statement, the first requirement is present. Based solely on the content of the statement of respondent Cendaña, he gravely accuses the Court of betraying its duties under the Constitution and violating its own precedents. From the words used alone, it appears that he was rallying the public to lose trust and confidence in the Judiciary's impartiality when he said that any corrupt officer can hide behind the Court. Thus, it is a performative utterance whose effect must be assessed whether it will have the intended effect given the context on which the speech was given and the intent of the speaker.

The third requirement of likelihood and imminence are also apparent considering respondent Cendaña's position as an incumbent Representative of the Akbayan Partylist. He also has a significant online presence with 54,000 followers on Facebook,[373] while the Akbayan Partylist page had almost 300,000 followers as of writing.[374] As a public figure, respondent Cendaña's statement was circulated and reported by multiple news outlets such as

Rappler,[375] Manila Bulletin,[376] and ABS-CBN.[377]

Like respondent Heydarian, respondent Cendaña can be treated as an online personality. As of October 16, 2025, his video statement has 969 likes, 13 comments, and 348 shares.[378] Given the nature of online social networks, we cannot measure the reach and scope of the post as it can be continuously reshared by anyone who has access to it.[379] Thus, he should have been careful in releasing the statement given his extensive influence so as not to contribute to disinformation.[380]

More importantly, respondent Cendaña is a public official.

Unlike ordinary citizens, the speech of public officials or public officers carry the weight of their office and is often perceived as an extension of governmental authority. Therefore, they should be conscious of the perlocutionary act—the effect of their speech which tends to undermine public confidence in the Judiciary.[381] Public officials are expected to observe a higher degree of restraint, since their words can distort public perception, create undue pressure on the courts, and compromise the appearance of impartiality and independence in the administration of justice. Thus, their comments should not cross the line from fair opinion into attempts that erode the dignity of the Judiciary or obstruct justice.

In the Request of the Public Attorney's Office to Delete Section 22, Canon III of the Proposed CPRA,[382] the Court imposed a fine for indirect contempt against the head of the Public Attorney's Office for her public tirades against the newly promulgated CPRA. By airing her criticisms through social media instead of pursuing proper legal channels, she effectively sought to pressure the Court by appealing to public opinion, which undermined judicial independence.[383] The Court ruled that such conduct was "an abhorrent practice that borders on insubordination, which is extremely undesirable for the Chief of Office of one of the Judiciary's indispensable partners in the administration of justice."[384]

In *Pobre v. Defensor-Santiago*,[385] the Court was confronted with remarks made by a sitting senator against then Chief Justice Artemio Panganiban. While the Court recognized that legislators play a vital role in shaping public opinion, it warned that when it disparages the Judiciary without basis, their speech threatens the balance among co-equal branches of government and erodes public confidence in the justice system.[386]

The Court ultimately dismissed the complaint for indirect contempt out of deference to the constitutional principle of separation of powers and the need to respect parliamentary privilege.[387] However, we stressed that members of Congress, despite their immunity, are expected to act responsibly and refrain from using such "as a vehicle to ridicule, demean, and destroy the reputation of the Court and its magistrates, nor as armor for personal wrath and disgust."[388]

Here, respondent Cendaña is a partylist representative. He plays a vital role in shaping public opinion and his statements ought to respect the balance between co-equal branches of government.

Similarly, this Court should be mindful of the constitutional principle of separation of powers.[389] Thus, while public officers are expected to exercise restraint in their speech against the Court, it is also expected to exercise restraint in curtailing public officers or officials in the exercise of their right to free speech and expression, considering that a partylist representative is intended to give a voice to the marginalized and underrepresented sector they are representing.

In any case, we do not find that respondent Cendaña intended to impede, obstruct, or degrade the administration of justice that would warrant his citation for indirect contempt. It bears emphasis that aside from the content of the statement, the entire context must be considered in inferring to the required mental element.[390]

As previously discussed, respondent Cendaña's statements have a negative and offensive impact and could be deemed contemptuous. "Supreme Coddler" may be interpreted as intending to convince others that the Court acted partially. However, to the larger portion of the public, it can simply be perceived as a knee-jerk political statement. We also note the observation of Associate Justice Caguioa during the deliberations that high emotions are common after the Court decides on controversial cases. Nevertheless, speech uttered in response to these decisions does not automatically disrupt the Court's administration of justice. Thus, we find that respondent Cendaña's statement is covered under the wide protection given to political expression, especially on grave matters of national importance.

Impeachment proceedings are matters of public concern involving the accountability of high-ranking public officials. Here, respondent Cendaña is voicing an opinion after the Court released its Decision in Duterte. The tenor of respondent Cendaña's statements is accusatory and reproving. However, it was clearly just a bitter and disappointed reaction in not obtaining a desired result. To recall, respondent Cendaña endorsed the first verified complaint for impeachment against Vice President Duterte last December 2, 2024.[391] Thus, he has an interest in the outcome of our decision. His expression of dismay, though unfair, is ultimately an opinion and an expected human reaction to the Court's adverse decision.

Moreover, the timing of respondent Cendaña's statement should also be considered. His video statement was released a few hours after Duterte was promulgated. As an emotional outburst, it is possible that he made the remarks with critical deliberation. As public officers, the sitting members of this Court are not "thin-skinned"[392] to wield our extraordinary power of contempt. After all, "the guarantee of free speech was enacted to protect not only polite speech, but even expression in its most unsophisticated form." [393] Further, commentary on public matters should have "room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy." [394]

However, as a co-equal branch of government, respondent Cendaña should have treated the Court with respect. As a sitting member of the House of Representatives, he should have been more circumspect of his words against the Court. A respectable legislator's discussion of public affairs should reflect their deep rumination and dispassionate analysis of issues, free of backhanded insults. It is unfortunate that respondent Cendaña failed in this regard.

## XI (C)

Meanwhile, respondent Gadon was interviewed by several media outlets during State of the Nation Address of President Ferdinand Marcos, Jr. and referred to the Court as "tuta ng mga Duterte," [395] owing to his frustration over the dismissal of the impeachment complaint against Vice President Duterte.

Petitioner Topacio asserts that respondent Gadon "openly and publicly accused the Supreme Court of being politically aligned with the Duterte family." [396] He contends that such remarks strike at the very core of judicial integrity, eroding public respect for the courts, and fostering distrust in the judicial process. [397] Petitioner Topacio argues that respondent Gadon's statements subvert the administration of justice and therefore warrant contempt sanctions. [398]

The Court still finds that it does not constitute contempt of court.

The term "tuta ng mga Duterte" implies that the Court blindly follows and serves the political interests of the Duterte family. Digesting this statement shows that it is not a fact because it is not an objectively verifiable truth. The phrase, while harsh and intemperate, is an expression of opinion made in the context of public discourse. It

was uttered in reaction to a highly publicized and politically charged event—the Court's Decision on the impeachment complaint against Vice President Duterte, which had drawn widespread attention and commentary from all sectors of society. As the statements of respondents Heydarian and Cendaña, respondent Gadon's words fall within the ambit of political speech, which enjoys a high degree of constitutional protection.

Applying the incitement test, the crucial inquiry is whether respondent Gadon's statement was directed to incite or produce imminent lawless action—in this case, to impede, obstruct, or degrade the administration of justice—and whether such action was likely to be produced as a result thereof.

Here, respondent's Gadon's remark, though arguably disrespectful, was not directed at obstructing judicial proceedings nor intended to influence the outcome of any pending case. Rather, it reflected an opinion on a matter of political importance that was the subject of intense national debate at that time. The political context reveals that various individuals, both supporting and opposing the decision, had publicly expressed similar sentiments. In this setting, the utterance formed part of the ordinary exercise of free expression inherent in a democratic society.

While the Court finds that the statement "tuta ng mga Duterte" incites the public to lose trust in the Judiciary, there is no imminent threat that respondent Gadon's statement has the perlocutionary effect that it will lead to the degradation of the Court's administration of justice nor does it pose any real risk of undermining public confidence in the Judiciary.

This Court further notes that while respondent Gadon presently holds public office, it bears emphasis that he had earlier been disbarred by the Court for uttering misogynistic, sexist, and abusive remarks in a viral video directed against journalist Raissa Robles, which is in clear violation of the CPRA.[399] In the same ruling, the Court also observed the existence of numerous administrative cases lodged against him for various infractions:

1. Admin. Case No. 11276, filed on April 08, 2016 by Sharief Agakan for misconduct;
2. Admin. Case No. 11275 filed on April 08, 2016 by Atty. Algamar Latiph for violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility and the Lawyer's Oath;
3. Admin. Case No. 11277 filed on April 08, 2016 by Atty. Mamarico Sansarona, Jr. for misconduct;
4. Admin. Case No. 12427 filed on December 17, 2018 by Ambulatory Healthcare Institute and Hernando Delizo (formerly CBD Case No. 15-4649, where the IBP Board of Governors recommended [Atty. Gadon's] suspension for two years, and for him to return the amount of Php700,000.00 to the Complainant); and
5. Admin Case No. 12464 filed on January 31, 2019 by Hernando Delizo (formerly CBD Case No. 15-4695, where the IBP Board of Governors recommended [Atty. Gadon's] suspension for six months to one year)[400]

Subsequently, the Court also found respondent Gadon guilty of violating the CPRA in *Felix v. Gadon*,[401] this time for making baseless and malicious remarks on air about former president Benigno "Noy" Aquino III having HIV. Considering his prior disbarment, the Court could no longer impose the same penalty, which was instead noted in his personal file in the event he applies for judicial clemency.[402]

In *Garrido v. Gadon*,[403] the Court again found respondent Gadon guilty of gross misconduct for having committed perjury in his 2017 impeachment complaint against then chief justice Maria Lourdes Sereno. As in *Felix*, the penalty of disbarment could no longer be imposed in view of his previous disbarment.[404] The Court also declared him ineligible for judicial clemency considering his status as a repeat offender.[405]

From the foregoing, it is evident that respondent Gadon has remained a vocal participant in public discourse, freely exercising his right to speak and express his opinions. Like others who have previously been disciplined, he has continued to express criticisms of the Court, including its decisions and resolutions on matters of great public

concern. However, his utterances have never crossed the threshold of posing a real and substantive threat to the administration of justice, as none were shown to incite the public to obstruct, degrade, or lose faith in the judicial process.

More importantly, respondent Gadon's accusation that the Court is "tuta ng mga Duterte" carries the implication that all 15 Justices of this Court are unthinking, unprincipled, and beholden to external influence. This sweeping charge is decisively belied by the Court's jurisprudence itself—reflected in the volumes of majority, concurring, and dissenting opinions—including in cases of profound political consequence. This demonstrates not blind adherence but rigorous deliberation, intellectual independence, and fidelity to the Constitution. Our collective record speaks more persuasively than any insult ever could.

The Court has always been receptive of legitimate criticisms. We hope that respondent Gadon, in the exercise of his freedoms, will continue to engage critically not only with our decisions, but also with the pressing issues confronting our nation. This Court reminds him to be critical and ground his commentaries with civility and fairness, and directed through proper fora.

Considering the foregoing, we uphold respondents' exercise of their political speech. Thus, this Court hesitates to wield its power of contempt.

## XII

During the deliberations, Associate Justice Caguioa maintains that the test applied in this case is still the clear and present danger test used by the Court in contempt cases. He found that the ponencia focused primarily on the personalities of the respondents, or their authority, credibility, and prominence. However, he argues that the prominence and effectiveness of the speaker are not likely to result in incitement of imminent unlawful behavior. Associate Justice Caguioa notes that while the speaker's qualities may be a factor in determining the likelihood of producing imminent lawless action, audience, political climate, venue, and timing must be considered.

We agree. This Court also highlighted the prominence of the respondents in this case following a libertarian vision in our free speech approach.

Formal viewpoint neutrality may, at times, undermine genuine democratic equality because actual speaking opportunities are unequal across economic or social groups. This applies physically or online because of the power of advertising algorithms. In assessing speech that allegedly undermines public confidence in the Judiciary, the constitutional inquiry must go beyond a narrow examination of content and engage the broader philosophies that animate free speech doctrine.

There are two conceptions of free speech known as free speech as equality (egalitarian vision) and free speech as liberty (libertarian vision).[406] The egalitarian approach understands free speech as an instrument for advancing political equality.[407] It recognizes that speech occurs within existing power structures and therefore seeks to ensure that no single group or socially dominant actor can overwhelm public discourse to the detriment of others.[408]

Under free speech as equality, constitutional protection carries both antidiscrimination and affirmative dimensions which "bars the government from discriminating against marginal, dissident, or unpopular viewpoints that are likely to suffer political subordination or hostility." [409] At the same time, it acknowledges that "speech is embodied in a kind of ideological hierarchy in which mainstream ideas held widely at any given time by majorities or the socially powerful predominate over the systematically subordinated voices of dissent." [410] Viewed from this perspective, regulation is not constitutionally suspect per se; rather, it may be justified when it is narrowly tailored to prevent distortions in public discourse and to preserve the conditions of meaningful

democratic participation, including the need to redistribute speaking power by protecting dissident and marginalized voices from regulatory burdens that would otherwise entrench existing hierarchies of influence.[411]

By contrast, the libertarian vision of free speech emphasizes viewpoint neutrality and anti-paternalism.[412] It treats free expression as a content-focused check against government regulation, grounded in the belief that the public is best equipped to evaluate political speech without state intervention aimed at reshaping discourse or redistributing speaking power.[413] This approach conceives free speech primarily as an information-flow system, largely indifferent to the identity, influence, or relative power of the speaker, and assumes that a freely competitive marketplace of ideas is preferable to any form of government-managed discourse.[414]

We adopted the egalitarian version of free speech in *The Diocese of Bacolod* when we held that the form of expression is part of the speech itself. COMELEC ordered the removal of the two tarpaulins containing the names of legislators and party list who voted in favor and against the Reproductive Health Law. Supposedly, this violated the size requirement of election campaign materials. However, in declaring the same unconstitutional, the Court held that size matters and it forms part of protected speech:

First, it enhances efficiency in communication. A larger tarpaulin allows larger fonts which make it easier to view its messages from greater distances. Furthermore, a larger tarpaulin makes it easier for passengers inside moving vehicles to read its content. Compared with the pedestrians, the passengers inside moving vehicles have lesser time to view the content of a tarpaulin. The larger the fonts and images, the greater the probability that it will catch their attention and, thus, the greater the possibility that they will understand its message.

Second, the size of the tarpaulin may underscore the importance of the message to the reader. From an ordinary person's perspective, those who post their messages in larger fonts care more about their message than those who carry their messages in smaller media. The perceived importance given by the speakers, in this case petitioners, to their cause is also part of the message. The effectivity of communication sometimes relies on the emphasis put by the speakers and on the credibility of the speakers themselves. Certainly, larger segments of the public may tend to be more convinced of the point made by authoritative figures when they make the effort to emphasize their messages. Third, larger spaces allow for more messages. Larger spaces, therefore, may translate to more opportunities to amplify, explain, and argue points which the speakers might want to communicate. Rather than simply placing the names and images of political candidates and an expression of support, larger spaces can allow for brief but memorable presentations of the candidates' platforms for governance. Larger spaces allow for more precise inceptions of ideas, catalyze reactions to advocacies, and contribute to a more educated and reasoned electorate. A more educated electorate will increase the possibilities of both good governance and accountability in our government. These points become more salient when it is the electorate, not the candidates or the political parties, that speaks. Too often, the terms of public discussion during elections are framed and kept hostage by brief and catchy but meaningless sound bites extolling the character of the candidate. Worse, elections sideline political arguments and privilege the endorsement by celebrities. Rather than provide obstacles to their speech, government should in fact encourage it. Between the candidates and the electorate, the latter have the better incentive to demand discussion of the more important issues. Between the candidates and the electorate, the former have better incentives to avoid difficult political standpoints and instead focus on appearances and empty promises. Large tarpaulins, therefore, are not analogous to time and place. They are fundamentally part of expression protected under Article III, Section 4 of the Constitution.[415]

This Court applied the incitement test in this case primarily because the speeches in question in these Petitions are political in nature and are accorded the greatest degree of protection. The incitement test differs from the clear and present danger test used in contempt cases. In the clear and present danger test, speech may be restricted when there exists a substantive and imminent threat to the administration of justice—one that poses a serious and

imminent danger of obstructing the performance of judicial functions or undermining public confidence in the courts.[416]

The incitement test is stricter. Under this test, speech or expression may only be restricted if it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." [417] This test also looks at the intent, the circumstances, and the likely effect of the speech and expression.

Thus, using the incitement test in contempt proceedings, this Court must first consider the following: (1) the speech that directs the public and incites them to lose trust in the independence of the Judiciary; (2) the intent of the speaker to impede, obstruct, or degrade the administration of justice be inferred from the speaker's statements and other circumstances; and (3) the likelihood and imminence of the statements to produce the intended effect of the speaker.

Moreover, the incitement test acknowledges that the content is not the sole determinant on evaluating whether the speech is protected. Aside from the type, characterization, and subject of the speech, this Court also took into consideration the speaker's intention, the speech's effect, the intended audience, and the platform and medium used. We consider speech as an act and look into the social, political, and digital landscapes.

Thus, we agree with Associate Justice Caguioa's point that the speaker's qualities are factors in determining the likelihood of producing imminent lawless action, alongside other factors like audience, political climate, timing, and manner must also be considered. While both the liberty and equality visions of free speech permit regulation through different analytical paths, this case is more appropriately resolved through the lens of free speech as equality. If the controversy centers on political speech and its capacity to influence public institutions, the identity, authority, and relative power of the speaker cannot be ignored; instead, it must be given careful constitutional consideration.

Further, this Court clarifies that the incitement test is not the default test in evaluating all contemptuous speech. Certain 'circumstances may still call for the use of the clear and present danger test. An example of this is inciting speech leading to stochastic terrorism.

Stochastic terrorism was coined in 2002 by risk analyst Gordon Woo.[418] He used the statistical term "stochastic" to explain the correlation between the fear fueled by mass media and seemingly random acts of violence.[419] The concept was initially understood to occur as when the following circumstances are present:

1. A leader or organization uses rhetoric in the mass media against a group of people.
2. This rhetoric, while hostile or hateful, doesn't explicitly tell someone to carry out an act of violence against that group, but a person, feeling threatened, is motivated to do so as a result.
3. That individual act of political violence can't be predicted as such, but that violence will happen is much more probable thanks to the rhetoric.
4. This rhetoric is thus called stochastic terrorism because of the way it incites random violence.[420]

The term was later refined by national security expert Juliette Kayyem as she related the concept to the process of "demonization of groups through mass media and other propaganda that can result in a violent act because listeners interpret it as promoting targeted violence." [421] Minorities and vulnerable groups are portrayed as grave threats through exaggerated claims, propaganda, or any other deceptive means.[422]

In his book, Kurt Braddock describes how populist and other far-right authoritarian leaders weaponize speech by using "violent imagery, metaphors, jokes about violence, references to past 'purges' of hated groups, and other aggressive rhetoric to refer to the targeted person or group – stopping just short of explicit calls to arms." [423]

Because of consistent violent rhetoric against targeted groups or individuals, the speaker's likely audience learns to fear them and develop moral disgust towards them.[424]

With the wide reach of the speaker's message and the breadth of audience who can access the same, it is almost certain that at least one person will interpret the inciting message to mean as an implied support and call to arms against perceived enemies. Thus, the listener will decide to commit violence against them.[425] The resulting random acts of terrorism are often influenced by dangerous speech which are ideologically motivated, without explicit mention of violent acts by the speaker.[426] While the patterns of violence may be predicted statistically, and is almost certain to occur, it is impossible to predict who, when, and where these attacks will happen.[427]

Stochastic terrorism is a result of today's digital landscape.

Prior to the rise of internet, conspiracy theories, hate speech, and other low value statements were filtered by traditional media. These do not reach the public instantaneously and were often discussed in closed settings. In *Brandenburg*, the SCOTUS considered the following factors in laying down the conditions when inciting to lawless violence can be suppressed:

[A] physically defined space with a delimited body of observers—i.e., potential subjects of incitement—isolated from any larger community, expression that is spoken and heard at the same instant, a speaker who is aware of his listeners and intends them to be moved to action, and reference to long-recognized categories of "lawless action." [428]

However, social media significantly altered the *Brandenburg* landscape where incitement and other inflammatory language can easily be accessed by anyone. With the internet acting as a virtual space, anyone can hear or see one's speech or expression online depending on the nature of the platform. Moreover, once content is posted, it becomes available for anyone to view from the moment of its creation, but it must first be seen or heard by the viewer to appreciate its contents. Thus, the requirement of imminence becomes relative on social media. Before social media, the speaker addresses a particular set of people who arrived in a physical space to listen to his or her inflammatory message. But with its advent, anyone can broadcast these types of messages without the filter of journalistic standards. Worse, they are directed to those who consume hateful and extremist content through algorithms and bots amplifying the same.[429]

Stochastic terrorism has gained significant attention due to the rise of random acts of violent behavior. These acts of radicalization are amplified by the rise of fake news in social media.

In 2016, the Pizzagate conspiracy theory gained traction on X (formerly Twitter). An owner of Comet Ping Pong, a pizza restaurant in Washington, appeared in a series of leaked emails from Hilary Clinton's campaign manager. Since he was a supporter of the democratic party, a conspiracy was hatched in 4Chan, a message board, where thousands believed that the restaurant was being used as a pedophile sex ring for prominent politicians and their donors.[430] The extent of the social and traditional media coverage on the Pizzagate conspiracy, notwithstanding the lack of victims and tangible evidence, led a man to "investigate" the claims and to open fire at the restaurant.[431]

In India, there is also a rise in hate speech of the ruling Bharatiya Janata Party and its allied Hindu nationalist organizations targeting religious minorities. The Center for the Study of Organized Hate issued a report in 2025 noting the prevalence of dangerous speech of political leaders where they call Muslims dehumanizing labels and advocate the Hindus to arm themselves, to boycott religious minorities' businesses, to destroy their properties and places of worship.[432]

While these incitements may lead to stochastic violence, they are still covered by the guarantees of free speech to

give breathing room for legitimate political opinions and prevent self-censorship.[433] However, some statements may amount to hate speech which has no free speech value. As such, the Brandenburg test may not always be applicable for incitements leading to stochastic violence. There may be instances when the clear and present danger test applies, especially when the statements are uttered in social media. The Court must thus be conscious of these distinctions in assessing the level of protection of the speech involved.

### **XIII**

In dismissing the Petitions, the Court affirms its commitment that public discussions on matters of paramount public interests should be free. There should be space for democratic discourse where the people are given the widest latitude to express their opinions without fear of being subsequently punished.

In today's digital world, where social media sites allow anyone to share their concerns and their "hot takes" on public issues, this Court should also be selective in deciding what is worthy of its time and attention. On the other hand, while the public has the right to be critical about the Court's decisions and its policies, there is no license for anyone to abuse their freedom of speech.

The Court will not hesitate to punish those who utter false comments. However, political speech must amount to the level of not only inciting the public to lose trust in the Judiciary, but the circumstances must also be assessed as to whether the communicative impact of the speech can imminently result to the intended outcome of the speaker. In wielding our inherent power of contempt, this Court should also be wary and discerning of attempts of others to suppress critical speech that feeds democracy.

ACCORDINGLY, the Verified Petitions for Indirect Contempt in G.R. Nos. E-01742 and E-01747 are DISMISSED for lack of merit.

### **SO ORDERED.**

Gesmundo, C.J., Hernando, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, Lopez, Dimaampao, Marquez, Kho, Jr., and Villanueva, JJ., concur.

Caguioa, J., see separate opinion.

Singh,[\*] J., on leave.

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[\*] On leave.

[1] Re: Lorraine Marie T. Badoy, 946 Phil. 1, 46, 64-65 (2023) [Per SAJ. Leonen, En Banc].

[2] Rollo (G.R. No. E-01742), pp. 39-55; rollo (G.R. No. E-01747), pp. 3-9.

[3] Rollo (G.R. No. E-01742), p. 39.

[4] Rollo (G.R. No. E-01747), p. 4.

[5] Duterle v. House of Representatives and Atty. Torreon v. House of Representatives, G.R. Nos. 278353 and 278359, July 25, 2025 [Per SAJ. Leonen, En Banc].

[6] Id. at 6-7. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[7] Id. at 8.

[8] Id. at 9.

[9] Id. at 95.

[10] Id.

[11] Rollo (G.R. No. E-01742), p. 73.

[12] Id. at 41, 74. See Richard Heydarian, Richard Heydarian status, available at <https://x.com/RichHeydarian/status/1948668467663831262> (last accessed on October 16, 2025).

[13] Rollo (G.R. No. E-01742), p. 42.

[14] See Richard Heydarian X account, available at <https://x.com/richheydarian?s=11> (last accessed on February 20, 2026).

[15] See Richard Foronda Heydarian Facebook account, available at <https://www.facebook.com/share/1FCeTuJtvc/?mibextid=wwXIf> (last accessed on February 20, 2026).

[16] Rollo (G.R. No. E-01742), pp. 4, 167.

[17] Id. at 42-43, 163. See <https://www.facebook.com/reel/1263352891961514> (last accessed on October 16, 2025).

[18] See Akbayan Representative Perci Cendaña and Akbayan Partylist, A Disastrous Day for Philippine Democracy, available at <https://www.facebook.com/reel/1263352891961514> (last accessed on October 16, 2025).

[19] See Akbayan Representative Perci Cendaña Facebook account, available at <https://www.facebook.com/AkbayanTeamPerci> (last accessed on February 20, 2026).

[20] See Akbayan Partylist Facebook account, available at <https://www.facebook.com/AkbayanParty/> (last accessed on February 20, 2026).

[21] Rollo (G.R. No. E-01742), p. 43. See Rappler, Akbayan: Supreme Court is a 'supreme coddler' of VP Sara for blocking her impeachment trial, RAPPLER, July 25, 2025, available at <https://www.facebook.com/watch/?v=637452186045985> (last accessed on September 19, 2025).

[22] Id. at 44. See Elison Quismorio, Cendaña dubs SC as 'Supreme Coddler' following dismissal of VP Duterte impeachment, MANILA BULLETIN, July 25, 2025, available at <https://mb.com.ph/2025/07/25/cendana-dubs-sc-as-supreme-coddler-following-dismissal-of-vp-duterte-impeachment> (last accessed on September 19, 2025).

[23] Id. at 45. See ABS-CBN News, Akbayan Representative Perci Cendaña calls the Supreme Court a "coddler of Vice President Sara Duterte" after it declares the articles of impeachment against her unconstitutional, ABS-CBN NEWS, July 25, 2025, available at <https://x.com/ABSCBNNews/status/1948674355309023462> (last accessed on September 19, 2025).

[24] Rollo (G.R. No. E-01747), pp. 3-4.

[25] Id. at 5. See Annex "A & B" of G.R. No. E-01747. See also UNTV News and Rescue, Disbarred Lawyer Larry Gadon Blasts SC, calling it "tuta ng mga Duterte," UNTV NEWS AND RESCUE, July 28, 2025, available at <https://www.youtube.com/shorts/DrHCS1cjQw> (last accessed September 19, 2025).

[26] Rollo (G.R. No. E-01742), pp. 39-55.

[27] Rollo (G.R. No. E-01747), pp. 3-9.

- [28] Rollo (G.R. No. E-01742), p. 40.
- [29] Id. at 42.
- [30] Id.
- [31] Id.
- [32] Id. at 46-47.
- [33] Id. at 46, 50.
- [34] Id. at 46.
- [35] Id. at 50.
- [36] Id.
- [37] Id. at 46.
- [38] Id. at 70-104.
- [39] Id. at 79.
- [40] Id.
- [41] Id. at 80.
- [42] Id. at 80-81.
- [43] Id. at 81-82.
- [44] Id. at 81-85.
- [45] Id. at 87, 90.
- [46] Id. at 87.
- [47] Id. at 87-88.
- [48] Id. at 91.
- [49] Id. at 92-93.
- [50] Id. at 93.
- [51] Id. at 159-174.
- [52] 941 Phil. 182 (2023) [Per SAJ. Leonen, En Banc].
- [53] Rollo (G.R. No. E-01742), p. 164.
- [54] Id. at 165.
- [55] Id.
- [56] Id. at 165-166.
- [57] Id. at 166.
- [58] Id.

- [59] Id. at 162.
- [60] Id. at 168.
- [61] Id. at 172.
- [62] Id. at 167.
- [63] Id. at 170.
- [64] Id. at 171.
- [65] Id.
- [66] Rollo (G.R. No. E-01747), p. 3.
- [67] Id. at 6.
- [68] Id.
- [69] Id. at 17-20.
- [70] Id. at 19.
- [71] Id.
- [72] Id. at 17.
- [73] Id. at 19.
- [74] Id. at 18-19.
- [75] Id. at 19.
- [76] Id.
- [77] Id. at 20.
- [78] Rollo (G.R. No. E-01742), p. 158-B.
- [79] CONST., art. VIII, sec. 1.
- [80] In re: Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya dated September 18, 19, 20, and 21, 2007, 583 Phil. 391, 435 (2008) [Per J. Reyes, R.T., En Banc].
- [81] Re: COA Opinion on Computation of Appraised Value of Properties Purchased by the Retired Chief/Assoc. Justices of the SC, 692 Phil. 147, 156-157 (2012) [Per Curiam, En Banc].
- [82] Re: Lorraine Marie T. Badoy, 946 Phil. 1, 31 (2023) [Per SAJ. Leonen, En Banc].
- [83] In re: Amzi B. Kelly, 35 Phil. 944, 950 (1916) [Per J. Johnson, En Banc].
- [84] Regalado v. Go, 543 Phil. 578, 590 (2007) [Per J. Chico-Nazario, Third Division].
- [85] Id.
- [86] Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines, 672 Phil. 1, 10 (2011) [Per J. Bersamin, First Division].
- [87] Galangi v. Judge Abad, 185 Phil. 227, 231 (1980) [Per J. Teehankee, First Division].

[88] *Español v. Formoso*, 552 Phil. 297, 306 (2007) [Per J. Sandoval-Gutierrez, First Division].

[89] *ABS-CBN v. Ampatuan*, 941 Phil. 182, 197 (2023) [Per SAJ. Leonen, En Banc].

[90] RULES OF COURT, Rule 71, sec. 4.

[91] 312 Phil. 977 (1995) [Per J. Regalado, En Banc].

[92] *Id.* at 999-1002.

[93] RULES OF COURT, Rule 71, sec. 3(d) states:

SECTION 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

....

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.]

[94] *People v. Godoy*, 312 Phil. 977, 1002-1003 (1995) [Per J. Regalado, En Banc].

[95] *Re: Republic v. Sereno*, 836 Phil. 166, 177-178 (2018) [Per J. Tijam, En Banc]; *Marantan v. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division]; *J. Brion*, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 652-656 (2010) [Per J. Abad, En Banc]; *Romero II v. Estrada*, 602 Phil. 312, 319 (2009) [Per J. Velasco Jr., En Banc]; *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya* dated September 18, 19, 20, and 21, 2007, 583 Phil. 391, 458 (2008) [Per J. Reyes, R.T., En Banc].

[96] *Roque Jr. v. Armed Forces of the Philippines Chief of Staff*, 805 Phil. 921, 933 (2017) [Per J. Leonen, Second Division]; *Palad v. Solis*, 796 Phil. 216, 228 (2016) [Per J. Peralta, Third Division]; *Fortun v. Quinsayas*, 703 Phil. 578, 595-597 (2013) [Per J. Carpio, Second Division]; *In re Abistado*, 57 Phil. 668, 674-675 (1932) [Per J. Vickers, En Banc]; *In re Lozano and Quevedo*, 54 Phil. 801, 805 (1930) [J. Malcolm, En Banc].

[97] *Re: News Report of Mr. Jomar Canlas in the Manila Times*, 865 Phil. 279, 287 (2019) [Per J. Carpio, En Banc]; *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya* dated September 18, 19, 20, and 21, 2007, 583 Phil. 391, 448 (2008) [Per J. Reyes, R.T., En Banc]; *Complaint of Mr. Aurelio Indencia Arrienda*, 499 Phil. 1, 11 (2005) [Per J. Corona, En Banc]; *In re Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurlled by Atty. Leonard De Vera*, 434 Phil. 503, 508 (2002) [Per J. Kapunan, En Banc]; *In re Jurado*, 313 Phil. 119, 180-181 (1995) [Per CJ. Narvasa, En Banc]; *People v. Godoy*, 312 Phil. 977, 1011-1012 (1995) [Per J. Regalado, En Banc]; *Zaldivar v. Sandiganbayan*, 248 Phil. 542, 554-555 (1988) [Per Curiam, En Banc]; *In re Almacen v. Yaptinchay*, 142 Phil. 353, 372 (1970) [Per J. Ruiz Castro, En Banc]; *People v. Castelo*, 114 Phil. 892, 900-901 (1962) [Per J. Bautista Angelo, En Banc]; *Cabansag v. Fernandez*, 102 Phil. 152, 162-163 (1957) [Per J. Bautista Angelo, En Banc]; *In re Vicente Sotto*, 82 Phil. 595, 600 (1949) [Per J. Feria, En Banc]; *In re Kelly*, 35 Phil. 944, 951 (1916) [Per J. Johnson, En Banc].

[98] *Marantan v. Diokno*, 726 Phil. 642, 648 (2014) [Per J. Mendoza, Third Division].

[99] *J. Brion*, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 652 (2010) [Per J. Abad, En Banc].

[100] *ABS-CBN v. Ampatuan*, 941 Phil. 182, 215 (2023) [Per SAJ. Leonen, En Banc].

[101] *Id.*

[102] Id. at 217. (Citation omitted)

[103] J. Brion, Supplemental Opinion in *Lejano v. People*, 652 Phil. 512, 656 (2010) [Per J. Abad, En Banc].

[104] *Atty. Roque v. AFP Chief of Staff*, 805 Phil. 921, 937 (2017) [Per J. Leonen, Second Division].

[105] Id.

[106] Id. at 938.

[107] Id. at 939.

[108] *In re: Almacen v. Yaptinchay*, 142 Phil. 353, 387 (1970) [Per J. Ruiz Castro, En Banc].

[109] Id. at 371.

[110] *People v. Castelo*, 114 Phil. 892, 899 (1962) [Per J. Bautista Angelo, En Banc].

[111] *Re: Post of Atty. Erwin Erfe on Social Media Accusing the Court of Judicial Tyranny*, 951 Phil. 663, 669 (2024) [Per J. Singh, En Banc].

[112] 951 Phil. 663 (2024) [Per J. Singh, En Banc].

[113] Id. at 665-666.

[114] *In re Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya* dated September 18, 19, 20, and 21, 2007, 583 Phil. 391, 436-437 (2008) [Per J. Reyes, R.T., En Banc].

[115] MALOLOS CONST. (1899), Title IV, art. 20.

[116] MALOLOS CONST. (1899), Title IV, art. 20.

[117] 1987 CONST., art. II, sec. 1.

[118] J. Leonen, Concurring Opinion in *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 614 (2019) [Per J. Reyes, J. Jr., En Banc], citing JOSEPH J. HEMMER, JR., *COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT* 3 (2000).

[119] *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 493 (1969) [Per J. Fernando, En Banc].

[120] *Chavez v. Gonzales*, 569 Phil. 155, 198 (2008) [Per C.J. Puno, En Banc].

[121] Id. at 196, citing *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, En Banc]; . *Salonga v. Cruz-Paño*, 219 Phil. 402, 425 (1985) [Per J. Gutierrez, Jr., En Banc]; *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co.*, 151-A Phil. 656, 676-677 (1973) [Per J. Makasiar, En Banc]; *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 489 (1969) [Per J. Fernando, En Banc].

[122] *Tulfo v. People*, 893 Phil. 6, 34 (2021) [Per J. Leonen, Third Division].

[123] *Chavez v. Gonzales*, 569 Phil. 155, 201-202 (2008) [Per C.J. Puno, En Banc]. (Citations omitted)

[124] *U.S. v. Bustos*, 37 Phil 731, 742 (1918) [Per J. Malcolm, En Banc].

[125] *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 493-494 (1969) [Per J. Fernando, En Banc].

[126] *Phil. Blooming Mills Employees Organization v. Phil. Blooming Mills, Inc.*, 151-A Phil. 656, 676 (1973) [Per J. Makasiar, First Division].

[127] *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 492 (1969) [Per J. Fernando, En Banc].

[128] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[129] *Id.* at 197-198.

**[130] 315 U.S. 568 (1942).**

[131] *Id.* at 572, n. 4.

[132] *Id.* at 573.

[133] 444 Phil. 230 (2003) [Per J. Bellosillo, En Banc].

[134] *Id.* at 259.

[135] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per C.J. Puno, En Banc].

[136] *Re: Lorraine Marie T. Badoy*, 946 Phil. 1, 46 (2023) [Per SAJ. Leonen, En Banc].

[137] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 932 (1996) [Per C.J. Puno, En Banc].

**[138] 249 U.S. 47 (1919).**

[139] *Id.* at 51.

**[140] 250 U.S. 616 (1919).**

[141] J. Holmes, Dissenting Opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919).

[142] *Abrams v. United States*, 250 U.S. 616, 624 (1919).

**[143] 268 U.S. 652 (1925).**

[144] *Id.* at 668.

[145] *Id.* at 669.

**[146] 274 U.S. 357 (1927).**

[147] *Id.* at 363.

[148] *Id.* at 371.

[149] J. Brandeis and J. Holmes, Concurring in *Whitney v. California*, 274 U.S. 357, 376 (1927).

**[150] 314 U.S. 252 (1941).**

[151] *Id.* at 269-271.

**[152] 395 U.S. 444 (1969).**

[153] *Id.* at 447-448.

**[154] 391 U.S. 367 (1968).**

[155] Id. at 381-382.

[156] 57 Phil. 354 (1932) [Per J. Ostrand, En Banc].

[157] 57 Phil. 451 (1932) [Per J. Street, En Banc]; 58 Phil. 573, 575 (1933) [Per J. Street, En Banc].

[158] 57 Phil. 455 (1932) [Per J. Street, En Banc].

[159] *People v. Evangelista*, 57 Phil. 354, 363-364 (1932) [Per J. Ostrand, En Banc]; *People v. Feleo*, 57 Phil. 451, 454-455 (1932) [Per J. Street, En Banc]; *People v. Nabong*, 57 Phil. 455, 460 (1932) [Per J. Street, En Banc].

[160] 57 Phil. 255 (1932) [Per J. Ostrand, En Banc].

[161] Id. at 261.

[162] 80 Phil. 71 (1948) [Per J. Feria, En Banc].

[163] Id. at 87.

[164] 102 Phil. 152 (1957) [Per J. Bautista Angelo, En Banc].

[165] Id. at 161-163.

[166] Id. at 168.

[167] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[168] Id. at 496.

[169] Id. at 502-507, citing *NAACP v. Alabama*, 377 U.S. 288, 307 (1964), citing further *Zwickler v. Koota*, 389 U.S. 241, 250 (1967), which refers to *Schneider v. State*, 308 U.S. 147, 164 (1939), *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940); *Martin v. City of Struthers*, 319 U.S. 141, 143-144 (1943); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 242 (1957); *Shelton v. Tucker*, 364 U.S. 479, 490 (1960); *Louisiana v. NAACP*, 366 U.S. 293, 296-297 (1961); *NAACP v. Button*, 371 U.S. 415, 434-438 (1963); *Aptheker v. Secretary of State*, 378 U.S. 500, 514 (1964).

[170] *Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per CJ. Puno, En Banc].

[171] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) [Per J. Puno, En Banc].

[172] *Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per CJ. Puno, En Banc].

[173] *ABS-CBN v. Ampatuan, Jr.*, 941 Phil. 182, 209 (2023) [Per SAJ. Leonen, En Banc], citing C.J. Puno, Dissenting Opinion in *Soriano v. Laguardia*, 605 Phil. 43, 162 (2009) [Per J. Velasco, Jr., En Banc].

[174] *Chavez v. Gonzales*, 569 Phil. 155, 205-208 (2008) [Per C.J. Puno, En Banc].

[175] Id. at 189-190.

[176] Id. at 188.

[177] Id. at 220.

[178] Id. at 220-221.

[179] *People v. Godoy*, 312 Phil. 977, 1020 (1995) [Per J. Regalado, En Banc].

[180] *United States v. Bustos*, 37 Phil. 731, 742-743 (1918) [Per J. Malcolm, En Banc].

[181] *People v. Castelo*, 114 Phil. 892, 897 (1962) [Per J. Bautista Angelo, En Banc].

[182] 726 Phil. 642 (2014) [Per J. Mendoza, Third Division].

[183] *Id.* at 650, citing *Austria v. Masaquel*, 127 Phil. 677, 691 (1967) [Per J. Zaldivar, En Banc].

**[184] 339 U.S. 382 (1950).**

[185] *J. Ruiz Castro, Concurring and Dissenting Opinion in In re Gonzales v. Commission on Elections*, 137 Phil 471, 535-536 (1969) [Per J. Fernando, En Banc].

[186] 181 Phil. 45 (1979) [Per J. Melencio-Herrera, First Division].

[187] *Id.* at 57-58.

[188] *Id.* at 58.

[189] *Zaldivar v. Sandiganbayan*, 252 Phil. 1, 10 (1989) [Per Curiam, En Banc].

[190] 252 Phil. 1 (1989) [Per Curiam, En Banc].

[191] *Zaldivar v. Sandiganbayan*, 248 Phil. 542 (1988) [Per Curiam, En Banc].

[192] *Id.* at 548.

[193] *Id.* at 578.

[194] *Id.* at 584.

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[206] *Id.* at 119.

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[307] 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. Mal-information is that which may be true or correct but is being shared to hurt or harm another person or entity. See also *ABS-CBN v. Ampatuan, Jr.*, 941 Phil. 182, 305 (2023) [Per SAJ. Leonen, En Banc]; Claire Wardle and Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking*, 5 (2017), available at <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-research/168076277c> (last accessed on February 10, 2026).

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[322] *Id.* at 246.

[323] *The United States v. Bustos*, 37 Phil. 731, 740-741 (1918) [Per J. Malcolm, En Banc].

[324] *Id.*

[325] *Valmonte v. Belmonte, Jr.*, 252 Phil. 264, 271-272 (1989) [Per J. Cortes, En Banc].

[326] Political speech refers to an utterance that is intended to contribute to public deliberation about issues affecting the citizens civil and political rights. See *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 514 (2015) [Per J. Leonen, En Banc].

[327] *Duterte v. House of Representatives and Atty. Torreon v. House of Representatives*, G.R. Nos. 278353 and 278359, July 25, 2025 [Per SAJ. Leonen, En Banc] at 41. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

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[383] Id. at 648.

[384] Id. at 648-649.

[385] 613 Phil. 352 (2009) [Per J. Velasco, Jr., Third Division].

[386] Id. at 359-360.

[387] Id. at 360.

[388] Id. at 362.

[389] Id. at 360.

- [390] ABS-CBN v. Ampatuan, Jr., 941 Phil. 182 (2023) [Per SAJ. Leonen, En Banc].
- [391] Duterte v. House of Representatives and Atty. Torreon v. House of Representatives, G.R. Nos. 278353 and 278359, July 25, 2025 [Per SAJ. Leonen, En Banc].
- [392] The United States v. Bustos, 37 Phil. 731, 741 (1918) [Per J. Malcolm, En Banc].
- [393] Guingguing v. Court of Appeals, 508 Phil. 193, 222 (2005) [Per J. Tinga, Second Division].
- [394] Id. at 206, citing New York Times Times v. Sullivan, 376 U.S. 254, 304 (1964).
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- [397] Id. at 6.
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## SEPARATE OPINION

### CAGUIOA, J.:

I thank the ponente for adopting my views, recognizing petitioners' legal standing to institute the present indirect contempt charges, and for including my suggested discussion on determining the imminence of inciting or producing acts or conduct inimical to the administration of justice in respondents' speech. The ponencia now reframes the analysis away from the prominence and effectiveness of the speakers and toward a broader contextual assessment that considers the circumstances under which the statements were made and their effect on the audience.

I concur in the dismissal of the indirect contempt charges. I write this Separate Opinion to maintain my position that the clear and present danger test in contempt cases is not materially different from the *Brandenburg* test, and to offer a more straightforward approach in its application.

#### Freedom of speech and expression in contempt proceedings

These cases concern the intersection of respondents' fundamental right to freedom of speech and expression and the Court's exercise of contempt power to protect its dignity, integrity, and independence. This is a topic not novel to the Court.

In the 1930 case of *In re Lozano and Quevedo*,<sup>[1]</sup> which involved the publication of an inaccurate account of a confidential investigation conducted by a Judge of First Instance, the Court recognized that the administration of justice and freedom of speech are equally sacred, and that neither may encroach upon the other. Accordingly, publications "tending to impede, obstruct, embarrass, or influence the courts in administering justice in a pending suit or proceeding constitute criminal contempt which is summarily punishable by the courts."<sup>[2]</sup> Subsequently, in *In re Brillantes*,<sup>[3]</sup> the Court held that there could still be contempt even after the case had been terminated.

In 1957, the Court in *Cabansag v. Fernandez*<sup>[4]</sup> introduced the dangerous tendency test and clear and present danger test in contempt proceedings. Reversing the contempt charges, the Court found that Apolonia Cabansag's letter to the Presidential Complaints and Action Commission did not cause a "serious imminent threat to the administration of justice,"<sup>[5]</sup> nor did it have a "dangerous tendency to belittle the court or undermine the administration of justice."<sup>[6]</sup> The Court further observed that he had no ill motive or any intention to degrade or undermine the court.<sup>[7]</sup>

Thereafter, the Court in *Gonzales v. COMELEC*<sup>[8]</sup> declared: "There is to be then no . . . subsequent liability . . . in . . . contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent,"<sup>[9]</sup> thereby cementing the clear and present danger test as the appropriate test in contempt cases involving the exercise of freedom of speech and expression.

In *People v. Godoy*,<sup>[10]</sup> which involved a post-litigation publication, the Court once again affirmed that, to constitute contempt, criticism of the court must pose a clear and present danger to the fair administration of justice.<sup>[11]</sup> Additionally, the Court also held that indirect contempt proceedings under Section 3(d), Rule 71 of the Rules of Court are criminal in nature, such that a person cannot be punished absent proof beyond reasonable doubt of intent to commit the contemptuous act.<sup>[12]</sup>

In a more recent case, the Court in *Stradcom Corporation v. Etong*<sup>[13]</sup> applied the same principles in determining whether it could exercise its contempt powers to punish allegedly contemptuous statements, i.e., (1) there must be a clear and present danger that the assailed utterances will impair the dispensation of justice;<sup>[14]</sup> and (2) there

must be proof that the respondent deliberately made the allegedly contumacious remarks to impede, obstruct, or degrade the administration of justice.[15]

In *ABS-CBN Corporation v. Ampatuan, Jr.*,[16] which involved a violation of the sub judice rule, the Court laid out the ultimate facts that must be alleged in a petition for indirect contempt:

First, public statements were made regarding the merits of the case while it is pending before the courts. The petition must clearly state the contemptible conduct and reproduce the content of the speech ought to be punished.

Second, since intent is necessary in criminal contempt, the required mental element of the speaker who uttered the contemptuous speech in a judicial proceeding must be specifically alleged. It must appear from the story that the "ultimate purpose" of its publication is to impede, obstruct or degrade the administration of justice. This is inferred from the totality of the story, the context of its publication, the wording used, the manner of reporting, and other relevant factors which may be derived from the story.

Third, the clear and present danger of the utterance to the court's administration of justice must be alleged, specifically identifying the importance and saliency of the information on the ability of courts to make an impartial decision. There must be a showing of the serious and imminent threat of an utterance on the court's administration of justice for it to be subject to subsequent punishment.

Finally, the effect of the speech on the administration of justice must be shown, particularly, that the utterance will influence the court's independence in ruling on a case, which will, in turn, affect public confidence in the Judiciary.[17] (Citations omitted)

Effectively, the Court introduced the following elements in examining contempt cases under Section 3(d), Rule 71 of the Rules of Court: (a) speech, (b) intent, and (c) effect.

In 2023, the Court still used the same principles in *Re: Badoy*,[18] where it said that "[u]nder the clear and present danger test, the freedom of speech prevails if the consequence of the expression is not 'extremely serious and the degree of imminence extremely high' for it to be punished. But if it is so, then the speech can be subsequently punished." [19] Clear and present danger has thus consistently been the standard in deciding contempt cases against the Court. Nonetheless, in *Re: Badoy*, the Court also applied the *Brandenburg* test.

The *Brandenburg* test originated from the 1969 Supreme Court of the United States (SCOTUS) case of *Brandenburg v. Ohio*. [20] Clarence Brandenburg, a Ku Klux Klan leader, was convicted under the Ohio Criminal Syndicalism Act in connection with the speech he delivered during their rally. On appeal, he challenged the constitutionality of the law under the First and Fourteenth Amendments to the American Constitution. The SCOTUS eventually ruled in his favor, citing *Dennis v. United States*, [21] and held that:

[T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. As we said in *Noto v. United States*, 367 U. S. 290, 297-298 (1961), "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action." [22] (Emphasis supplied)

*Dennis*, in turn, is the 1951 SCOTUS decision that laid down the clear and present danger test. The *Brandenburg* test is thus an iteration of the clear and present danger test, which looks into the imminence of the danger, and asks the question of whether the speech (1) is directed at inciting or producing imminent lawless action; and (2) is likely to incite or produce such lawless action. The inquiry focuses on both the character of the speech itself (whether it calls for lawless action) and its effect (whether it creates a probability of commission of lawless

action), and whether the danger it possibly creates—temporally speaking—is imminent. Therefore, it is not enough that the words and lawless action are connected in a "clear" way, but also that the possibility that the lawless action comes about is "present." Notably, this is the same clear and present danger test used by the Court in contempt cases discussed above.

The ponencia explains that the Brandenburg test differs from and is stricter than the clear and present danger test, as it examines the intent, circumstances, and likely effect of speech and expression.[23] Conventionally, the clear and present danger test—unlike the Brandenburg test—does not require proof of the speaker's intention in making the alleged contemptuous statement. To my mind, however, this distinction has little or no practical consequence in contempt cases of a similar nature to the present one, where intent is indispensable. In such cases, liability attaches only when there is a finding that the speaker knowingly made the statement to impede or obstruct the administration of justice. Consequently, the inquiry under the clear and present danger test in these cases already entails an assessment of the speaker's intent, rendering the analysis functionally equivalent to the Brandenburg test. Ultimately, both tests operate to the same effect: permitting restriction of speech only when it poses a serious and imminent danger or threat to the orderly administration of justice.

#### Application of the Brandenburg test in contempt cases

Similar to the clear and present danger test, the Court, in applying the Brandenburg test, must assess the allegedly contemptuous statement in the context in which it was made, including the audience, political climate, venue, and timing of the statement. Although a speaker's prominence and credibility may provide relevant context in evaluating the likelihood that the speech would incite or produce acts or conduct that impede, obstruct, or degrade the administration of justice, these qualities should not be the main focus of the inquiry. Whether the Court adopts a libertarian or an egalitarian vision of free speech,[24] neither the clear and present danger test nor the Brandenburg test puts a premium on the speaker's prominence in determining whether the danger is clear and present or whether the incitement to lawless action is imminent.

I commend the ponencia for its discussion on speech-act theory and its analysis of speech components. J. L. Austin's work indeed offers a nuanced understanding of speech that goes beyond its obvious meaning. However, the concern here is that these analytical tools unnecessarily complicate, rather than provide clear guidance in, the process of ruling on free speech in contempt cases. While the Court is free to adopt tests it deems appropriate to properly analyze the cases before it, it must also bear in mind that these tests have implications outside the courtroom. Contempt, after all, entails punishment. Thus, individuals must be properly guided on what constitutes contemptible speech, in order to provide fair notice of which conduct to avoid. I do not intend to oversimplify matters, but in my view, the concepts of locutionary, illocutionary, and perlocutionary acts in speech simply correspond to the speech itself, the speaker's intention, and the speech's effect on the audience—parameters already recognized in Philippine jurisprudence.

Therefore, I respectfully propose a more straightforward application of the Brandenburg test in determining respondents' liabilities—one that answers the following questions, with due consideration of the totality of circumstances surrounding the utterance: (1) whether the speech in question is directed to inciting or producing imminent lawless action, or in this case, action or conduct that would impede, obstruct, or degrade the administration of justice (speech); (2) whether the speaker intended to do so (intent); and (3) whether the speech is likely to incite or produce the intended effect (effect).

In the wake of the promulgation of the Court's decision in *Duterte v. House of Representatives*,[25] respondent Richard J. Heydarian (Heydarian) posted in X (formerly Twitter) and cross-posted in his Facebook account:

FACT: DUTERTE had APPOINTED as many as 13 out of 15 SUPREME COURT justices by 2022!![26]

which was followed by another statement in the same X thread:

Nevertheless, the decision was unanimous and would be unfair to automatically cast judgment just because of appointment patterns.[27]

The contempt charge in G.R. No. E-01742 was instituted solely in connection with Heydarian's first post. However, it would be improper to read his first post in isolation, as contextual analysis is necessary in resolving contempt charges. When read alongside the subsequent post, it becomes clear that Heydarian's statements do not advocate lawless action or conduct that would impede, obstruct, or degrade the administration of justice. There is no direct or indirect call to undermine the Court, unlike in *Re: Badoy*, where the contumacious statements advocated violence. Here, Heydarian's remarks merely invite the audience to notice and reflect on the dynamics of appointments in the Judiciary and the dispensation of justice. If anything, they even underscore that Court decisions are not dictated by political appointments or personal loyalties.

It is also evident from the matter-of-fact language used by Heydarian that he had no intention of impeding, obstructing, or degrading the administration of justice, contrary to petitioners' submissions.[28] Instead, it appears that he merely intended to initiate discourse among his audience.

Regarding the effect of his statements, aside from Heydarian's prominence and the use of digital platforms, petitioners failed to identify any other factors indicating that his statements were likely to incite or produce imminent lawless action, or pose a serious and imminent threat to the administration of justice.[29] As I stressed in earlier deliberations, the prominence of a speaker does not necessarily translate into a likelihood of inciting imminent unlawful conduct. In this case, the surrounding circumstances and the public's reactions to his posts (which consisted of mixed expressions of disappointment and support) do not indicate that his statements were likely to pose a serious imminent threat to the dispensation of justice or, as petitioners stated, that it would "introduce systemic instability" in the Judiciary.[30]

The case of respondent Percival V. Cendaña (Cendaña) somehow differs, as his statements were more pointed.

Cendaña posted a video on his and Akbayan Partylist's Facebook page where he stated:

Gaya ng makulimlim na panahon, madilim din ang ating demokrasya. Binalewala ng Supreme Court ang Konstitusyon, binalewala ang sarili nilang mga desisyon, binalewala ang separation of powers para lang protektahan ang Bise Presidente. Nireduce ng Supreme Court ang kanyang sarili bilang Supreme Coddler of the Philippines.

The dismissal of the impeachment sets a dangerous precedent. Lahat ng tiwaling pulitiko pwedeng magtago sa likod ng Supreme Court at takasan ang pananagutan sa sambayanan. A disastrous day for Philippine democracy.[31]

Indeed, Cendaña's statements are directed towards undermining the public's trust and confidence in the Judiciary. His words impute bias and corruption on the part of the Court, suggesting that it betrayed its constitutional mandate just to protect the Vice President and would do so for other erring public officials. His statement urges the public to question the Court's integrity and independence. All that considered, it does not appear that Cendaña intended to impede, obstruct, or degrade the administration of justice, nor are his statements likely to incite or produce such an effect imminently.

Cendaña's words were forceful and critical. However, considering that his video statement was posted mere hours after the Court's ruling was promulgated, it can hardly be perceived as a calculated effort to interfere with the administration of justice, contrary to what petitioners claimed.[32] Instead, his words appear to simply be vigorous expressions of personal disagreement and disappointment with the Court's ruling. After all, criticisms of

the Court are common after controversial decisions on high-profile cases and personalities, as these evoke strong emotions from the public.

This does not automatically mean, however, that the danger of disorderly administration of justice is imminent. Taking into account the events leading to the posting of the video and the subsequent interactions with the post, it is unlikely that Cendaña's statement would incite or produce lawless action or pose a serious imminent threat to the Court's dispensation of justice. Although Cendaña comes from a position of authority and influence, and his language was strong, these circumstances alone do not establish the imminence of such danger or threat. As in the case of Heydarian, apart from Cendaña's prominence, no other factors, such as political climate, venue, and timing, point to the imminence of the evil sought to be prevented.

As with respondent Lorenzo "Larry" G. Gadon (Gadon), the same conclusion follows.

During President Ferdinand R. Marcos, Jr.'s State of the Nation Address, Gadon was asked by several media outlets for his reaction to the Court's ruling in Duterte. In the video clips annexed to the Petition in G.R. No. E-01747, Gadon referred to the Court as "tuta ng mga Duterte." In the video clip from CDN Digital, Gadon critiqued the Court's ruling and then made the following remarks:

Halata kasi na itong Supreme Court is just siding with Sara [Duterte]. Ako nga dinisbar ako for a much lesser offense. Samantalang si Sara katakot-takot na pagmumura, katakot-takot na pagbabanta ng pagpatay ang ginawa nya, hindi sya dinidisbar. So ang Supreme Court talaga, tuta, tuta ng Duterte. 'Yang si Gesmundo na yan tuta ng Duterte yan.[33]

As in the case of Cendaña, Gadon's statements attack the integrity and independence of the Judiciary. He similarly accuses the Court of being beholden to the Vice President and her family, effectively urging the public to lose its trust and confidence in the Judiciary. Nonetheless, the elements of intent and likelihood of inciting or producing imminent lawless action are likewise absent in his statements.

In referring to the Court as "tuta ng mga Duterte," Gadon also passionately alluded to his deep personal frustration towards the Court. He laments that the Court has supposedly treated him more harshly than the Vice President, despite that he allegedly committed lighter infractions. Viewed in this context and taken together with his evident disagreement with how the Court resolved Duterte, it can reasonably be inferred that Gadon made those remarks as an expression of dissatisfaction and dissent rather than a deliberate attempt to impede, obstruct, or degrade the administration of justice, or otherwise disrupt the judicial process.

Petitioners in G.R. No. E-01747 argue that Gadon's remarks carry greater impact because of his status as a public official and public figure, thereby increasing the damage and disrespect to the Court's dignity and integrity.[34] The speaker's prominence, however, is not the primary factor in determining the likelihood of inciting unlawful action. Here, as in the case of Heydarian and Cendaña, there are no other circumstances apart from Gadon's status that would point to a likelihood of inciting or producing imminent lawless action. There remains no demonstrable serious and imminent threat to the administration of justice that would warrant the Court's exercise of contempt powers and imposition of sanctions.

For the foregoing reasons, I vote to dismiss the contempt charges in G.R. Nos. E-01742 and E-01747.

Citizens of this country must be accorded the widest latitude to express their dissent and discontent, especially in matters of public concern, without fear of repercussions. Absent a clear and imminent danger to the administration of justice, expressions of dissatisfaction or disagreement, no matter how strongly or pointedly worded, should not be subjected to sanction.

[1] 54 Phil. 801 (1930) [Per J. Malcolm, En Banc].

[2] Id. at 805.

[3] 42 O.G. 59 (unreported); See Court's disquisition in *In re: Almacen v. Yaptinchay*, 140 Phil. 353, 386 (1970) [Per J. Castro, En Banc].

[4] *Cabansag v. Fernandez*, 102 Phil. 152 (1957) [Per J. Bautista Angelo, En Banc].

[5] Id. at 165.

[6] Id.

[7] See id. at 164-165.

[8] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[9] Id. at 492-493. (Citations omitted)

[10] 312 Phil. 977 (1995) [Per J. Regalado, En Banc].

[11] Id. at 1022.

[12] See id. at 1002-1003.

[13] 930 Phil. 757 (2022) [Per J. Leonen, Second Division].

[14] Id. at 789.

[15] Id. at 785-786.

[16] 941 Phil. 182 (2023) [Per J. Leonen, En Banc].

[17] Id. at 325-326.

[18] *Re: Statements Made by Badoy Allegedly Threatening Judge Magdoza-Malagar*, 946 Phil. 1 (2023) [Per J. Leonen, En Banc].

[19] Id. at 43.

**[20] 395 U.S. 444 (1969).**

**[21] 341 U.S. 494 (1951).**

[22] *Brandenburg v. Ohio*, supra note 20, at 447-448.

[23] Ponencia, pp. 35, 81-82.

[24] See id. at 79-82.

[25] G.R. Nos. 278353 and 278359, July 25, 2025 [Per J. Leonen, En Banc].

[26] Richard Heydarian, X (formerly Twitter), available at <https://x.com/RichHeydarian/status/1948668467663831262> (last accessed on March 16, 2026).

[27] Richard Heydarian, X (formerly Twitter), available at <https://x.com/RichHeydarian/status/1948760059116487139> (last accessed on March 16, 2026).

[28] See Petition in G.R. No. E-01742, pp. 10-13.

[29] Id.

[30] Id. at 11.

[31] Ponencia, p. 73. See also Akbayan Partylist Representative Perci Cadeña video statement, available at <https://www.facebook.com/reel/1263352891961514> (last accessed on March 16, 2026).

[32] See Petition in G.R. No. E-01742, pp. 10-13.

[33] Annex "B" of the Petition; available at <https://www.facebook.com/share/v/1AbiT4Hmxk/> (last accessed on March 16, 2026).

[34] See Petition in G.R. No. E-01747, p. 4.

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