WHITE LIGHT CORPORATION, TITANIUM CORPORATION AND STA. MESA TOURIST & DEVELOPMENT CORPORATION, PETITIONERS, VS. CITY OF MANILA, REPRESENTED BY MAYOR ALFREDO S. LIM, RESPONDENT.

G.R. No. 122846. January 20, 2009

Ponente: TINGA, J.

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TINGA, J.:

With another city ordinance of Manila also principally involving the tourist district as subject, the Court is confronted anew with the incessant clash between government power and individual liberty in tandem with the archetypal tension between law and morality.

In City of Manila v. Laguio, Jr.,[1] the Court affirmed the nullification of a city ordinance barring the operation of motels and inns, among other establishments, within the Ermita-Malate area. The petition at bar assails a similarly-motivated city ordinance that prohibits those same establishments from offering short-time admission, as well as pro-rated or "wash up" rates for such abbreviated stays. Our earlier decision tested the city ordinance against our sacred constitutional rights to liberty, due process and equal protection of law. The same parameters apply to the present petition.

This Petition[2] under Rule 45 of the Revised Rules on Civil Procedure, which seeks the reversal of the Decision[3] in C.A.-G.R. S.P. No. 33316 of the Court of Appeals, challenges the validity of Manila City Ordinance No. 7774 entitled, "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila" (the Ordinance).

I.

The facts are as follows:

On December 3, 1992, City Mayor Alfredo S. Lim (Mayor Lim) signed into law the Ordinance.[4] The Ordinance is reproduced in full, hereunder:

> SECTION 1. Declaration of Policy. It is hereby the declared policy of the City Government to protect the best interest, health and welfare, and the morality of its constituents in general and the youth in particular.
>
> SEC. 2. Title. This ordinance shall be known as "An Ordinance" prohibiting short time admission in hotels, motels, lodging houses, pension houses and similar establishments in the City of Manila.
>
> SEC. 3. Pursuant to the above policy, short-time admission and rate [sic], wash-up rate or other similarly concocted terms, are hereby prohibited in hotels, motels, inns, lodging houses, pension houses and similar establishments in the City of Manila.

> SEC. 4. Definition of Term[s]. Short-time admission shall mean admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of said establishments but would mean the same or would bear the same meaning.
>
> SEC. 5. Penalty Clause. Any person or corporation who shall violate any provision of this ordinance shall upon conviction thereof be punished by a fine of Five Thousand (P5,000.00) Pesos or imprisonment for a period of not exceeding one (1) year or both such fine and imprisonment at the discretion of the court; Provided, That in case of [a] juridical person, the president, the manager, or the persons in charge of the operation thereof shall be liable: Provided, further, That in case of subsequent conviction for the same offense, the business license of the guilty party shall automatically be cancelled.
>
> SEC. 6. Repealing Clause. Any or all provisions of City ordinances not consistent with or contrary to this measure or any portion hereof are hereby deemed repealed.
>
> SEC. 7. Effectivity. This ordinance shall take effect immediately upon approval.
>
> Enacted by the city Council of Manila at its regular session today, November 10, 1992.
>
> Approved by His Honor, the Mayor on December 3, 1992.

On December 15, 1992, the Malate Tourist and Development Corporation (MTDC) filed a complaint for declaratory relief with prayer for a writ of preliminary injunction and/or temporary restraining order (TRO)[5] with the Regional Trial Court (RTC) of Manila, Branch 9 impleading as defendant, herein respondent City of Manila (the City) represented by Mayor Lim.[6] MTDC prayed that the Ordinance, insofar as it includes motels and inns as among its prohibited establishments, be declared invalid and unconstitutional. MTDC claimed that as owner and operator of the Victoria Court in Malate, Manila it was authorized by Presidential Decree (P.D.) No. 259 to admit customers on a short time basis as well as to charge customers wash up rates for stays of only three hours.

On December 21, 1992, petitioners White Light Corporation (WLC), Titanium Corporation (TC) and Sta. Mesa Tourist and Development Corporation (STDC) filed a motion to intervene and to admit attached complaint-in-intervention[7] on the ground that the Ordinance directly affects their business interests as operators of drive-in-hotels and motels in Manila.[8] The three companies are components of the Anito Group of Companies which owns and operates several hotels and motels in Metro Manila.[9]

On December 23, 1992, the RTC granted the motion to intervene.[10] The RTC also notified the Solicitor General of the proceedings pursuant to then Rule 64, Section 4 of the Rules of Court. On the same date, MTDC moved to withdraw as plaintiff.[11]

On December 28, 1992, the RTC granted MTDC's motion to withdraw.[12] The RTC issued a TRO on January 14, 1993, directing the City to cease and desist from enforcing the Ordinance.[13] The City filed an Answer dated January 22, 1993 alleging that the Ordinance is a legitimate exercise of police power.[14]

On February 8, 1993, the RTC issued a writ of preliminary injunction ordering the city to desist from the enforcement of the Ordinance.[15] A month later, on March 8, 1993, the Solicitor General filed his Comment arguing that the Ordinance is constitutional.

During the pre-trial conference, the WLC, TC and STDC agreed to submit the case for decision without trial as the case involved a purely legal question.[16] On October 20, 1993, the RTC rendered a decision declaring the Ordinance null and void. The dispositive portion of the decision reads:

> WHEREFORE, in view of all the foregoing, [O]rdinance No. 7774 of the City of Manila is hereby declared

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> null and void.
>
> Accordingly, the preliminary injunction heretofor issued is hereby made permanent.
>
> SO ORDERED.[17]

The RTC noted that the ordinance "strikes at the personal liberty of the individual guaranteed and jealously guarded by the Constitution."[18] Reference was made to the provisions of the Constitution encouraging private enterprises and the incentive to needed investment, as well as the right to operate economic enterprises. Finally, from the observation that the illicit relationships the Ordinance sought to dissuade could nonetheless be consummated by simply paying for a 12-hour stay, the RTC likened the law to the ordinance annulled in Ynot v. Intermediate Appellate Court,[19] where the legitimate purpose of preventing indiscriminate slaughter of carabaos was sought to be effected through an inter-province ban on the transport of carabaos and carabeef.

The City later filed a petition for review on certiorari with the Supreme Court.[20] The petition was docketed as G.R. No. 112471. However in a resolution dated January 26, 1994, the Court treated the petition as a petition for certiorari and referred the petition to the Court of Appeals.[21]

Before the Court of Appeals, the City asserted that the Ordinance is a valid exercise of police power pursuant to Section 458 (4)(iv) of the Local Government Code which confers on cities, among other local government units, the power:

> [To] regulate the establishment, operation and maintenance of cafes, restaurants, beerhouses, hotels, motels, inns, pension houses, lodging houses and other similar establishments, including tourist guides and transports.[22]

The Ordinance, it is argued, is also a valid exercise of the power of the City under Article III, Section 18(kk) of the Revised Manila Charter, thus:

> "to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity and the promotion of the morality, peace, good order, comfort, convenience and general welfare of the city and its inhabitants, and such others as be necessary to carry into effect and discharge the powers and duties conferred by this Chapter; and to fix penalties for the violation of ordinances which shall not exceed two hundred pesos fine or six months imprisonment, or both such fine and imprisonment for a single offense.[23]

Petitioners argued that the Ordinance is unconstitutional and void since it violates the right to privacy and the freedom of movement; it is an invalid exercise of police power; and it is an unreasonable and oppressive interference in their business.

The Court of Appeals reversed the decision of the RTC and affirmed the constitutionality of the Ordinance.[24] First, it held that the Ordinance did not violate the right to privacy or the freedom of movement, as it only penalizes the owners or operators of establishments that admit individuals for short time stays. Second, the virtually limitless reach of police power is only constrained by having a lawful object obtained through a lawful method. The lawful objective of the Ordinance is satisfied since it aims to curb immoral activities. There is a lawful method since the establishments are still allowed to operate. Third, the adverse effect on the establishments is justified by the well-being of its constituents in general. Finally, as held in Ermita-Malate Motel Operators Association v. City Mayor of Manila, liberty is regulated by law.

TC, WLC and STDC come to this Court via petition for review on certiorari.[25] In their petition and Memorandum, petitioners in essence repeat the assertions they made before the Court of Appeals. They contend that the assailed Ordinance is an invalid exercise of police power.

II.

We must address the threshold issue of petitioners' standing. Petitioners allege that as owners of establishments offering "wash-up" rates, their business is being unlawfully interfered with by the Ordinance. However, petitioners also allege that the equal protection rights of their clients are also being interfered with. Thus, the crux of the matter is whether or not these establishments have the requisite standing to plead for protection of their patrons' equal protection rights.

Standing or locus standi is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers,[26] sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government.

The requirement of standing is a core component of the judicial system derived directly from the Constitution.[27] The constitutional component of standing doctrine incorporates concepts which concededly are not susceptible of precise definition.[28] In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing.[29] In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in Allen v. Wright.[30]

Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.[31]

For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In Powers v. Ohio,[32] the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an `injury-in-fact,' thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests."[33] Herein, it is clear that the business interests of the petitioners are likewise injured by the Ordinance. They rely on the patronage of their customers for their continued viability which appears to be threatened by the enforcement of the Ordinance. The relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit.[34]

American jurisprudence is replete with examples where parties-in-interest were allowed standing to advocate or invoke the fundamental due process or equal protection claims of other persons or classes of persons injured by state action. In Griswold v. Connecticut,[35] the United States Supreme Court held that physicians had standing to challenge a reproductive health statute that would penalize them as accessories as well as to plead the constitutional protections available to their patients. The Court held that:

> "The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them."[36]

An even more analogous example may be found in Craig v. Boren,[37] wherein the United States Supreme Court held that a licensed beverage vendor has standing to raise the equal protection claim of a male customer challenging a statutory scheme prohibiting the sale of beer to males under the age of 21 and to females under the age of 18. The United States High Court explained that the vendors had standing "by acting as advocates of the rights of third parties who seek access to their market or function."[38]

Assuming arguendo that petitioners do not have a relationship with their patrons for the former to assert the rights

of the latter, the overbreadth doctrine comes into play. In overbreadth analysis, challengers to government action are in effect permitted to raise the rights of third parties. Generally applied to statutes infringing on the freedom of speech, the overbreadth doctrine applies when a statute needlessly restrains even constitutionally guaranteed rights.[39] In this case, the petitioners claim that the Ordinance makes a sweeping intrusion into the right to liberty of their clients. We can see that based on the allegations in the petition, the Ordinance suffers from overbreadth.

We thus recognize that the petitioners have a right to assert the constitutional rights of their clients to patronize their establishments for a "wash-rate" time frame.

III.

To students of jurisprudence, the facts of this case will recall to mind not only the recent City of Manila ruling, but our 1967 decision in Ermita-Malate Hotel and Motel Operations Association, Inc., v. Hon. City Mayor of Manila.[40] Ermita-Malate concerned the City ordinance requiring patrons to fill up a prescribed form stating personal information such as name, gender, nationality, age, address and occupation before they could be admitted to a motel, hotel or lodging house. This earlier ordinance was precisely enacted to minimize certain practices deemed harmful to public morals. A purpose similar to the annulled ordinance in City of Manila which sought a blanket ban on motels, inns and similar establishments in the Ermita-Malate area. However, the constitutionality of the ordinance in Ermita-Malate was sustained by the Court.

The common thread that runs through those decisions and the case at bar goes beyond the singularity of the localities covered under the respective ordinances. All three ordinances were enacted with a view of regulating public morals including particular illicit activity in transient lodging establishments. This could be described as the middle case, wherein there is no wholesale ban on motels and hotels but the services offered by these establishments have been severely restricted. At its core, this is another case about the extent to which the State can intrude into and regulate the lives of its citizens.

The test of a valid ordinance is well established. A long line of decisions including City of Manila has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[41]

The Ordinance prohibits two specific and distinct business practices, namely wash rate admissions and renting out a room more than twice a day. The ban is evidently sought to be rooted in the police power as conferred on local government units by the Local Government Code through such implements as the general welfare clause.

A.

Police power, while incapable of an exact definition, has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response as the conditions warrant.[42] Police power is based upon the concept of necessity of the State and its corresponding right to protect itself and its people.[43] Police power has been used as justification for numerous and varied actions by the State. These range from the regulation of dance halls,[44] movie theaters,[45] gas stations[46] and cockpits.[47] The awesome scope of police power is best demonstrated by the fact that in its hundred or so years of presence in our nation's legal system, its use has rarely been denied.

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The apparent goal of the Ordinance is to minimize if not eliminate the use of the covered establishments for illicit sex, prostitution, drug use and alike. These goals, by themselves, are unimpeachable and certainly fall within the ambit of the police power of the State. Yet the desirability of these ends do not sanctify any and all means for their achievement. Those means must align with the Constitution, and our emerging sophisticated analysis of its guarantees to the people. The Bill of Rights stands as a rebuke to the seductive theory of Macchiavelli, and, sometimes even, the political majorities animated by his cynicism.

Even as we design the precedents that establish the framework for analysis of due process or equal protection questions, the courts are naturally inhibited by a due deference to the co-equal branches of government as they exercise their political functions. But when we are compelled to nullify executive or legislative actions, yet another form of caution emerges. If the Court were animated by the same passing fancies or turbulent emotions that motivate many political decisions, judicial integrity is compromised by any perception that the judiciary is merely the third political branch of government. We derive our respect and good standing in the annals of history by acting as judicious and neutral arbiters of the rule of law, and there is no surer way to that end than through the development of rigorous and sophisticated legal standards through which the courts analyze the most fundamental and far-reaching constitutional questions of the day.

B.

The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition.[48] The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.

The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property.[49] Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.[50]

The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.

C.

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in U.S. v. Carolene Products.[51] Footnote 4 of the Carolene Products case acknowledged that the judiciary would defer to the legislature unless there is a

discrimination against a "discrete and insular" minority or infringement of a "fundamental right."[52] Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender[53] and legitimacy.[54] Immediate scrutiny was adopted by the U.S. Supreme Court in Craig,[55] after the Court declined to do so in Reed v. Reed.[56] While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges.[57] Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest.[58] Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered.[59] Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms.[60] Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.[61] The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage,[62] judicial access[63] and interstate travel.[64]

If we were to take the myopic view that an Ordinance should be analyzed strictly as to its effect only on the petitioners at bar, then it would seem that the only restraint imposed by the law which we are capacitated to act upon is the injury to property sustained by the petitioners, an injury that would warrant the application of the most deferential standard - the rational basis test. Yet as earlier stated, we recognize the capacity of the petitioners to invoke as well the constitutional rights of their patrons - those persons who would be deprived of availing short time access or wash-up rates to the lodging establishments in question.

Viewed cynically, one might say that the infringed rights of these customers were are trivial since they seem shorn of political consequence. Concededly, these are not the sort of cherished rights that, when proscribed, would impel the people to tear up their cedulas. Still, the Bill of Rights does not shelter gravitas alone. Indeed, it is those "trivial" yet fundamental freedoms - which the people reflexively exercise any day without the impairing awareness of their constitutional consequence - that accurately reflect the degree of liberty enjoyed by the people. Liberty, as integrally incorporated as a fundamental right in the Constitution, is not a Ten Commandments-style enumeration of what may or what may not be done; but rather an atmosphere of freedom where the people do not feel labored under a Big Brother presence as they interact with each other, their society and nature, in a manner innately understood by them as inherent, without doing harm or injury to others.

D.

The rights at stake herein fall within the same fundamental rights to liberty which we upheld in City of Manila v. Hon. Laguio, Jr. We expounded on that most primordial of rights, thus:

> Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities

> with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare."[[65]] In accordance with this case, the rights of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; and to pursue any avocation are all deemed embraced in the concept of liberty.[[66]]
>
> The U.S. Supreme Court in the case of Roth v. Board of Regents, sought to clarify the meaning of "liberty." It said:
> While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[67] [Citations omitted]

It cannot be denied that the primary animus behind the ordinance is the curtailment of sexual behavior. The City asserts before this Court that the subject establishments "have gained notoriety as venue of `prostitution, adultery and fornications' in Manila since they `provide the necessary atmosphere for clandestine entry, presence and exit and thus became the `ideal haven for prostitutes and thrill-seekers.'"[68] Whether or not this depiction of a mise-en-scene of vice is accurate, it cannot be denied that legitimate sexual behavior among willing married or consenting single adults which is constitutionally protected[69] will be curtailed as well, as it was in the City of Manila case. Our holding therein retains significance for our purposes:

> The concept of liberty compels respect for the individual whose claim to privacy and interference demands respect. As the case of Morfe v. Mutuc, borrowing the words of Laski, so very aptly stated:
>
> Man is one among many, obstinately refusing reduction to unity. His separateness, his isolation, are indefeasible; indeed, they are so fundamental that they are the basis on which his civic obligations are built. He cannot abandon the consequences of his isolation, which are, broadly speaking, that his experience is private, and the will built out of that experience personal to himself. If he surrenders his will to others, he surrenders himself. If his will is set by the will of others, he ceases to be a master of himself. I cannot believe that a man no longer a master of himself is in any real sense free.
>
> Indeed, the right to privacy as a constitutional right was recognized in Morfe, the invasion of which should be justified by a compelling state interest. Morfe accorded recognition to the right to privacy independently of its identification with liberty; in itself it is fully deserving of constitutional protection. Governmental powers should stop short of certain intrusions into the personal life of the citizen.[70]

We cannot discount other legitimate activities which the Ordinance would proscribe or impair. There are very legitimate uses for a wash rate or renting the room out for more than twice a day. Entire families are known to choose pass the time in a motel or hotel whilst the power is momentarily out in their homes. In transit passengers who wish to wash up and rest between trips have a legitimate purpose for abbreviated stays in motels or hotels. Indeed any person or groups of persons in need of comfortable private spaces for a span of a few hours with purposes other than having sex or using illegal drugs can legitimately look to staying in a motel or hotel as a convenient alternative.

E.

That the Ordinance prevents the lawful uses of a wash rate depriving patrons of a product and the petitioners of lucrative business ties in with another constitutional requisite for the legitimacy of the Ordinance as a police power measure. It must appear that the interests of the public generally, as distinguished from those of a particular

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class, require an interference with private rights and the means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights.[71] It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.[72]

Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights. As held in Morfe v. Mutuc, the exercise of police power is subject to judicial review when life, liberty or property is affected.[73] However, this is not in any way meant to take it away from the vastness of State police power whose exercise enjoys the presumption of validity.[74]

Similar to the Comelec resolution requiring newspapers to donate advertising space to candidates, this Ordinance is a blunt and heavy instrument.[75] The Ordinance makes no distinction between places frequented by patrons engaged in illicit activities and patrons engaged in legitimate actions. Thus it prevents legitimate use of places where illicit activities are rare or even unheard of. A plain reading of section 3 of the Ordinance shows it makes no classification of places of lodging, thus deems them all susceptible to illicit patronage and subject them without exception to the unjustified prohibition.

The Court has professed its deep sentiment and tenderness of the Ermita-Malate area, its longtime home,[76] and it is skeptical of those who wish to depict our capital city - the Pearl of the Orient - as a modern-day Sodom or Gomorrah for the Third World set. Those still steeped in Nick Joaquin-dreams of the grandeur of Old Manila will have to accept that Manila like all evolving big cities, will have its problems. Urban decay is a fact of mega cities such as Manila, and vice is a common problem confronted by the modern metropolis wherever in the world. The solution to such perceived decay is not to prevent legitimate businesses from offering a legitimate product. Rather, cities revive themselves by offering incentives for new businesses to sprout up thus attracting the dynamism of individuals that would bring a new grandeur to Manila.

The behavior which the Ordinance seeks to curtail is in fact already prohibited and could in fact be diminished simply by applying existing laws. Less intrusive measures such as curbing the proliferation of prostitutes and drug dealers through active police work would be more effective in easing the situation. So would the strict enforcement of existing laws and regulations penalizing prostitution and drug use. These measures would have minimal intrusion on the businesses of the petitioners and other legitimate merchants. Further, it is apparent that the Ordinance can easily be circumvented by merely paying the whole day rate without any hindrance to those engaged in illicit activities. Moreover, drug dealers and prostitutes can in fact collect "wash rates" from their clientele by charging their customers a portion of the rent for motel rooms and even apartments.

IV.

We reiterate that individual rights may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. The State is a leviathan that must be restrained from needlessly intruding into the lives of its citizens. However well--intentioned the Ordinance may be, it is in effect an arbitrary and whimsical intrusion into the rights of the establishments as well as their patrons. The Ordinance needlessly restrains the operation of the businesses of the petitioners as well as restricting the rights of their patrons without sufficient justification. The Ordinance rashly equates wash rates and renting out a room more than twice a day with immorality without accommodating innocuous intentions.

The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect.[77] The notion that the

promotion of public morality is a function of the State is as old as Aristotle.[78] The advancement of moral relativism as a school of philosophy does not de-legitimize the role of morality in law, even if it may foster wider debate on which particular behavior to penalize. It is conceivable that a society with relatively little shared morality among its citizens could be functional so long as the pursuit of sharply variant moral perspectives yields an adequate accommodation of different interests.[79]

To be candid about it, the oft-quoted American maxim that "you cannot legislate morality" is ultimately illegitimate as a matter of law, since as explained by Calabresi, that phrase is more accurately interpreted as meaning that efforts to legislate morality will fail if they are widely at variance with public attitudes about right and wrong.[80] Our penal laws, for one, are founded on age-old moral traditions, and as long as there are widely accepted distinctions between right and wrong, they will remain so oriented.

Yet the continuing progression of the human story has seen not only the acceptance of the right-wrong distinction, but also the advent of fundamental liberties as the key to the enjoyment of life to the fullest. Our democracy is distinguished from non-free societies not with any more extensive elaboration on our part of what is moral and immoral, but from our recognition that the individual liberty to make the choices in our lives is innate, and protected by the State. Independent and fair-minded judges themselves are under a moral duty to uphold the Constitution as the embodiment of the rule of law, by reason of their expression of consent to do so when they take the oath of office, and because they are entrusted by the people to uphold the law.[81]

Even as the implementation of moral norms remains an indispensable complement to governance, that prerogative is hardly absolute, especially in the face of the norms of due process of liberty. And while the tension may often be left to the courts to relieve, it is possible for the government to avoid the constitutional conflict by employing more judicious, less drastic means to promote morality.

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals is REVERSED, and the Decision of the Regional Trial Court of Manila, Branch 9, is REINSTATED. Ordinance No. 7774 is hereby declared UNCONSTITUTIONAL. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Velasco, Jr., Nachura, and Leonardo-De Castro, JJ., concur.
Carpio, J., on official leave.
Brion, J., on official leave.
Peralta, J., on leave.

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[1] G.R. 118127, 12 April 2005, 455 SCRA 308.

[2] See rollo, pp. 4-41.

[3]Id. at 42-59. Penned by Associate Justice Jaime M. Lantin, concurred in by Associate Justices Ricardo P. Galvez (later, Solicitor-General) and Antonio P. Solano.

[4] Id. at 46.

[5]Id. at 62-69.

[6] Id. at 45-46.

[7] Id. at 70-77.

[8]Id. at 47.

[9]Id.

[10] Id.

[11] Id. at 48.

[12]Id. at 81.

[13]Id. at 82-83.

[14] Id. at 84-99.

[15] Id. at 104-105.

[16]Id. at 49.

[17] Id. at 52.

[18] Id. at 120.

[19] No. L-74457, 20 March 1987, 148 SCRA 659.

[20] Rollo, pp. 129-145.

[21]Id. at 158.

[22] Id. at 53.

[23] Id.

[24]Id. at 43-59.

[25]Id. at 4-40.

[26] Allen v. Wright, 468 U.S. 737 (1984).

[27] Const., Art. VIII , Sec. 5, Sanlakas v. Executive Secretary Reyes, 466 Phil. 482 (2004).

[28]Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100, 99 S.Ct. 1601, 1608, 60 L.Ed.2d 66 (1979).

[29] See Domingo v. Carague, G.R. No. 161065,15 April 2005, 456 SCRA 450. See also Macasiano v. National Housing Authority, G.R. No. 107921, 1 July 1993, 224 SCRA 236.

[30] 468 U.S. 737 (1984).

[31] Supra note 29.

[32] 499 U.S. 400 (1991).

[33] Id. at p 410-411.

[34] See Kelsey McCowan Heilman, The Rights of Others: Protection and Advocacy Organizations Associational Standing to Sue, 157 U. Pa. L. Rev. 237, for a general discussion on advocacy groups.

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[35] 381 U.S. 479(1965).

[36] Id. at 481.

[37] 429 U.S. 190 (1976).

[38]Id. at 194.

[39] Chavez v. Comelec, G.R. No. 162777, 31 August 2004, 437 SCRA 415; Adiong v. Comelec, G.R. No. 103956, 31 March 1992, 207 SCRA 712.

[40] 127 Phil. 306 (1967).

[41] City of Manila v. Laguio, Jr., supra note 1; Tatel v. Municipality of Virac, G.R. No. 40243, 11 March 1992, 207 SCRA 157, 161; Solicitor General v. Metropolitan Manila Authority, G.R. No. 102782, 11 December 1991, 204 SCRA 837, 845; Magtajas v. Pryce Properties Corp., Inc., G.R. No. 111097, 20 July 1994, 234 SCRA 255, 268-267.

[42] Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 127 Phil. 306 (1967).

[43] JMM Promotion and Management Inc. v. Court of Appeals, 329 Phil. 87, 94 (1996) citing Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).

[44]U.S. v. Rodriguez, 38 Phil. 759.

[45] People v. Chan, 65 Phil. 611 (1938).

[46] Javier v. Earnshaw, 64 Phil. 626 (1937).

[47]Pedro v. Provincial Board of Rizal, 56 Phil. 123 (1931).

[48]See U.S. v. Ling Su Fan, 10 Phil. 104 (1908); Insular Government v. Ling Su Fan, 15 Phil. 58 (1910).

[49] Lopez v. Director of Lands, 47 Phil. 23, 32 (1924).

[50] See City of Manila v. Hon. Laguio, Jr., supra note 1 at 330 citing CHEMERINSKY, ERWIN, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES, 2nd Ed. 523 (2002).

[51] 304 U.S. 144 (1938).

[52]Id, at 152.

[53] Craig v. Boren, 429 U.S. 190 (1976).

[54] Clark v. Jeter, 486 U.S. 456 (1988).

[55] 429 U.S. 190 (1976).

[56] 404 U.S. 71 (1971).

[57]Central Bank Employee's Association v. Bangko Sentral ng Pilipinas, 487 Phil. 531 (2004); Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform, G.R. Nos. 78742, 79310, 79744, and 79777, July 14, 1989, 175 SCRA 343; In Ermita-Malate, supra note 1 at 324, the Court in fact noted: "if the liberty involved were freedom of the mind or the person, the standard for the validity of government acts is much more rigorous and exacting, but where the liberty curtailed affects what are at the most rights of property, the

permissible scope of regulatory measures is wider."

[58] Central Bank Employee's Association v. Bangko Sentral ng Pilipinas, supra note 57.

[59] Id.

[60] Mendoza, J., Concurring Opinion in Estrada v. Sandiganbayan, G.R. No. 148560, 19 November 2001, 369 SCRA 394.

[61] Id.

[62] Bush v. Gore, 531 U.S. 98 (2000).

[63]Boddie v. Connecticut, 401 U.S. 371 (1971).

[64] Shapiro v. Thompson, 394 U.S. 618 (1969). It has been opined by Chemerinsky that the use of the equal protection clause was to avoid the use of substantive due process since the latter fell into disfavor in the United States. See Erwin Chemerinsky, Constitutional Law, Principles and Policies (2[nd] ed. 2002).

[65] Morfe v. Mutuc, 130 Phil. 415 (1968).

[66] Id. at 440.

[67] City of Manila v. Laguio, Jr., supra note 1 at 336-337.

[68] Rollo, p. 258.

[69]"Motel patrons who are single and unmarried may invoke this right to autonomy to consummate their bonds in intimate sexual conduct within the motel's premises -- be it stressed that their consensual sexual behavior does not contravene any fundamental state policy as contained in the Constitution. (See Concerned Employee v. Glenda Espiritu Mayor, A.M. No. P-02-1564, 23 November 2004) Adults have a right to choose to forge such relationships with others in the confines of their own private lives and still retain their dignity as free persons. The liberty protected by the Constitution allows persons the right to make this choice. Their right to liberty under the due process clause gives them the full right to engage in their conduct without intervention of the government, as long as they do not run afoul of the law. Liberty should be the rule and restraint the exception.

Liberty in the constitutional sense not only means freedom from unlawful government restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is the beginning of all freedom -- it is the most comprehensive of rights and the right most valued by civilized men." City of Manila v. Hon. Laguio, Jr. supra note 1 at 337-338.

[70] City of Manila v. Laguio, Jr., supra note 1 at 338-339.

[71] Metro Manila Development Authority v. Viron Transportation Co., G.R. Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341.

[72] U.S. v. Toribio, 15 Phil. 85 (1910).

[73] 130 Phil. 415 (1968).

[74]Carlos Superdrug v. DSWD, G.R. No. 166494, June 29, 2007, Alalayan v. National Power Corporation, 24 Phil. 172 (1968); U.S. v. Salaveria, 39 Phil. 102 (1918).

[75]Philippine Press Institute v. Comelec, 314 Phil. 131 (1995).

[76] Supra note 1.

[77] City of Manila v. Hon. Laguio, Jr., supra note 1; De La Cruz, et al. v. Hon. Paras, et al., 208 Phil. 490 (1983); Ermita-Malate Hotel and Motel Operations Association, Inc. v. City Mayor of Manila, supra note 42.

[78] "The end of the state is not mere life; it is, rather, a good quality of life." Therefore any state "which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance..." The law "should be a rule of life such as will make the members of a [state] good and just." Otherwise it "becomes a mere covenant - or (in the phrase of the Sophist Lycophron) `a guarantor of men's rights against one another.'" Politics II.9.6-8.1280 31-1280bii; cited in Hamburger, M., Morals and Law: The Growth of Aristotle's Legal Theory (1951 ed.), p. 178.

[79] Greenwalt, K., Conflicts of Law and Morality (1989 ed.), at 38.

[80] Steven G., Render Unto Caesar that which is Caesars, and unto God that which is God's, 31 Harv. J.L. & Pub. Pol'y 495. He cites the example of the failed Twentieth (?) Amendment to the U.S. Constitution, which prohibited the sale and consumption of liquor, where it was clear that the State cannot justly and successfully regulate consumption of alcohol, when huge portions of the population engage in its consumption.

See also Posner, Richard H., The Problematics of Moral And Legal Theory, The Belknap Press of Harvard University Press (2002). He writes:

> . . . Holmes warned long ago of the pitfalls of misunderstanding law by taking its moral vocabulary too seriously. A big part of legal education consists of showing students how to skirt those pitfalls. The law uses moral terms in part because of its origin, in part to be impressive, in part to speak a language that the laity, to whom the commands of the law are addressed, is more likely to understand - and in part, because there is a considerable overlap between law and morality. The overlap, however, is too limited to justify trying to align these two systems of social control (the sort of project that Islamic nations such as Iran, Pakistan, and Afghanistan have been engaged in of late). It is not a scandal when the law to pronounce it out of phase with current moral feeling. If often is, and for good practical reasons (in particular, the law is a flywheel, limiting the effects of wide swings in public opinion). When people make that criticism--as many do of the laws, still found on the statute books of many states, punishing homosexual relations--what they mean is that the law neither is supported by public opinion nor serves any temporal purpose, even that of stability, that it is merely a vestige, an empty symbol.

[81] See Burton , S., Judging in Good Faith, (1992 ed.), at 218.

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