SOUTHERN HEMISPHERE ENGAGEMENT NETWORK, INC., ON BEHALF OF THE SOUTH-SOUTH NETWORK (SSN) FOR NON-STATE ARMED GROUP ENGAGEMENT, AND ATTY. SOLIMAN M. SANTOS, JR., PETITIONERS, VS....

G.R. No. 178552. October 05, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before the Court are six petitions challenging the constitutionality of Republic Act No. 9372 (RA 9372), "An Act to Secure the State and Protect our People from Terrorism," otherwise known as the Human Security Act of 2007,[1] signed into law on March 6, 2007.

Following the effectivity of RA 9372 on July 15, 2007,[2] petitioner Southern Hemisphere Engagement Network, Inc., a non-government organization, and Atty. Soliman Santos, Jr., a concerned citizen, taxpayer and lawyer, filed a petition for certiorari and prohibition on July 16, 2007 docketed as G.R. No. 178552. On even date, petitioners Kilusang Mayo Uno (KMU), National Federation of Labor Unions-Kilusang Mayo Uno (NAFLU-KMU), and Center for Trade Union and Human Rights (CTUHR), represented by their respective officers[3] who are also bringing the action in their capacity as citizens, filed a petition for certiorari and prohibition docketed as G.R. No. 178554.

The following day, July 17, 2007, organizations Bagong Alyansang Makabayan (BAYAN), General Alliance Binding Women for Reforms, Integrity, Equality, Leadership and Action (GABRIELA), Kilusang Magbubukid ng Pilipinas (KMP), Movement of Concerned Citizens for Civil Liberties (MCCCL), Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), Kalipunan ng Damayang Mahihirap (KADAMAY), Solidarity of Cavite Workers (SCW), League of Filipino Students (LFS), Anakbayan, Pambansang Lakas ng Kilusang Mamamalakaya (PAMALAKAYA), Alliance of Concerned Teachers (ACT), Migrante, Health Alliance for Democracy (HEAD), and Agham, represented by their respective officers,[4] and joined by concerned citizens and taxpayers Teofisto Guingona, Jr., Dr. Bienvenido Lumbera, Renato Constantino, Jr., Sister Mary John Manansan, OSB, Dean Consuelo Paz, Atty. Josefina Lichauco, Retired Col. Gerry Cunanan, Carlitos Siguion-Reyna, Dr. Carolina Pagaduan-Araullo, Renato Reyes, Danilo Ramos, Emerenciana de Jesus, Rita Baua and Rey Claro Casambre filed a petition for certiorari and prohibition docketed as G.R. No. 178581.

On August 6, 2007, Karapatan and its alliance member organizations Hustisya, Desaparecidos, Samahan ng mga Ex-Detainees Laban sa Detensyon at para sa Amnestiya (SELDA), Ecumenical Movement for Justice and Peace (EMJP), and Promotion of Church People's Response (PCPR), which were represented by their respective officers[5] who are also bringing action on their own behalf, filed a petition for certiorari and prohibition docketed as G.R. No. 178890.

On August 29, 2007, the Integrated Bar of the Philippines (IBP), Counsels for the Defense of Liberty (CODAL),[6] Senator Ma. Ana Consuelo A.S. Madrigal, Sergio Osmeña III, and Wigberto E. Tañada filed a

petition for certiorari and prohibition docketed as G.R. No. 179157.

Bagong Alyansang Makabayan-Southern Tagalog (BAYAN-ST), other regional chapters and organizations mostly based in the Southern Tagalog Region,[7] and individuals[8] followed suit by filing on September 19, 2007 a petition for certiorari and prohibition docketed as G.R. No. 179461 that replicates the allegations raised in the BAYAN petition in G.R. No. 178581.

Impleaded as respondents in the various petitions are the Anti-Terrorism Council[9] composed of, at the time of the filing of the petitions, Executive Secretary Eduardo Ermita as Chairperson, Justice Secretary Raul Gonzales as Vice Chairperson, and Foreign Affairs Secretary Alberto Romulo, Acting Defense Secretary and National Security Adviser Norberto Gonzales, Interior and Local Government Secretary Ronaldo Puno, and Finance Secretary Margarito Teves as members. All the petitions, except that of the IBP, also impleaded Armed Forces of the Philippines (AFP) Chief of Staff Gen. Hermogenes Esperon and Philippine National Police (PNP) Chief Gen. Oscar Calderon.

The Karapatan, BAYAN and BAYAN-ST petitions likewise impleaded President Gloria Macapagal-Arroyo and the support agencies for the Anti-Terrorism Council like the National Intelligence Coordinating Agency, National Bureau of Investigation, Bureau of Immigration, Office of Civil Defense, Intelligence Service of the AFP, Anti-Money Laundering Center, Philippine Center on Transnational Crime, and the PNP intelligence and investigative elements.

The petitions fail.

Petitioners' resort to
certiorari is improper

Preliminarily, certiorari does not lie against respondents who do not exercise judicial or quasi-judicial functions. Section 1, Rule 65 of the Rules of Court is clear:

> Section 1. Petition for certiorari.--When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis and underscoring supplied)

Parenthetically, petitioners do not even allege with any modicum of particularity how respondents acted without or in excess of their respective jurisdictions, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The impropriety of certiorari as a remedy aside, the petitions fail just the same.

In constitutional litigations, the power of judicial review is limited by four exacting requisites, viz: (a) there must be an actual case or controversy; (b) petitioners must possess locus standi; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the lis mota of the case.[10]

In the present case, the dismal absence of the first two requisites, which are the most essential, renders the discussion of the last two superfluous.

Petitioners lack locus standi

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Locus standi or legal standing requires a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[11]

Anak Mindanao Party-List Group v. The Executive Secretary[12] summarized the rule on locus standi, thus:

> Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.
>
> [A] party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.
>
> For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action. (emphasis and underscoring supplied.)

Petitioner-organizations assert locus standi on the basis of being suspected "communist fronts" by the government, especially the military; whereas individual petitioners invariably invoke the "transcendental importance" doctrine and their status as citizens and taxpayers.

While Chavez v. PCGG[13] holds that transcendental public importance dispenses with the requirement that petitioner has experienced or is in actual danger of suffering direct and personal injury, cases involving the constitutionality of penal legislation belong to an altogether different genus of constitutional litigation. Compelling State and societal interests in the proscription of harmful conduct, as will later be elucidated, necessitate a closer judicial scrutiny of locus standi.

Petitioners have not presented any personal stake in the outcome of the controversy. None of them faces any charge under RA 9372.

KARAPATAN, Hustisya, Desaparecidos, SELDA, EMJP and PCR, petitioners in G.R. No. 178890, allege that they have been subjected to "close security surveillance by state security forces," their members followed by "suspicious persons" and "vehicles with dark windshields," and their offices monitored by "men with military build." They likewise claim that they have been branded as "enemies of the [S]tate."[14]

Even conceding such gratuitous allegations, the Office of the Solicitor General (OSG) correctly points out that petitioners have yet to show any connection between the purported "surveillance" and the implementation of RA 9372.

BAYAN, GABRIELA, KMP, MCCCL, COURAGE, KADAMAY, SCW, LFS, Anakbayan, PAMALAKAYA, ACT, Migrante, HEAD and Agham, petitioner-organizations in G.R. No. 178581, would like the Court to take judicial notice of respondents' alleged action of tagging them as militant organizations fronting for the Communist Party of the Philippines (CPP) and its armed wing, the National People's Army (NPA). The tagging, according to petitioners, is tantamount to the effects of proscription without following the procedure under the law.[15] The petition of BAYAN-ST, et al. in G.R. No. 179461 pleads the same allegations.

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The Court cannot take judicial notice of the alleged "tagging" of petitioners.

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
>
> Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.[16] (emphasis and underscoring supplied.)

No ground was properly established by petitioners for the taking of judicial notice. Petitioners' apprehension is insufficient to substantiate their plea. That no specific charge or proscription under RA 9372 has been filed against them, three years after its effectivity, belies any claim of imminence of their perceived threat emanating from the so-called tagging.

The same is true with petitioners KMU, NAFLU and CTUHR in G.R. No. 178554, who merely harp as well on their supposed "link" to the CPP and NPA. They fail to particularize how the implementation of specific provisions of RA 9372 would result in direct injury to their organization and members.

While in our jurisdiction there is still no judicially declared terrorist organization, the United States of America[17] (US) and the European Union[18] (EU) have both classified the CPP, NPA and Abu Sayyaf Group as foreign terrorist organizations. The Court takes note of the joint statement of Executive Secretary Eduardo Ermita and Justice Secretary Raul Gonzales that the Arroyo Administration would adopt the US and EU classification of the CPP and NPA as terrorist organizations.[19] Such statement notwithstanding, there is yet to be filed before the courts an application to declare the CPP and NPA organizations as domestic terrorist or outlawed organizations under RA 9372. Again, RA 9372 has been in effect for three years now. From July 2007 up to the present, petitioner-organizations have conducted their activities fully and freely without any threat of, much less an actual, prosecution or proscription under RA 9372.

Parenthetically, the Fourteenth Congress, in a resolution initiated by Party-list Representatives Saturnino Ocampo, Teodoro Casiño, Rafael Mariano and Luzviminda Ilagan,[20] urged the government to resume peace negotiations with the NDF by removing the impediments thereto, one of which is the adoption of designation of the CPP and NPA by the US and EU as foreign terrorist organizations. Considering the policy statement of the Aquino Administration[21] of resuming peace talks with the NDF, the government is not imminently disposed to ask for the judicial proscription of the CPP-NPA consortium and its allied organizations.

More important, there are other parties not before the Court with direct and specific interests in the questions being raised.[22] Of recent development is the filing of the first case for proscription under Section 17[23] of RA

9372 by the Department of Justice before the Basilan Regional Trial Court against the Abu Sayyaf Group.[24] Petitioner-organizations do not in the least allege any link to the Abu Sayyaf Group.

Some petitioners attempt, in vain though, to show the imminence of a prosecution under RA 9372 by alluding to past rebellion charges against them.

In Ladlad v. Velasco,[25] the Court ordered the dismissal of rebellion charges filed in 2006 against then Party-List Representatives Crispin Beltran and Rafael Mariano of Anakpawis, Liza Maza of GABRIELA, and Joel Virador, Teodoro Casiño and Saturnino Ocampo of Bayan Muna. Also named in the dismissed rebellion charges were petitioners Rey Claro Casambre, Carolina Pagaduan-Araullo, Renato Reyes, Rita Baua, Emerencia de Jesus and Danilo Ramos; and accused of being front organizations for the Communist movement were petitioner-organizations KMU, BAYAN, GABRIELA, PAMALAKAYA, KMP, KADAMAY, LFS and COURAGE.[26]

The dismissed rebellion charges, however, do not save the day for petitioners. For one, those charges were filed in 2006, prior to the enactment of RA 9372, and dismissed by this Court. For another, rebellion is defined and punished under the Revised Penal Code. Prosecution for rebellion is not made more imminent by the enactment of RA 9372, nor does the enactment thereof make it easier to charge a person with rebellion, its elements not having been altered.

Conversely, previously filed but dismissed rebellion charges bear no relation to prospective charges under RA 9372. It cannot be overemphasized that three years after the enactment of RA 9372, none of petitioners has been charged.

Petitioners IBP and CODAL in G.R. No. 179157 base their claim of locus standi on their sworn duty to uphold the Constitution. The IBP zeroes in on Section 21 of RA 9372 directing it to render assistance to those arrested or detained under the law.

The mere invocation of the duty to preserve the rule of law does not, however, suffice to clothe the IBP or any of its members with standing.[27] The IBP failed to sufficiently demonstrate how its mandate under the assailed statute revolts against its constitutional rights and duties. Moreover, both the IBP and CODAL have not pointed to even a single arrest or detention effected under RA 9372.

Former Senator Ma. Ana Consuelo Madrigal, who claims to have been the subject of "political surveillance," also lacks locus standi. Prescinding from the veracity, let alone legal basis, of the claim of "political surveillance," the Court finds that she has not shown even the slightest threat of being charged under RA 9372. Similarly lacking in locus standi are former Senator Wigberto Tañada and Senator Sergio Osmeña III, who cite their being respectively a human rights advocate and an oppositor to the passage of RA 9372. Outside these gratuitous statements, no concrete injury to them has been pinpointed.

Petitioners Southern Hemisphere Engagement Network and Atty. Soliman Santos Jr. in G.R. No. 178552 also conveniently state that the issues they raise are of transcendental importance, "which must be settled early" and are of "far-reaching implications," without mention of any specific provision of RA 9372 under which they have been charged, or may be charged. Mere invocation of human rights advocacy has nowhere been held sufficient to clothe litigants with locus standi. Petitioners must show an actual, or immediate danger of sustaining, direct injury as a result of the law's enforcement. To rule otherwise would be to corrupt the settled doctrine of locus standi, as every worthy cause is an interest shared by the general public.

Neither can locus standi be conferred upon individual petitioners as taxpayers and citizens. A taxpayer suit is proper only when there is an exercise of the spending or taxing power of Congress,[28] whereas citizen standing

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must rest on direct and personal interest in the proceeding.[29]

RA 9372 is a penal statute and does not even provide for any appropriation from Congress for its implementation, while none of the individual petitioner-citizens has alleged any direct and personal interest in the implementation of the law.

It bears to stress that generalized interests, albeit accompanied by the assertion of a public right, do not establish locus standi. Evidence of a direct and personal interest is key.

Petitioners fail to
present an actual
case or controversy

By constitutional fiat, judicial power operates only when there is an actual case or controversy.

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[30] (emphasis and underscoring supplied.)

As early as Angara v. Electoral Commission,[31] the Court ruled that the power of judicial review is limited to actual cases or controversies to be exercised after full opportunity of argument by the parties. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[32]

Information Technology Foundation of the Philippines v. COMELEC[33] cannot be more emphatic:

> [C]ourts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging. The controversy must be justiciable--definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other hand; that is, it must concern a real and not merely a theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. (Emphasis and underscoring supplied)

Thus, a petition to declare unconstitutional a law converting the Municipality of Makati into a Highly Urbanized City was held to be premature as it was tacked on uncertain, contingent events.[34] Similarly, a petition that fails to allege that an application for a license to operate a radio or television station has been denied or granted by the authorities does not present a justiciable controversy, and merely wheedles the Court to rule on a hypothetical problem.[35]

The Court dismissed the petition in Philippine Press Institute v. Commission on Elections[36] for failure to cite any specific affirmative action of the Commission on Elections to implement the assailed resolution. It refused, in Abbas v. Commission on Elections,[37] to rule on the religious freedom claim of the therein petitioners based merely on a perceived potential conflict between the provisions of the Muslim Code and those of the national law, there being no actual controversy between real litigants.

The list of cases denying claims resting on purely hypothetical or anticipatory grounds goes on ad infinitum.

The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest
suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be sufficient facts to enable the Court to intelligently adjudicate the issues.[38]

Very recently, the US Supreme Court, in Holder v. Humanitarian Law Project,[39] allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief."[40] The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. §2339B (a) (1),[41] proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations. They claimed that they intended to provide support for the humanitarian and political activities of two such organizations.

Prevailing American jurisprudence allows an adjudication on the merits when an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do, as there would then be a justiciable controversy.[42]

Unlike the plaintiffs in Holder, however, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid constitutionally protected conduct or activity that they seek to do. No demonstrable threat has been established, much less a real and existing one.

Petitioners' obscure allegations of sporadic "surveillance" and supposedly being tagged as "communist fronts" in no way approximate a credible threat of prosecution. From these allegations, the Court is being lured to render an advisory opinion, which is not its function.[43]

Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.[44]

The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused.[45] Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable.

A facial invalidation of a
statute is allowed only in free speech cases,
wherein certain rules of constitutional
litigation are rightly excepted

Petitioners assail for being intrinsically vague and impermissibly broad the definition of the crime of terrorism[46] under RA 9372 in that terms like "widespread and extraordinary fear and panic among the populace" and "coerce the government to give in to an unlawful demand" are nebulous, leaving law enforcement agencies with no standard to measure the prohibited acts.

Respondents, through the OSG, counter that the doctrines of void-for-vagueness and overbreadth find no application in the present case since these doctrines apply only to free speech cases; and that RA 9372 regulates conduct, not speech.

For a jurisprudentially guided understanding of these doctrines, it is imperative to outline the schools of thought on whether the void-for-vagueness and overbreadth doctrines are equally applicable grounds to assail a penal statute.

Respondents interpret recent jurisprudence as slanting toward the idea of limiting the application of the two doctrines to free speech cases. They particularly cite Romualdez v. Hon. Sandiganbayan[47] and Estrada v. Sandiganbayan.[48]

The Court clarifies.

At issue in Romualdez v. Sandiganbayan was whether the word "intervene" in Section 5[49] of the Anti-Graft and Corrupt Practices Act was intrinsically vague and impermissibly broad. The Court stated that "the overbreadth and the vagueness doctrines have special application only to free-speech cases," and are "not appropriate for testing the validity of penal statutes."[50] It added that, at any rate, the challenged provision, under which the therein petitioner was charged, is not vague.[51]

While in the subsequent case of Romualdez v. Commission on Elections,[52] the Court stated that a facial invalidation of criminal statutes is not appropriate, it nonetheless proceeded to conduct a vagueness analysis, and concluded that the therein subject election offense[53] under the Voter's Registration Act of 1996, with which the therein petitioners were charged, is couched in precise language.[54]

The two Romualdez cases rely heavily on the Separate Opinion[55] of Justice Vicente V. Mendoza in the Estrada case, where the Court found the Anti-Plunder Law (Republic Act No. 7080) clear and free from ambiguity respecting the definition of the crime of plunder.

The position taken by Justice Mendoza in Estrada relates these two doctrines to the concept of a "facial" invalidation as opposed to an "as-applied" challenge. He basically postulated that allegations that a penal statute is vague and overbroad do not justify a facial review of its validity. The pertinent portion of the Concurring Opinion of Justice Mendoza, which was quoted at length in the main Estrada decision, reads:

> A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.
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> This rationale does not apply to penal statutes. Criminal statutes have general in terrorem effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech.
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> The overbreadth and vagueness doctrines then have special application only to free speech cases. They are inapt for testing the validity of penal statutes. As the U.S. Supreme Court put it, in an opinion by Chief Justice Rehnquist, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment." In Broadrick v. Oklahoma, the Court ruled that "claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words" and, again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct." For this reason, it has been held that "a facial challenge to a

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> legislative act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." As for the vagueness doctrine, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. "A plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others."
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> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.
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> Indeed, "on its face" invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected. It constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts. But, as the U.S. Supreme Court pointed out in Younger v. Harris
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> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, . . . ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

For these reasons, "on its face" invalidation of statutes has been described as "manifestly strong medicine," to be employed "sparingly and only as a last resort," and is generally disfavored. In determining the constitutionality of a statute, therefore, its provisions which are alleged to have been violated in a case must be examined in the light of the conduct with which the defendant is charged.[56] (Underscoring supplied.)

The confusion apparently stems from the interlocking relation of the overbreadth and vagueness doctrines as grounds for a facial or as-applied challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).

To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.

A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[57] The overbreadth doctrine, meanwhile, decrees that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.[58]

As distinguished from the vagueness doctrine, the overbreadth doctrine assumes that individuals will understand

what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected.[59]

A "facial" challenge is likewise different from an "as-applied" challenge.

Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.[60]

Justice Mendoza accurately phrased the subtitle[61] in his concurring opinion that the vagueness and overbreadth doctrines, as grounds for a facial challenge, are not applicable to penal laws. A litigant cannot thus successfully mount a facial challenge against a criminal statute on either vagueness or overbreadth grounds.

The allowance of a facial challenge in free speech cases is justified by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged.[62] As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an "in terrorem effect" in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.[63]

The Court reiterated that there are "critical limitations by which a criminal statute may be challenged" and "underscored that an `on-its-face' invalidation of penal statutes x x x may not be allowed."[64]

> [T]he rule established in our jurisdiction is, only statutes on free speech, religious freedom, and other fundamental rights may be facially challenged. Under no case may ordinary penal statutes be subjected to a facial challenge. The rationale is obvious. If a facial challenge to a penal statute is permitted, the prosecution of crimes may be hampered. No prosecution would be possible. A strong criticism against employing a facial challenge in the case of penal statutes, if the same is allowed, would effectively go against the grain of the doctrinal requirement of an existing and concrete controversy before judicial power may be appropriately exercised. A facial challenge against a penal statute is, at best, amorphous and speculative. It would, essentially, force the court to consider third parties who are not before it. As I have said in my opposition to the allowance of a facial challenge to attack penal statutes, such a test will impair the State's ability to deal with crime. If warranted, there would be nothing that can hinder an accused from defeating the State's power to prosecute on a mere showing that, as applied to third parties, the penal statute is vague or overbroad, notwithstanding that the law is clear as applied to him.[65] (Emphasis and underscoring supplied)

It is settled, on the other hand, that the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases.

By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

> The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for"; so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties

> not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.[66] (Emphasis in the original omitted; underscoring supplied.)

In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases,[67] observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment,[68] and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words.[69] In Virginia v. Hicks,[70] it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."[71]

Since a penal statute may only be assailed for being vague as applied to petitioners, a limited vagueness analysis of the definition of "terrorism" in RA 9372 is legally impermissible absent an actual or imminent charge against them

While Estrada did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law as applied to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety."[72] It stressed that "statutes found vague as a matter of due process typically are invalidated only 'as applied' to a particular defendant."[73]

American jurisprudence[74] instructs that "vagueness challenges that do not involve the First Amendment must be examined in light of the specific facts of the case at hand and not with regard to the statute's facial validity."

For more than 125 years, the US Supreme Court has evaluated defendants' claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as "among the most important guarantees of liberty under law."[75]

In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases,[76] the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132(b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two Romualdez and Estrada cases, were actually charged with the therein assailed penal statute, unlike in the present case.

There is no merit in the claim that RA 9372 regulates speech so as to permit a facial analysis of its validity

From the definition of the crime of terrorism in the earlier cited Section 3 of RA 9372, the following elements may be culled: (1) the offender commits an act punishable under any of the cited provisions of the Revised Penal Code, or under any of the enumerated special penal laws; (2) the commission of the predicate crime sows and creates a condition of widespread and extraordinary fear and panic among the populace; and (3) the offender is actuated by the desire to coerce the government to give in to an unlawful demand.

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In insisting on a facial challenge on the invocation that the law penalizes speech, petitioners contend that the element of "unlawful demand" in the definition of terrorism[77] must necessarily be transmitted through some form of expression protected by the free speech clause.

The argument does not persuade. What the law seeks to penalize is conduct, not speech.

Before a charge for terrorism may be filed under RA 9372, there must first be a predicate crime actually committed to trigger the operation of the key qualifying phrases in the other elements of the crime, including the coercion of the government to accede to an "unlawful demand." Given the presence of the first element, any attempt at singling out or highlighting the communicative component of the prohibition cannot recategorize the unprotected conduct into a protected speech.

Petitioners' notion on the transmission of message is entirely inaccurate, as it unduly focuses on just one particle of an element of the crime. Almost every commission of a crime entails some mincing of words on the part of the offender like in declaring to launch overt criminal acts against a victim, in haggling on the amount of ransom or conditions, or in negotiating a deceitful transaction. An analogy in one U.S. case[78] illustrated that the fact that the prohibition on discrimination in hiring on the basis of race will require an employer to take down a sign reading "White Applicants Only" hardly means that the law should be analyzed as one regulating speech rather than conduct.

Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true a fortiori in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.

> [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.[79] (italics and underscoring supplied)

Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct.[80] Since speech is not involved here, the Court cannot heed the call for a facial analysis.

IN FINE, Estrada and the other cited authorities engaged in a vagueness analysis of the therein subject penal statute as applied to the therein petitioners inasmuch as they were actually charged with the pertinent crimes challenged on vagueness grounds. The Court in said cases, however, found no basis to review the assailed penal statute on its face and in its entirety.

In Holder, on the other hand, the US Supreme Court allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds, since the therein plaintiffs faced a "credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief."

As earlier reflected, petitioners have established neither an actual charge nor a credible threat of prosecution under RA 9372. Even a limited vagueness analysis of the assailed definition of "terrorism" is thus legally impermissible. The Court reminds litigants that judicial power neither contemplates speculative counseling on a statute's future effect on hypothetical scenarios nor allows the courts to be used as an extension of a failed legislative lobbying in Congress.

WHEREFORE, the petitions are DISMISSED.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.
Carpio, J., on official leave.
Abad, J., certify that J. Abad who is on official business a concurring opinion.

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[1] A consolidation of House Bill No. 4839 and Senate Bill No. 2137.

[2] REPUBLIC ACT No. 9372, Sec. 62.

[3] KMU Chairperson Elmer Labog, NAFLU-KMU National President Joselito V. Ustarez and NAFLU-KMU Secretary General Antonio C. Pascual, and CTUHR Executive Director Daisy Arago.

[4] BAYAN Chairperson Dr. Carolina Pagaduan-Araullo, GABRIELA Secretary General Emerenciana de Jesus, KMP Secretary General Danilo Ramos, MCCCL Convenor Amado G. Inciong, COURAGE National President Ferdinand Gaite, KADAMAY Vice Chairperson Gloria G. Arellano, SCW Chairperson Merly Grafe, LFS National Chairperson Vencer Crisostomo, Anakbayan Secretary General Eleanor de Guzman, PAMALAKAYA Chairperson Fernando Hicap, ACT Chairperson Antonio Tinio, Migrante Chairperson Concepcion Bragas-Regalado, HEAD Deputy Secretary General Dr. Geneve Rivera, and Agham Chairperson Dr. Giovanni Tapang. Grafe and Tapang, however, failed to verify the petition.

[5] Dr. Edelina P. De La Paz for Karapatan, Evangeline Hernandez for Hustisya, Mary Guy Portajada for Desaparecidos, Donato Continente for SELDA, Bishop Elmer M. Bolocon for EMJP and Fr. Gilbert Sabado for PCPR.

[6] IBP is represented by Atty. Feliciano M. Bautista, national president, while CODAL is represented by Atty. Noel Neri, convenor/member.

[7] BAYAN-ST is represented by Secretary General Arman Albarillo; Katipunan ng mga Magsasaka sa Timog Katagulagan (KASAMA-TK) by Secretary General Orly Marcellana; Pagkakaisa ng mga Manggagawa sa Timog Katagalugan (PAMANTIK-KMU) by Regional Secretary General Luz Baculo; GABRIELA-Southern Tagalog by Secretary General Helen Asdolo; Organized Labor Association in Line Industries and Agriculture (OLALIA) by Chairperson Romeo Legaspi; Southern Tagalog Region Transport Organization (STARTER) by Regional Chairperson Rolando Mingo; Bayan Muna Partylist-ST by Regional Coordinator Bayani Cambronero; Anakbayan-ST by Regional Chairperson Pedro Santos, Jr.; LFS-ST by Spokesperson Mark Velasco; PAMALAKAYA-ST by Vice Chairperson Peter Gonzales, Bigkis at Lakas ng mga Katutubo sa Timog Katagalugan (BALATIK) by Regional Auditor Aynong Abnay; Kongreso ng mga Magbubukid para sa Repormang Agraryo (Kompra) represented by member Leng Jucutan; Martir ng Bayan with no representation; Pagkakaisa at Ugnayan ng nmga Magbubukid sa Laguna (PUMALAG) represented by Provincial Secretary General Darwin Liwag; and Los Baños Rural Poor Organization for Progress and Equality represented by Teodoro Reyes.

[8] Francesca Tolentino, Jannette Barrientos, Arnel Segune Beltran, Edgardo Bitara Yap, Oscar Lapida, Delfin de Claro, Sally Astera, Christian Niño Lajara, Mario Anicete, and Emmanuel Capulong.

[9] REPUBLIC ACT No. 9372, Sec. 53.

[10] Francisco v. House of Representatives, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 133 (2003).

[11] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 633 (2000), citing Baker v. Carr, 369 U.S. 186 (1962).

[12] G.R. No. 166052, August 29, 2007, 531 SCRA 583, 591-592.

[13] 360 Phil. 133 (1998).

[14] Rollo (G.R. No. 178890), pp. 11-12.

[15] Rollo (G.R. No. 178581), p. 17.

[16] Vide Genesis Transport Service, Inc. v. Unyon ng Malayang Manggagawa ng Genesis Transport, G.R. No. 182114, April 5, 2010.

[17] (last visited August 13, 2010).

[18] and its recent update on the Council Common Position (last visited August 13, 2010).

[19] Philippine Daily Inquirer, July 11, 2007, Page A-1. Visit also (last visited August 16, 2010).

[20] House Resolution No. 641.

[21] In his State of the Nation Address, President Benigno Aquino III said: "x x x x. Tungkol naman po sa CPP-NPA-NDF: handa na ba kayong maglaan ng kongkretong mungkahi, sa halip na pawang batikos lamang?

Kung kapayapaan din ang hangad ninyo, handa po kami sa malawakang tigil-putukan. Mag-usap tayo.

Mahirap magsimula ang usapan habang mayroon pang amoy ng pulbura sa hangin. Nananawagan ako: huwag po natin hayaang masayang ang napakagandang pagkakataong ito upang magtipon sa ilalim ng iisang adhikain.

Kapayapaan at katahimikan po ang pundasyon ng kaunlaran. Habang nagpapatuloy ang barilan, patuloy din ang pagkakagapos natin sa kahirapan. x x x x." See: (last visited August 25, 2010).

[22] In Francisco v. House of Representatives, 460 Phil. 830, 899 (2003), the Court followed the determinants cited by Mr, Justice Florentino Feliciano in Kilosbayan v. Guingona for using the transcendental importance doctrine, to wit: (a) the character of the funds or other assets involved in the case; (b) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (c) the lack of any other party with a more direct and specific interest in the questions being raised.

[23] SEC. 17. Proscription of Terrorist Organization, Association, or Group of Persons. -Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for that purpose, actually uses acts to terrorize mentioned in this Act or to sow and create a condition of widespread fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared as a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court.

[24] (last visited: September 1, 2010).

[25] G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318.

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[26] Rollo (G.R. No. 178581), pp. 111-125.

[27] Supra note 22 at 896.

[28] Gonzales v. Hon. Narvasa, 392 Phil. 518, 525 (2000), citing Flast v. Cohen, 392 US 83, 20 L Ed 2d 947, 88 S Ct 1942.

[29] Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Comelec, G.R. No. 132922, April 21, 1998, 289 SCRA 337.

[30] Constitution, Article VIII, Section 1.

[31] 63 Phil. 139, 158 (1936).

[32] Republic Telecommunications Holding, Inc. v. Santiago, G.R. No. 140338, August 7, 2007, 529 SCRA 232, 243.

[33] 499 Phil. 281, 304-305 (2005).

[34] Mariano, Jr. v. Commission on Elections, 312 Phil. 259 (1995).

[35] Allied Broadcasting Center v. Republic, G.R. No. 91500, October 18, 1990, 190 SCRA 782.

[36] 314 Phil. 131 (1995).

[37] G.R. No. 89651, November 10, 1989, 179 SCRA 287.

[38] De Castro v. Judicial and Bar Council, G.R. No. 191002, March 17, 2010, citing Buckley v. Valeo, 424 U.S. 1, 113-118 (1976) and Regional Rail Reoganization Act Cases, 419 U.S. 102, 138-148 (1974).

[39] 561 U.S. [unpaginated] (2010). Volume 561 is still pending completion.

[40] Id. citing Babbitt v. Farm Workers, supra.

[41] §2339B. Providing material support or resources to designated foreign terrorist organizations.

(a) Prohibited Activities.--

(1) Unlawful conduct.-- Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

[42] Doe v. Bolton, 410 U.S. 179, 188-189 (1973).

[43] Automotive Industry Workers Alliance v. Romulo, G.R. No. 157509, January 18, 2005, 449 SCRA 1, 10, citing Allied Broadcasting Center, Inc. v. Republic, G.R. No. 91500, October 18, 1990, 190 SCRA 782.

[44] LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW Vol. I, p.332 (3[rd] ed. 2000), citing Steffel v. Thompson, 415 U.S. 452 (1974) and Ellis v. Dyson, 421 U.S. 426 (1975).

[45] Vide Garcia v. Commission on Elections, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 117, stating

that "all powers are susceptible of abuse. The mere possibility of abuse cannot, however, infirm per se the grant of power[.]"

[46] RA 9372 defines the crime of terrorism as follows:

SEC. 3. Terrorism. - Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 222 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d'etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction); or under

- Presidential Decree No. 1613 (The Law on Arson);

- Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

- Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);

- Republic Act No. 6235 (Anti-Hijacking Law);

- Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,

- Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[47] 479 Phil. 265 (2004).

[48] 421 Phil. 290 (2001).

[49] Republic Act No. 3019, Sec. 5. Prohibition on certain relatives. It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government x x x. (Underscoring supplied)

[50] Romualdez v. Hon. Sandiganbayan, supra at 281.

[51] Id. at 288.

[52] G.R. No. 167011, April 30, 2008, 553 SCRA 370.

[53] Punishable under Section 45(j) in relation to Section 10(g) or (j) of Republic Act No. 8189.

[54] Romualdez v. Commission on Elections, supra at 284.

[55] Estrada v. Sandiganbayan, supra at 421-450.

[56] Id. at 353-356.

[57] People v. Nazario, No. L-44143, August 31, 1988, 165 SCRA 186, 195.

[58] Blo Umpar Adiong v. Commission on Elections, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 719-720.

[59] Andrew E. Goldsmith, The Void-for-Vagueness Doctrine in the Supreme Court, Revisited, 30 Am. J. Crim. L. 279 (2003), note 39, citing Michael C. Dorf, Facial Challenges to State and Federal Statutes, 46 Stan. L. Rev. 235, 261-262 (1994).

[60] Vide David v. Macapagal-Arroyo, G.R. No. 171396, May 3, 2006, 489 SCRA 160, 239; Romualdez v. Commission on Elections, supra at 418, note 35.

[61] Estrada v. Sandiganbayan, supra at 429.

[62] CONSTITUTION, Art. III, Sec. 4.

[63] The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged. (People v. Siton, G.R. No. 169364, September 18, 2009, 600 SCRA 476, 485).

[64] Romualdez v. Commission on Elections, supra at 643.

[65] Id. at 645-646.

[66] David v. Macapagal-Arroyo, supra at 238.

[67] Estrada v. Sandiganbayan, supra; David v. Macapagal-Arroyo, supra.

[68] Estrada v. Sandiganbayan, supra at 354.

[69] Id.

[70] 539 U.S. 113, 156 L. Ed. 2d 148 (2003).

[71] Gooding v. Wilson, 405 U.S. 518, 31 L. Ed 2d 408 (1972).

[72] Estrada v. Sandiganbayan, supra at 355.

[73] Id.

[74] United States v. Waymer, 55 F.3d 564 (11th Circ. 1995) cert. denied, 517 U.S. 1119, 134 L. Ed. 2d 519 (1996); Chapman v. United States, 500 U.S. 453, 114 L. Ed 2d 524 (1991); United States v. Powell, 423 U.S. 87, 46 L. Ed. 2d 228 (1975); United States v. Mazurie, 419 U.S. 544, 42 L. Ed 2d 706 (1975).

[75] Andrew E. Goldsmith, The Void-for-Vagueness Doctrine in the Supreme Court, Revisited, 30 Am. J. Crim. L. 279 (2003).

[76] People v. Nazario, No. L-44143, August 31, 1988, 165 SCRA 186; People v. Dela Piedra, G.R. No. 121777, January 24, 2001, 350 SCRA 163; People v. Siton, G.R. No. 169364, September 18, 2009, 600 SCRA 476.

[77] Republic Act No. 9372, Sec. 3, supra.

[78] Rumsfield v. Forum for Academic and Institutional Rights, Inc., 547 U.S. 47, 164 L.Ed 2d 156 (2006).

[79] Giboney v. Empire Storage and Ice Co., 336 U.S. 490, 93 L. Ed. 834, 843-844 (1949); Cf Brown v. Hartlage, 456 U.S. 45, 71 L. Ed 2d 732, 742 (1982) that acknowledges: x x x The fact that such an agreement [to engage in

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illegal conduct] necessarily takes the form of words does not confer upon it, or upon the underlying conduct, the constitutional immunities that the First Amendment extends to speech. Finally, while a solicitation to enter into an agreement arguably crosses the sometimes hazy line distinguishing conduct from pure speech, such a solicitation, even though it may have an impact in the political arena, remains in essence an invitation to engage in an illegal exchange for private profit, and may properly be prohibited.

[80] Vide Eugene Volokh, Speech as Conduct: Generally Applicable Laws, Illegal Courses of Conduct, "Situation-Altering Utterances," and the Uncharted Zones, 90 Cornell L. Rev. 1277, 1315 (2005).

CONCURRING OPINION

ABAD, J.:

I concur with the majority opinion in dismissing the various petitions filed before this Court challenging the validity of Republic Act (R.A.) 9372. I feel a need to emphasize, however, that as the grounds for dismissal are more procedural than substantive, our decision in these consolidated cases does not definitively uphold the validity of the questioned law. The specific questions raised by the petitioners against R.A. 9372 may be raised in the proper forum if and when an actual controversy arises and becomes ripe for adjudication.

ROBERTO A. ABAD
Associate Justice

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