

NAPOLEON SANOTA, BAMBI MAGNO PURISIMA, ANTONIO TABBAD, BONIFACIO COLES, BENJIE REBUENO, ARNOLD ATADERO, BOY SILVA, REY ARQUIZA, BEN PAYPON, ARTURO GALLEGO, JACK PATEÑA, JULIO SI...*G.R. No. 199479. April 03, 2024*

Ponente: LOPEZ, J., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-199479/>**LOPEZ, J., J.:**

This Court resolves a Petition for Prohibition[1] with prayer for the issuance of temporary restraining order filed by petitioners Napoleon Sanota, Bambi Magno Purisima, Antonio Tabbad, Bonifacio Coles, Benjie Rebueno, Arnold Atadero, Boy Silva, Rey Arquiza, Ben Paypon, Arturo Gallego, Jack Pateña, Julio Sison, Froilan Morillos, Boy Mirasol, Ed Bausa, Victor Reyes, Ibarra Samson, Jr., Ricky Carvajal, Jr., Tony Wyco, Customs Media Association, Inc. and Customs Tri-Media Association, Inc. (collectively, Sanota et al.) seeking to enjoin the Bureau of Customs (BOC) from implementing Customs Memorandum Order No. 37-2011,[2] which provides the guidelines on the accreditation of media practitioners in the BOC.

The Antecedents

On November 8, 2011, the BOC issued Customs Memorandum Order No. 37-2011[3] signed by then Commissioner Rozzano Rufino B. Biazon.

The scope of Customs Memorandum Order No. 37-2011 was to provide the guidelines and procedures in the accreditation of BOC media practitioners to ensure that only bona fide media professionals and bona fide media organizations were allowed entry into the BOC to cover its events.[4]

The accreditation procedure required all applicants to submit the accreditation requirements to the Office of the Public Information and Assistance Division (PIAD) of the BOC. Within five days from the submission of the requirements, the PIAD chief would issue a BOC Identification Card (ID) to the accredited media practitioners. Columnists were likewise granted visitation passes to enter the BOC premises and conduct media rounds whenever necessary, but they were required to provide clear documentation that they were on assignment from a specific news organization or publication.[5]

Under the operational provision of Customs Memorandum Order No. 37-2011, all applicants were required to submit the following documents for accreditation:

III.

1.

Requirements for Accreditation

a.

Publication

1.

Complete Application Form;

2.

For partnerships and corporations, Certified True Copy of Securities & Exchange Commission (SEC) Registration, Articles of Partnership/Incorporation, By-Laws and latest General Information Sheet;

3.

For sole proprietorships, Certified True Copy of Department of Trade & Industry (DTI) Registration;

4.

Certified True Copy of Mayor's Permit;

5.

Certified True Copy of Bureau of Internal Revenue (BIR) Certificate of Registration;

6.

Publisher's Association of the Philippines, Inc. Certificate of Registration;

7.

Proof that the publication has been consistently in circulation for at least six (6) months;

8.

Proof that the publication has a weekly circulation of at least 3,000 copies;

b.

Reporters/Writers/Photographers

1.

Completed Application Form;

2.

Letter of Assignment on Official Letterhead of a Media Organization/Publication signed by the Publisher or Editor-in-Chief Indicating the name and duration of assignment of the reporter/journalist/writer/photographer;

3.

Bureau of Internal Revenue (BIR) Identification Card;

4.

Print media representatives are required to submit two articles published within the past month and a copy of

the publication;

5.

Radio and Television representatives are required to submit two recordings of two reports broadcast within the past month;

6.

Photographers are required to submit original photographs published within the past month and a copy of the publication.[6]

The terms and conditions of Customs Memorandum Order No. 37-2011 also provided, among others, that: (1) the editorial content of the publication must at all times be compliant with the Philippine Journalist's Code of Ethics; (2) the No I.D., No Entry shall be strictly enforced; and (3) media interview with the BOC officials and employees must be prearranged with the PIAD to avoid work disruption.[7]

Customs Memorandum Order No. 37-2011 further provided that the accreditation could be revoked or canceled upon a valid complaint and after due notice and hearing to be conducted by the Grievance Committee composed of the PIAD chief, representatives from the Legal Service, and Office of the Commissioner.[8]

Sanota et al., who claimed to be reporters from various newspapers, magazines, and broadcast entities, asserted that Customs Memorandum Order No. 37-2011 is equivalent to censorship or prior restraint, as it intended to regulate and limit their access to facts and information in the BOC, which are matters of public interest. They claimed that this violated the constitutionally protected freedom of expression, of speech, and of the press.[9]

Specifically, Sanota et al. contended that the requirements for accreditation, as imposed by Customs Memorandum Order No. 37-2011 with respect to publication and reporters, writers, and photographers, were akin to applying for a business permit, which should not be the case, since what they intend to do inside the BOC is only to obtain information for public consumption and not to engage in a private enterprise.[10] They also posited that the exercise of press freedom was not a profession that could be regulated by the government, but a vocation.[11]

Sanota et al. also assailed the requirement that media practitioners "must at all times be compliant with the Philippine Journalist's Code of Ethics,"[12] claiming that this Philippine Journalist's Code of Ethics was only a private undertaking agreed upon by journalists, which the BOC could not convert into law by adopting it in a memorandum order. They likewise submitted that in issuing Customs Memorandum Order No. 37-2011, the BOC had made itself as a censor, judge, and executioner of its decision meant to punish media for news reports not palatable to its officials, in the usurpation of legislative authority.[13]

More, Sanota et al. insinuated that requiring members of the press to prearrange the conduct of interviews and to obtain visitation passes before they could enter the BOC, as well as to prove that they were on official assignment from their respective news organizations, would enable the BOC to obtain advance information as to who will be interviewed, allowing its errant employees to avoid the discovery of illicit activities. Sanota et al. also claimed that Customs Memorandum Order No. 37-2011 was meant to avoid "bad press" when it required that the information obtained inside the BOC should be used only for bona fide news reporting.[14]

On the other hand, the BOC, through the Office of the Solicitor General (OSG), counters that Customs Memorandum Order No. 37-2011, as already revoked by Customs Memorandum Order No. 22-2015, was merely an internal policy intended to facilitate an orderly and responsible news and information gathering in the BOC and was not meant to arrogate legislative power upon itself. Its objective was to ensure that only bona fide media

professionals and bona fide media organizations were allowed entry to cover the events in the BOC.[15] It partook in the nature of content-neutral regulation in which only the manner and method of conducting an interview is regulated. It did not restrict the substance or information to be communicated by those who seek to conduct an interview. There was likewise no threat of punishment in the event that the product of the interview was adverse to the BOC.[16] Customs Memorandum Order No. 22-2015 also sought to regulate only the schedule of an interview to avoid a work disruption and to protect the safety and security of officials and employees of the BOC.[17] Similarly, the requirement for media practitioners to comply with the Philippine Journalist's Code of Ethics did not impose additional burden or restraint on media practitioners as this was already required and expected of them for the exercise of their profession. In any case, the OSG submitted that while the freedom of the press and other allied constitutional guarantees inure as a matter of right, its unbridled exercise is never justified and compliance with the exacting duty and obligation appurtenant to that is always required.[18]

In a January 18, 2012 Resolution,[19] this Court denied the prayer for the issuance of a temporary restraining order. Sanota et al. moved for reconsideration, but it was denied with finality for lack of merit on March 21, 2012.[20]

Issue

The threshold issue is whether there is a necessity to enjoin the implementation of Customs Memorandum Order No. 37-2011 for being violative of the constitutional guarantees of the freedom of speech, expression, and of the press.

This Court's Ruling

We resolve to dismiss the Petition.

I.

Prefatorily, it must be noted that Customs Memorandum Order No. 37-2011, the assailed law in this present Petition, had already been repealed on January 2, 2014 by Customs Memorandum Order No. 01-2014[21] or the "Revised Guidelines on the Accreditation of Media Practitioners covering the Bureau of Customs." The pertinent provisions of Customs Memorandum Order No. 01-2014 state:

I. SCOPE

This Order, which revokes Customs Memorandum Order (CMO) No. 37-2011, dated 08 November 2011, revises the guidelines and procedures in the accreditation of journalists and other media practitioners who cover the Bureau of Customs ([BOC]) on a regular basis to ensure that only bona fide media professionals and bona fide media organizations or entities are allowed entry to [BOC] premises nationwide and cover events therein.[22] (Emphasis supplied).

. . . .

V. REPEALING CLAUSE – All Memoranda, Orders and other Issuances inconsistent herewith are hereby repealed/superseded and/or modified accordingly[.][23] (Emphasis supplied)

Subsequently, on July 10, 2015, Customs Memorandum Order No. 01-2014 was further repealed by Customs Memorandum Order No. 22-2015,[24] or the "Revised Guidelines on the Accreditation of the Bureau of Customs Press Corps." In particular, Customs Memorandum Order No. 22-2015 explicitly provides:

I. SCOPE

This Order, which revokes Customs Memorandum Order (CMO) dated 01-2014 further revises the guidelines

and procedures in the accreditation of the members of the Bureau of Customs Press Corps who cover the Bureau and use the BOC Press Office to ensure that only bona fide media professionals and entities are allowed entry to BOC premises in the Port of Manila.[25] (Emphasis Supplied).

....

VII. REPEALING CLAUSE

All Memoranda, Orders and other Issuances inconsistent herewith are hereby repealed, superseded and/or modified accordingly.[26] (Emphasis supplied).

It can be gleaned from the foregoing that both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 use the terms "revokes," "repealed," "superseded," and "modified." Black's Law Dictionary defines these terms in the following manner:

revocation, . . . n. (15c) 1. An annulment, cancellation, or reversal, usu. of an act of power[.]

repeal, n. (16c) Abrogation of an existing law by express legislative act; RESCIND (3). – repeal, vb.

express repeal. (17c) Repeal by specific declaration in a new statute or main motion.

supersede, vb. (17c) 1. To annul, make void, or repeal by taking the place of [.]

modification. (17c) 1. A change to something; an alteration or amendment [.]

modify, vb. (14c) 1. To make somewhat different; to make small changes to (something) by way of improvement, suitability or effectiveness[.][27]

It also bears pointing out that the scopes of both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 expressly state that they "revoke" Customs Memorandum Order No. 37-2011, and Customs Memorandum Order No. 01-2014, respectively. This strongly indicates that Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015 specifically identify the memorandum order, which they intend to revoke. This revocation, in conjunction with the common terms used in both Customs Memorandum Order No. 01-2014 and Customs Memorandum Order No. 22-2015, undeniably reveals the intention of respondent to expressly repeal the previous memorandum order with the subsequent memorandum order.

Jurisprudence defines express repeal as one "wherein a statute declares, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed." All other repeals are implied.[28] Case law further instructs that when a law has been repealed, it ceases to exist and becomes inoperative from the moment the repealing law becomes effective.[29]

Accordingly, the enactment of Customs Memorandum Order No. 01-2014 constitutes an express repeal of Customs Memorandum Order No. 37-2011. In turn, the passage of Customs Memorandum Order No. 22-2015 amounts to an express repeal of Customs Memorandum Order No. 01-2014. In view of these express repeals, Customs Memorandum Order No. 37-2011 and Customs Memorandum Order No. 01-2014 no longer exist and have become inoperative. There is no need to refer to these memorandum orders because Customs Memorandum Order No. 22-2015 is deemed to contain all the guidelines and procedures in the accreditation of media practitioners in respondent.

Notably, it has not been shown that petitioners have amended their Petition to question the constitutionality of Customs Memorandum Order No. 22-2015, which expressly repealed Customs Memorandum Order No. 37-2011 and Customs Memorandum Order No. 01-2014. Thus, the issue that comes to the fore is whether an actual case or

controversy exists for this Court to exercise its judicial power of review.

Under Article VIII, Section 1 of the Constitution, the exercise of this Court's power of judicial review requires the presence of 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.

The foregoing provision articulates the court's traditional and expanded powers of judicial review. Prior to the 1987 Constitution, judicial review is confined to the traditional concept of settling actual controversies involving legally demandable and enforceable rights. However, under the present Constitution, the expanded power of judicial review includes the "power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality."^[30] Its scope was deliberately enlarged to "prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government."^[31]

Nevertheless, whether this Court's power of review is invoked under the traditional or expanded concept, the presence of an actual case or controversy remains a requisite before judicial power is exercised. However, "when the Court's expanded jurisdiction is invoked, the requirement of an actual case or controversy is satisfied upon prima facie showing of grave abuse of discretion in the assailed governmental act."^[32]

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,^[33] this Court held:

Basic in the exercise of judicial power—whether under the traditional or in the expanded setting – is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated.

....

The Court's expanded jurisdiction – itself an exercise of judicial power – does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the assailed governmental act.^[34] (Citations omitted)

The requirement of actual case or controversy is founded on the doctrine of separation of powers,^[35] which precludes the courts from encroaching upon the policy making powers of the executive and legislative branches of the government. It is presumed that the laws or acts enacted by these co-equal branches of the government have been passed within constitutional limits. Hence, unless there is an actual or sufficiently imminent breach of or injury to a right,^[36] this Court generally exercises judicial restraint and will not delve into the wisdom, justice, or expediency of these acts or cause its nullity or invalidation. As explained in *Angara v. Electoral Commission*:^[37]

[T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide

by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[38]

Correlatively, the requisite of actual case or controversy is present "when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." [39] It must involve issues that are definite and concrete and affect legal relations of parties with adverse interests.[40] The actual case or controversy requirement is satisfied when it is shown that there is "a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." [41]

Further, "the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice." [42] "A case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events." [43] When the case has become moot or academic, there is no justiciable controversy,[44] and an adjudication would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[45]

In this case, this Court finds that the enactment of Customs Memorandum Order No. 22-2015 is a supervening event that has mooted the main issue of this present Petition—the constitutionality of Customs Memorandum Order No. 37-2011. As adverted earlier, Customs Memorandum Order No. 37-2011 no longer exists, and its validity had become inoperative by virtue of the express repeals. In view of this, it is evident that this Court need not pass upon the constitutionality of Customs Memorandum Order No. 37-2011 as the same had become a non-issue. The purpose of petitioners in filing the Petition is to nullify the validity of Customs Memorandum Order No. 37-2011 for being unconstitutional and enjoin its implementation. The same was already achieved when Customs Memorandum Order No. 37-2011 was expressly repealed.

Relatedly, Chief Justice Alexander G. Gesmundo astutely pointed out that with the express repeal of Customs Memorandum Order No. 37-2011, there is nothing left for this Court to declare unconstitutional. This is because the express repeal of a statute and the declaration of unconstitutionality produce a similar effect on the subject enactment. The enactment ceases to exist and produces no legal effect.

Parenthetically, it would be redundant and a futile exercise to adjudicate on the constitutionality of Customs Memorandum Order No. 37-2011, when in the first place, its express repeal has already rendered the same nonexistent and inoperative. Put differently, a declaration on the issue would not serve the parties any substantial relief or any practical legal effect, precisely, because Customs Memorandum Order No. 37-2011, which petitioners sought to annul for being unconstitutional, no longer exists.

Here, "[c]ourts are called upon to resolve actual cases and controversies, not to render advisory opinions." [46] Judicial decisions are part of the legal system. Thus, "[r]uling on hypothetical situations with no bearing on any matter will weaken the import of this Court's issuances." [47] In *Belgica, et al. v. Ochoa*: [48]

Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have

exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.[49]

Consistent with the foregoing, this Court has refrained from resolving the constitutional issue of a statute for lack of an actual case or controversy.

In *Falcis v. Civil Registrar General*,^[50] this Court declined to entertain the petition challenging the constitutionality of certain provisions of the Family Code for lack of an actual case, among others:

This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."

This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:

Even the expanded jurisdiction of the Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.

As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.^[51] (Citations omitted)

Similarly, in *Atty. Lozano v. Speaker Nograles*,^[52] this Court dismissed the petitions assailing the validity of House Resolution No. 1109 for lack of an actual case:

The determination of the nature, scope[,], and extent of the powers of government is the exclusive province of the judiciary, such that any mediation on the part of the latter for the allocation of constitutional boundaries would amount, not to its supremacy, but to its mere fulfillment of its "solemn and sacred obligation" under the Constitution. This Court's power of review may be awesome, but it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. The "case-or-controversy" requirement bans this court from deciding "abstract, hypothetical or contingent questions," lest the court give opinions in the nature of advice concerning legislative or executive action.^[53] (Citation omitted)

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,^[54] this Court refused to take

cognizance of the petition challenging the constitutionality of Republic Act No. 9372 or the Human Security Act of 2007 for lack of an actual case. This Court held that it is not enough that there is a possibility of abuse of the questioned enactment. There must first be an actual act of abuse:

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.

The possibility of abuse in the implementation of [Republic Act No.] 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined, . . . 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.[55] (Emphasis supplied, citations omitted)

Again, in *Republic of the Philippines v. Roque*,[56] this Court refused to adjudicate on the constitutional issue concerning certain provisions of Republic Act No. 9372, or the Human Security Act of 2007 for lack of an actual justiciable controversy:

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of [Republic Act No.] 9372. Not far removed from the factual milieu in the Southern Hemisphere cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of [Republic Act No.] 9172 against them. In other words, there was no particular, real[,] or imminent threat to any of them[57] (Citation omitted)

In all these cases, this Court has emphasized the limited application of its power of judicial review to actual cases or controversies. "Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions." [58] "The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent." [59] The requirement of actual case or controversy applies to all cases except only in the rare instances when this Court recognizes the exceptions [60] to the moot and academic principles. The present Petition, however, is not one of them. To stress anew, no benefit whether rational or practical would be derived to pass upon the constitutionality of a lifeless and inoperative memorandum order. With the express repeal of Customs Memorandum Order No. 37-2011, there is nothing for the court to resolve as the matter in dispute had already been resolved by a subsequent event. Ruling on the merits of the Petition that this Court has already categorized as moot and thus, without justiciable controversy is the very definition of an advisory opinion.

In sum, the Petition has failed to present an actual justiciable controversy calling for the exercise of this Court power of judicial review. The express repeals that have taken place during the pendency of the case have rendered the Petition moot and academic, such that an adjudication of the case or declaration on the issue would not serve any actual substantial relief to the parties and which would be negated by the dismissal of the Petition. Without an actual case or controversy, there is simply no justification for this Court to exercise its judicial power of review. Where legal relief is no longer needed nor called for, as in this case, this Court is left with no recourse but to dismiss the Petition.

As a final note, it cannot be overemphasized that in a democratic society such as ours, the freedom of speech,

expression, and of the press are at the core of civil liberties. Through the exercise of these fundamental rights, a healthy public sphere is created where people can exchange ideas, acquire knowledge and information, confront public issues, or discuss matters of public interest, without fear of reprisals. Thus, no less than our Constitution mandates full protection to freedom of speech, of expression, and of the press.[61]

In recognition of all these, this Court has not wavered in its duty to uphold these cherished freedoms by striking down laws or regulations, which while guise as promoting a legitimate government interest, are in reality nothing but naked means to suppress the exercise of free speech, expression and of the press.[62]

Here, while the constitutionality of Customs Memorandum Order No. 37-2011 was not adjudicated upon due to the limitations stated, this Court stresses that the guidelines and procedures for the accreditation of media representatives in respondent should not be used to transgress the constitutional rights to freedom of speech, expression, and of the press. Any limitation on the exercise of free speech "must be justified on legitimate grounds that are clear and indubitable and with means that are narrowly tailored and only specifically calibrated to achieve those purposes." [63] Thus, no matter how laudable the objective of respondent in weeding out illegitimate media personalities, the means used to achieve such an objective must not unnecessarily sweep on the rights of legitimate media personalities. The furtherance of a substantial governmental interest must not amount to an infringement of the freedom of expression. Otherwise, any rule or regulation that encroaches on this area of protected speech will be stricken down.

WHEREFORE, the Petition for Prohibition with prayer for the issuance of temporary restraining order is DISMISSED.

SO ORDERED.

Caguioa, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Gesmundo, C.J., see concurring opinion.

Leonen, SAJ., dissent. See separate opinion.

[1] Rollo, pp. 3–23.

[2] Id. at 24–26.

[3] Id.

[4] Id. at 24.

[5] Id. at 25.

[6] Id. at 24–25.

[7] Id. at 25–26.

[8] Id. at 26.

[9] Id.

[10] Id. at 15–16.

[11] Id. at 17.

[12] Id. at 16.

- [13] Id. at 16–18.
- [14] Id. at 17.
- [15] Id. at 98.
- [16] Id. at 97.
- [17] Id. at 99.
- [18] Id. at 100.
- [19] Id. at 27. Notice.
- [20] Id. at 39.
- [21] Id. at 102–106.
- [22] Id. at 102.
- [23] Id. at 104 .
- [24] Id. at 107–110.
- [25] Id. at 107.
- [26] Id. at 110.
- [27] BLACK'S LAW DICTIONARY 1579, 1553, 1739, 1203 (Revised 11[th] ed., 2019).
- [28] *Javier v. Commission on Elections*, 777 Phil. 700, 725 (2016) [Per J. Brion, En Banc]. (Citation omitted)
- [29] Id. at 727.
- [30] *GSIS Family Bank Employees Union v. Villanueva*, 846 Phil. 30, 46 (2019) [Per J. Leonen, Third Division]. (Citation omitted)
- [31] Id. at 47.
- [32] *Private Hospitals Association of the Philippines, Inc. v. Exec. Sec. Medialdea*, 842 Phil. 747, 782 (2018) [Per J. Tijam, En Banc]. (Citation omitted)
- [33] 802 Phil. 116 (2016) [Per J. Brion, En Banc].
- [34] Id. at 140–141.
- [35] See *Kilusang Mayo Uno v. Hon. Aquino III*, 850 Phil. 1168, 1188 (2019) [Per J. Leonen, En Banc].
- [36] Id.
- [37] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].
- [38] Id. at 158–159.
- [39] *Santos v. Atty. Gabaen*, G.R. No. 195638, March 22, 2022 [Per J. J. Lopez, En Banc] at 15. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.
- [40] *Express Telecommunications, Co., Inc. v. AZ Communications, Inc.*, 877 Phil. 44, 54–55 (2020) [Per J. Leonen, Third Division].

[41] *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023 [Per SAJ. Leonen, En Banc] at 10. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website.

[42] *Congressman Garcia v. Executive Secretary*, 602 Phil. 64, 74 (2009) [Per J. Brion, En Banc].

[43] *Oclarino v. Navarro*, 863 Phil. 949, 955 (2019) [Per J. Reyes, Jr., Second Division]. (Citation omitted)

[44] See *Philippine Savings Bank v. Senate Impeachment Court*, 699 Phil. 34, 36 (2012) [Per J. Perlas-Bernabe, En Banc].

[45] *Spouses Imbong v. Hon. Ochoa, Jr.*, 732 Phil. 1, 123 (2014) [Per J. Mendoza, En Banc].

[46] *Ticzon v. Video Post Manila, Inc.*, 389 Phil. 20 (2000) [Per J. Panganiban, Third Division].

[47] *Private Hospitals Association of the Philippines, Inc. v. Exec. Sec. Medialdea*, 842 Phil. 747, 794 (2018) [Per J. Tijam, En Banc] (See separate and concurring opinion of SAJ Leonen). (Citation omitted)

[48] *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, 721 Phil. 416, 661 (2013) [Per J. Perlas-Bernabe, En Banc].

[49] *Id.* at 661.

[50] 861 Phil. 388 (2019) [Per J. Leonen, En Banc].

[51] *Id.* at 438–439.

[52] 607 Phil. 334 (2009) [Per C.J. Puno, En Banc].

[53] *Id.* at 340.

[54] 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[55] *Id.* at 482–483.

[56] 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].

[57] *Id.* at 305–306.

[58] *Confederation for Unity, Recognition and Advancement of Government Employees v. Abad*, 889 Phil. 699, 730 (2020) [Per J. Leonen, En Banc]. (Citation omitted)

[59] *Express Telecommunications, Co., Inc. v. AZ Communications, Inc.*, 877 Phil. 44, 56 (2020) [Per J. Leonen, Third Division].

[60] (1) There is a grave violation of the Constitution;

(2) The exceptional character of the situations and the paramount public interest is involved;

(3) The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and

(4) The case is capable of repetition yet evading review.

See *Bayan Muna Party-List Representatives Satur C. Ocampo and Teodoro A. Casiño v. President Gloria Macapagal-Arroyo*, G.R. No. 182734, January 10, 2023 [Per J. Gaerlan] at 12. This pinpoint citation refers to a copy of this Decision uploaded to the Supreme Court website. (Citation omitted)

[61] See *Soriano v. Laguardia*, 605 Phil. 43, 96 (2009) [Per J. Velasco, Jr., En Banc].

[62] Chavez v. Gonzales, 569 Phil. 155, 187 (2008) [Per C.J. Puno, En Banc].

[63] Nicolas-Lewis v. Commission on Elections, 859 Phil. 560, 607 (2019) [Per J. J. Reyes, Jr., En Banc].

CONCURRING OPINION

GESMUNDO, C.J.:

I concur in the ponencia that it is improper to declare as unconstitutional a repealed issuance as, in such scenario, there is no actual case or controversy that would allow the Court to exercise its judicial power.

Summary of the case and the ponencia's ruling

This is a Petition for Prohibition with prayer for the issuance of a temporary restraining order (TRO) filed by Napoleon Sanota, Bambi Magno Purisima, Antonio Tabbad, Bonifacio Coles, Benjie Rebueno, Arnold Atadero, Boy Silva, Rey Arquiza, Ben Paypon, Arturo Gallego, Jack Pateña, Julio Sison, Froilan Morillos, Boy Mirasol, Ed Bausa, Victor Reyes, Ibarra Samson, Jr., Ricky Carvajal, Jr., Tony Wyco, Customs Media Association, Inc., and Customs Tri-Media Association, Inc. (Sanota et al.) against the Bureau of Customs (BOC). They seek to enjoin the BOC from implementing Customs Memorandum Order (CMO) No. 37-2011, which provides guidelines and procedures in the accreditation of BOC media practitioners to ensure that only bona fide media professionals and bona fide media organizations are allowed entry to the BOC premises to cover events therein.[1]

In its January 18, 2012 Resolution, the Court denied the prayer for the issuance of a TRO. Sanota et al. moved for reconsideration, but the Court denied the same with finality for lack of merit on March 21, 2012.[2]

The ponencia dismissed the Petition. It stated that CMO No. 37-2011 was repealed on January 2, 2014 by CMO No. 01-2014 or the "Revised Guidelines on the Accreditation of Media Practitioners covering the Bureau of Customs." Subsequently, on July 10, 2015, CMO No. 01-2014 was further repealed by CMO No. 22-2015 or the "Revised Guidelines on the Accreditation of the Bureau of Customs Press Corps." It noted that both CMO No. 01-2014 and CMO No. 22-2015 use the terms "revokes," "repealed," "superseded," and "modified." Further, it observed that the scopes of both CMO No. 01-2014 and CMO No. 22-2015 expressly state that they "revoke" CMO No. 37-2011 and CMO No. 01-2014, respectively. This revocation, in conjunction with the common terms used in both CMO No. 01-2014 and CMO No. 22-2015, indubitably reveals the intention of the BOC to expressly repeal the previous memorandum order with the subsequent memorandum order. Thus, in view of these express repeals, the ponencia held that CMO No. 37-2011 and CMO No. 01-2014 no longer exist and have become inoperative. There is no need to refer to these memorandum orders because CMO No. 22-2015 is deemed to contain all the guidelines and procedures in the accreditation of media practitioners to the BOC.[3]

The ponencia also observed that Sanota et al. have not amended their Petition to question the constitutionality of CMO No. 22-2015. Thus, the ponencia determined that the issue to be resolved is whether an actual case or controversy exists for the Court to exercise its judicial power of review. It found that the enactment of CMO No. 22-2015 has mooted the main issue of this present Petition – the constitutionality of CMO No. 37-2011. The ponencia agreed that with the express repeal of CMO No. 37-2011, there is nothing left for the Court to declare unconstitutional. This is because the express repeal of a statute and the declaration of unconstitutionality produce a similar effect on the subject enactment. The enactment ceases to exist and produces no legal effect. In sum, it found that the Petition has failed to present an actual justiciable controversy calling for the exercise of this Court's power of judicial review.[4]

As a final note, the ponencia stated that "while the constitutionality of [CMO] No. 37-2011 was not adjudicated upon due to the limitations stated, this Court stresses that the guidelines and procedures for the accreditation of media representatives [to the BOC] should not be used to transgress the constitutional rights to freedom of speech, expression, and of the press." [5]

I concur in the observations of the ponencia and write to share my views on the same.

CMO No. 37-2011 has been revoked by CMO No. 01-2014. Meanwhile, CMO No. 01-2014 has been revoked by CMO No. 22-2015

The instant Petition for Prohibition assails the validity of CMO No. 37-2011. [6] Unfortunately, CMO No. 37-2011 has been revoked by CMO No. 01-2014. For this purpose, CMO No. 01-2014 provides as follows:

I. SCOPE

This Order, which revokes Customs Memorandum Order (CMO) No. 37-2011, dated [November 8, 2011], revises the guidelines and procedures in the accreditation of journalists and other media practitioners who cover the Bureau of Customs (BOC) on a regular basis to ensure that only bona fide media professionals and bona fide media organizations or entities are allowed entry to BOC premises nationwide and cover events therein.

....

V. REPEALING CLAUSE-All Memoranda, Orders[,] and other Issuances inconsistent herewith are hereby repealed/superseded and/or modified accordingly. (Emphasis supplied)

Further, CMO No. 01-2014 itself has been revoked by CMO No. 22-2015, to wit:

I. SCOPE

This Order, which revokes Customs Memorandum Order (CMO) [No.] 01-2014[,] further revises the guidelines and procedures in the accreditation of the members of the Bureau of Customs Press Corps who cover the Bureau and use the BOC Press Office to ensure that only bona fide media professionals and entities are allowed entry to BOC premises in the Port of Manila.

....

VII. REPEALING CLAUSE

All Memoranda, Orders[,] and other Issuances inconsistent herewith are hereby repealed, superseded and/or modified accordingly. (Emphasis supplied)

Both CMO No. 01-2014 and CMO No. 22-2015 use the terms "revokes," "repealed," and "superseded."

Black's Law Dictionary defines these terms in the following manner:

Repeal. The abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated (which is called "express" repeal), or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force (called "implied" repeal). To revoke, abolish, annul, to rescind or abrogate by authority. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221, 223. See also Abrogation; Express repeal.

Amendment distinguished. "Repeal" of a law means its complete abrogation by the enactment of a subsequent statute, whereas the "amendment" of a statute means an alteration in the law already existing, leaving some part of the original still standing.

....

Express repeal. Abrogation or annulment of previously existing law by enactment of subsequent statute declaring that former law shall be revoked or abrogated.

....

Revocation /rev?kéysh?n/. The withdrawal or recall of some power, authority, or thing granted, or a destroying or making void of some will, deed, or offer that had been valid until revoked. In contract law, the withdrawal by the offeree of an offer that had been valid until withdrawn. It may be either general, all acts and things done before; or special, revoking a particular thing.

Revocation by act of the party is an intentional or voluntary revocation. The principal instances occur in the case of authorities and powers of attorney and wills.

In contract law, the withdrawal of an offer by an offeror; unless the offer is irrevocable, it can be revoked at any time prior to acceptance without liability.

In criminal law, may refer to termination of a probation or parole order because of either a rule violation or a new offense, and forcing the offender to begin or continue serving his or her sentence.

A revocation in law, or constructive revocation, is produced by a rule of law, irrespectively of the intention of the parties. Thus, a power of attorney is in general revoked by the death of the principal.

See also Abrogation; Cancel; Cancellation; Rescind.

....

Supersede /s(y)ùwp?rsíyd/. Obliterate, set aside, annul, replace, make void, inefficacious or useless, repeal. To set aside, render unnecessary, suspend, or stay.[7]

Both CMO No. 01-2014 and CMO No. 22-2015 expressly stated in their scopes that they revoke CMO No. 37-2011 and CMO No. 01-2014, respectively. From the definitions reproduced from Black's Law Dictionary, it is evident that this revocation constitutes an express repeal. The subsequent memorandum order replaces the previous one, such that nothing of the original is left standing. This is supported by the fact that both CMO No. 01-2014 and CMO No. 22-2015 are integrally whole; there is no need to refer to the previously revoked memorandum because the subsequent memorandum contains the whole of the governing provisions pertaining to the accreditation of the BOC Press Corps.

While the repealing clause of both CMO No. 01-2014 and CMO No. 22-2015 use the word "modified," such use was plainly intended as a catch-all. The express revocation found in the scope of both CMOs cannot be interpreted in any other manner except as an express repeal of the previous memorandum order, especially because the subsequent CMOs are integrally whole.

Hence, CMO No. 01-2014 replaced CMO No. 37-2011. Meanwhile, CMO No. 22-2015 replaced CMO No. 01-2014. CMO No. 37-2011 and CMO No. 01-2014, by virtue of their express repeals, are no longer extant. Only CMO No. 22-2015 remains.

There is no actual case or controversy to warrant an exercise of the Court's judicial power

Sanota et al. assail the constitutionality and enforcement of CMO No. 37-2011.[8] There is no showing that Sanota et al. have amended their Petition to question the subsequent CMO No. 22-2015, which has revoked and superseded CMO No. 37-2011 and CMO No. 01-2014.

As previously discussed, CMO No. 37-2011 has been repealed. It no longer exists. Considering this, to my mind,

it is improper to declare CMO No. 37-2011 as unconstitutional. In such instance, there is no actual case or controversy that would allow the Court to exercise its judicial power and rule upon the constitutionality of CMO No. 37-2011.

Article VIII, Section 1 of the 1987 Constitution provides for the Court's judicial power:

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. (Emphasis supplied)

The essential requisites for judicial review are well-established:

(1)

There must be an actual case or controversy calling for the exercise of judicial power;

(2)

The person challenging the act must have legal standing;

(3)

The question of constitutionality must be raised at the earliest possible opportunity; and

(4)

The issue of constitutionality must be the very *lis mota* of the case.[9]

The Court has elucidated on the requirement of an actual case or controversy, viz.:

An actual case or controversy exists when there is a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. The issues presented must be definite and concrete, touching on the legal relations of parties having adverse interests. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Corollary thereto, the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. All these are in line with the well-settled rule that this Court does not issue advisory opinions, nor does it resolve mere academic questions, abstract quandaries, hypothetical or feigned problems, or mental exercises, no matter how challenging or interesting they may be. Instead, case law requires that there is ample showing of *prima facie* grave abuse of discretion in the assailed governmental act in the context of actual, not merely theoretical, facts.[10] (Emphasis supplied, citations omitted)

An actual case or controversy, for purposes of the Court's exercise of its judicial power, requires the existence of a contrariety of legal rights capable of interpretation and enforcement on the basis of existing law and jurisprudence.

It is respectfully submitted that the express repeal of CMO No. 37-2011 has rendered the instant case not

susceptible to the exercise of the Court's judicial power due to the absence of an actual case or controversy.

With the repeal of the assailed enactment, there is nothing for the Court to declare unconstitutional. This is because an express repeal and a declaration of unconstitutionality produce a similar effect on the subject enactment. As discussed, an express repeal results in the abrogation or annulment of the law. The enactment ceases to exist and to have any legal effect.

A declaration of unconstitutionality has a similar effect:

Instructive is the brief treatise made by Mr. Justice Isagani A. Cruz, whose words we quote —

There are two views on the effects of a declaration of the unconstitutionality of a statute.

The first is the orthodox view. Under this rule, as announced in *Norton v. Shelby*, an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office, it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.

The second or modern view is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. The parties to the suit are concluded by the judgment, but not one else is bound.

The orthodox view is expressed in Article 7 of the Civil Code, providing that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern[.]"^[11] (Emphasis supplied)

Thus, a declaration of the unconstitutionality of a repealed law results in no effect as the repealed law has already ceased to exist by virtue of the repeal. In such scenario, to declare unconstitutional a repealed law results in nothing more than an advisory opinion, which the Court is barred from rendering.^[12]

ACCORDINGLY, I vote to DISMISS the Petition.

[1] Ponencia, pp. 1–2.

[2] *Id.* at 5.

[3] *Id.* at 5–7.

[4] *Id.* at 7–14.

[5] *Id.* at 14–15.

[6] *Id.* at 3–4.

[7] BLACK'S LAW DICTIONARY 1299, 581, 1321, 1437 (Revised 6th Ed., 1991).

[8] Ponencia, pp. 3–4.

[9] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003) [Per J. Carpio Morales, En Banc].

[10] *Atty. Calleja v. Executive Secretary Medialdea*, 918-B Phil. 1, 55–56 (2021) [Per J. Carandang, En Banc].

[11] *Republic v. Court of Appeals*, 298 Phil. 291, 294–295 (1993) [Per J. Vitug, Third Division].

[12] *Atty. Calleja v. Executive Secretary Medialdea*, 918-B Phil. 1, 56 (2021) [Per J. Carandang, En Banc].

DISSENTING OPINION

LEONEN, SAJ.:

I acknowledge that the repeal of Customs Memorandum Order (CMO) No. 37-2011 renders this case moot. However, in fulfilling its obligation to safeguard fundamental constitutional freedoms, this Court should adjudicate on the matter to guide the Bench and the Bar, and to avoid its repetition in the near future. Therefore, I dissent.

The role of a free press in a deliberative democracy is crucial. It acts as a watchdog over the government. It keeps the public informed so that they may participate in public discussions. It empowers the sovereign with information to hold the government accountable.

Given its crucial role, the media is expected to deliver information and news with accuracy, fairness, accountability, and transparency.[1] These standards are embodied in the Philippine Journalist's Code of Ethics, which is not a legal obligation to adhere to, but is carried out through self-regulation by the community of journalists and media organizations tasked to discipline its own members.[2]

The Journalist's Code of Ethics tackles the content of the news and reports. It provides a guide on using facts, handling confidential information, and gathering and reporting news. As it is a self-regulating measure, the State has no power to interpret and use it to test the legitimacy of a media practitioner. By using it as a condition in the revocation of an interview permit, the Bureau of Customs will necessarily assess the language and substance of the work of media practitioners. This amounts to a content-based regulation, which infringes on the exercise of free expression, speech, and of the press.

I

Customs Memorandum Order No. 37-2011 lays down the guidelines and procedures in the accreditation of media practitioners.[3] It requires them to submit certain documents to enter the Bureau of Customs and to interview Customs officials and employees.[4] The chief of Public Information and Assistance Division of the Bureau of Customs is mainly responsible for approving and revoking the accreditation.[5]

The Memorandum Order requires the following documents for accreditation:

III.

1.

Requirements for Accreditation

a.

Publication

1.

Complete Application Form;

2.

For partnerships and corporations, Certified True Copy of Securities & Exchange Commission (SEC) Registration, Articles of Partnership/Incorporation, By-Laws and latest General Information Sheet;

3.

For sole proprietorships, Certified True copy of Department of Trade & Industry (DTI) Registration;

4.

Certified True Copy of Mayor's Permit;

5.

Certified True Copy of Bureau of Internal Revenue (BIR) Certificate of Registration;

6.

Publisher's Association of the Philippines, Inc. Certificate of Registration;

7.

Proof that the publication has been consistently in circulation for at least six (6) months;

8.

Proof that the publication has a weekly circulation of at least 3,000 copies;

b.

Reporters/Writers/Photographers

1.

Completed Application Form;

2.

Letter of Assignment on Official Letterhead of a Media Organization/Publication signed by the Publisher or Editor-in-Chief Indicating the name and duration of assignment of the reporter/journalist/writer/photographer;

3.

Bureau of Internal Revenue (BIR) Identification Card;

4.

Print media representatives are required to submit two articles published within the past month and a copy of the publication;

5.

Radio and Television representatives are required to submit two recordings of two reports broadcast within the past month;

6.

Photographers are required to submit original photographs published within the past month and copy of the

publication.[6]

It also provides the following terms and conditions:

IV. TERMS AND CONDITIONS:

a.

The Editorial Content of the publication must at all times be compliant to the Philippine Journalist's Code of Ethics;

b.

BOC accredited media organizations/publications shall be allowed a maximum of three (3) media professionals to cover the Customs beat;

c.

Bureau of Customs (BOC) issued media IDs must always be worn while inside the BOC premises;

d.

The NO I.D., NO ENTRY policy shall be strictly enforced;

e.

In order to avoid disruption of work, media interviews with BOC officials and employees must be pre-arranged with the PIAD;

f.

Loitering within the BOC premises without the necessary access pass from PIAD shall be strictly prohibited;

g.

The accreditation granted pursuant to this Order shall be non-transferable;

h.

Any information the accredited media practitioner obtains by virtue of his/her accreditation will only be used for bona fide news reporting;

i.

The BOC reserves the right to identify areas where media access shall be restricted so as not to disrupt the operations of the Bureau. Accredited media practitioners shall be allowed access to these restricted areas only with express permission from concerned authorities.[7]

According to the Memorandum Order, the Bureau of Customs can revoke or cancel the accreditation upon a valid complaint and after due notice and hearing conducted by a Grievance Committee.[8] The Grievance Committee is composed of the Public Information and Assistance Division chief, a representative from the Legal Service, and a representative from the Office of the Commissioner.[9]

Napoleon Sanota and other media practitioners filed a Petition for Prohibition, praying that public respondent Bureau of Customs be enjoined from implementing Customs Memorandum Order No. 37-2011.[10]

Petitioners mainly contend that the Memorandum Order is a form of prior restraint on the freedom of speech and

of the press as its accreditation requirement functions like business permits, which cannot be applied to media practitioners.[11] They add out that press work cannot be government-regulated, and the Bureau of Customs cannot enforce the Journalist's Code of Ethics, a private undertaking among journalists only.[12]

Petitioners further assert that the guidelines are vague and may be interpreted to strike down bad press, such as when the Memorandum Order required that all information gathered only be for bona fide news reporting, without explaining what it means.[13]

They add that the Bureau of Customs usurped legislative authority as it arrogated upon itself the powers of a quasi-judicial body.[14]

On the other hand, the Bureau of Customs argues that the Memorandum Order is not a form of prior restraint and censorship, but a content-neutral regulation, which does not control how media practitioners will conduct interviews or the contents of their work.[15] It asserts that the Memorandum Order is merely an internal policy meant to facilitate information gathering and to avoid the disruption of work in its office.[16]

Moreover, the Bureau of Customs asserts that the guidelines are intended to filter out fly-by-night media outlets, which degrade the profession due to their lack of training, skill, and purpose.[17] This allegedly guarantees the quality and integrity of the media practitioners' news gathering, reporting, and accountability.[18]

Last, the Bureau of Customs submits that its reference to the adherence to the Philippine Journalist's Code of Ethics does not impose an additional burden or restraint to petitioners.[19]

Subsequently, the Bureau of Customs released Customs Memorandum Order No. 22-2015, which repealed the 2011 Memorandum Order. It reduced the documentary requirements to the following:

a.

Letter from the publisher, editor in chief or section editor with the official letterhead stating that the applicant for accreditation has been officially assigned to primarily cover news in the Bureau;

b.

Clear photocopies of government-issued identification such as passport, driver's license, TIN.[20]

It further limited the grounds for cancellation or revocation of accreditation to the following:

1)

Violation of any guidelines set forth in this Order

2)

Violation of Philippine Journalist[s] Code of Ethics

3)

Involvement in smuggling activities

4)

Involvement in altercations or any acts that violate the rules and regulations within BOC premises

5)

Use of the accreditation as proof of professional qualifications or as authorization or as credential to conduct any other transaction with the Bureau

6)

Willfully allowing another person to use his/her BOC-issued ID.[21]

Accordingly, this Court's majority dismissed the Petition, saying that Customs Memorandum Order No. 22-2015 was a supervening event that rendered the issue of constitutionality of Customs Memorandum Order No. 37-2011 moot.[22] It ruled that "an adjudication of the case or declaration on the issue would not serve any actual substantial relief to the parties[.]"[23]

I dissent.

In *Pangilinan v. Cayetano*,[24] this Court reiterated that addressing constitutional issues requires a present and existing case apt for determination, the absence of which renders the case moot.[25]

However, exceptions to the rule on mootness abound in certain cases: (1) if there is a grave violation of the Constitution; (2) if the case involves a situation of exceptional character and was of paramount public interest; (3) if the issues raised require the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) if the case is capable of repetition yet evading review.[26]

In *Sy v. Sandiganbayan*,[27] the petitioner was charged with violating Section 3(e) of Republic Act No. 3019. A hold departure order was issued to prevent him from leaving the country. He riled three motions to allow him to leave the country, but these were all denied. He went to this Court to question the denials, but the issue was rendered moot since the travel period requested had already lapsed.[28] Yet, this Court still "deem[ed] it proper to take cognizance of th[e] case . . . to guide the [B]ar and especially the [B]ench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused's constitutional right to travel." [29]

In *David v. Arroyo*,[30] several petitions were filed assailing the constitutionality of the declaration of a state of national emergency. Although the declaration had been revoked before the cases were concluded, this Court still ruled on the merits as the issues involved were of serious constitutional violations and of public significance. It also reaffirmed its duty to establish constitutional principles and acknowledged the possibility that the actions could repeat.[31]

In the recent case of *Ranada v. Office of the President*,[32] the petitioners, who are journalists of media network Rappler, filed a petition before this Court seeking to prohibit the respondents from banning them from covering any news event in the presence of then President Rodrigo Duterte. They contended that "the ban abridges the freedom of the press, as barring access to members of the press, or otherwise restricting or censoring the ability of the press to cover activities or events of the President, contravenes their constitutional rights." [33] Regrettably, this Court dismissed the petition on the ground of mootness:

President Duterte is no longer the current President of our Republic. His term ended at noon on June 30, 2022 in accordance with Article VII, Section 4 of the Constitution, when he was succeeded in office by President Ferdinand Marcos, Jr. (President Marcos).

Given that the primary assertion of the petitioners is that the ban was the result of the various offices in the executive department acting to implement the verbal directives of President Duterte, and that the accreditation issue was merely a pretext for President Duterte's personal dislike of the petitioners, it is clear that the expiration of his term as President has mooted this Petition.[34]

Both *Ranada* and this case involve the fundamental right of speech, expression, and the press. Then and now, I maintain my dissent:

While this case has been rendered moot by the end of the term of former President Rodrigo Duterte and the inclusion of the petitioners in the list of media entities allowed to access presidential events, I urge that we continue to rule to emphasize our doctrines on a free press and to avoid repetition in the future.

The implication of the ban and regulation of the media in covering the events of a government institution raises questions on the exercise of a free press vis-à-vis the State and the condition of our democracy.

The task of a free press in a deliberative democracy is paramount. Journalists are the watchdogs over the government and its officials. The press empowers the citizens by keeping them informed about public affairs, allowing them to hold the government accountable.

Government interference in exercising free press is always treated as suspect, and the government must prove the validity and constitutionality of its regulation.[35]

II

The Constitution guarantees the freedom of expression, of speech, and of the press. Article III, Section 4 of the Constitution states:

SECTION 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.[36]

Freedom of expression and its cognate rights are "highly ranked in our scheme of constitutional values." [37] These rights "enjoy precedence and primacy." [38] In *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*: [39]

Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs — political, economic or otherwise.

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions." [40] (Citations omitted)

The right to free expression and speech is anchored on the constitutional paradigm that "[s]overeignty resides in the people and all government authority emanates from them." [41] The exercise of free expression is indispensable in a meaningful and deliberative democracy, as it is through a full and free discourse on public affairs that citizens can hold the government accountable. [42] In *The Diocese of Bacolod v. Commission on Elections*: [43]

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

Speech that promotes dialogue on public affairs, or airs out grievances and political discontent, should thus be protected and encouraged. [44] (Citations omitted)

Thus, this Court gives immediate protection to the exercise of free speech, adopting the principle that "debate on

public issues should be uninhibited, robust, and wide open . . . [including even] unpleasantly sharp attacks on government and public officials." [45] In *In re Gonzales*: [46]

The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social including political decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guaranty. It represents a profound commitment to the principle that debate of public issue should be uninhibited, robust, and wide-open. It is not going too far, according to another American decision, to view the function of free speech as inviting dispute. "It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

Freedom of speech and of the press thus means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, to take refuge in the existing climate of opinion on any matter of public consequence. So atrophied, the right becomes meaningless. The right belongs as well, if not more, for those who question, who do not conform, who differ. To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us. [47] (Citations omitted)

Freedom of expression is intertwined with press freedom. These freedoms empower the public with information on governmental acts, enabling citizens to scrutinize these acts and to provide opinion on public affairs. In *Tulfo v. People*: [48]

The need to protect freedom of speech and of the press cannot be understated. These freedoms are the most pervasive and powerful vehicles of informing the government of the opinions, needs, and grievances of the public. It is through these guarantees that the people are kept abreast of government affairs. Without these rights, no vigilant press would flourish. And without a vigilant press, the government's mistakes would go unnoticed, their abuses unexposed, and their wrongdoings uncorrected.

In this regard, journalists and the media enjoy a wide latitude of discretion in investigating, gathering, and reporting news pertinent to public affairs. Public affairs encompass a wide array of matters, including information on public officials' exercise of their official functions. [49] (Citation omitted)

The press acts as a watchdog. Journalists play a crucial role in a deliberative democracy by keeping the public informed and well equipped to participate in the public discourse. In *Guy v. Tulfo*: [50]

The degree of freedom by which journalists operate to uncover and write the news is an indication of the current state of our country's democracy. By freely obtaining vital information on matters of public concern, citizens become socially aware and well-equipped to participate in different political processes to exercise their rights enshrined in the fundamental law. Journalists are the sentinels who keep watch over the actions of the government. They are the eyes and ears of the citizenry. [51]

The work of the press is political speech because it is "'both intended and received as a contribution to public deliberation about some issue,' 'foster[ing] informed and civic-minded deliberation.'" [52] It is "motivated by the desire to be heard and understood, to move people to action." [53] Thus, the Constitution confers greater protection on the exercise of free speech and press compared to other types of speech, such as commercial speech. [54]

III

Given the precedence and primacy of the right to free speech and free press, governmental acts that regulate these rights are treated as suspect. [55] Any form of censorship is anathema to our constitutional values. [56]

Governmental regulation on free expression may be in the form of prior restraint or subsequent punishment. [57]

Prior restraint is a governmental restriction on expression in advance of its utterance, dissemination, or publication.[58] In *Chavez v. Gonzales*: [59]

Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.[60] (Citations omitted)

On the other hand, subsequent punishment takes the form of imposing liabilities on the individual or entity that already exercised its freedom. The liability may be criminal, civil, or administrative.[61]

Between the two, prior restraint is a more severe restriction on expression because it absolutely prevents the dissemination of ideas. While subsequent punishment deters expression, the ideas are still disseminated to the public.[62]

Given the preferred position of free expression in our Constitution, governmental regulations tantamount to prior restraint of free expression are presumed in valid and unconstitutional. The government bears the burden of proving otherwise.[63] In *Calleja v. Executive Secretary*, [64] we explained:

The Constitution, however, abhors prior restraints on speech. Thus, a law does not enjoy the presumption of constitutionality if it restrains speech. Instead, a presumption of unconstitutionality arises. This presumption proceeds from the constitutional command under Section 4, Article III that no law shall be passed abridging free speech, expression, and their cognate rights. And this mandate, in turn, is actualized by the Court through the many iterations of the dictum that said rights are accorded preference or a high place in the constitutional scheme that any alleged infringement manifest in the language of the statute cannot be allowed to pass unnoticed. In such cases, therefore, it becomes the burden of government to establish the law's constitutionality. Instructive on this rule is the separate opinion of Associate Justice Marvic Mario Victor F. Leonen in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*:

Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.

Because Strict Scrutiny involves statutes which either classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored.

The Court has thus declared that any restriction to the freedom of speech or expression should be treated as an exemption — any act that chills or restrains speech is presumed invalid and any act that chills or restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows.[65] (Citations omitted)

Nevertheless, the exercise of free speech is not absolute. It must "not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society." [66]

When a governmental regulation is challenged for being a prior restraint, it is crucial to distinguish whether it is a

content-neutral or a content-based regulation.

A regulation is characterized as content-neutral if it is "merely concerned with the incidents of the speech, or one that merely controls the time, place[,] or manner, and under well-defined standards[,] " regardless of the content of the speech.[67] Content-based regulation is based either on the point of view of the speaker or the subject of the expression,[68] focusing on the subject matter of the speech.[69]

A content-based regulation carries a heavy presumption of unconstitutionality and must overcome the clear and present danger test.[70] To pass the test, the government must demonstrate that the regulation seeks to prevent a substantive and imminent evil already manifested on ground and the speech it targets to suppress brings about that evil.[71]

In *Primicias v. Fugoso*,[72] this Court upheld an ordinance that granted a mayor discretion to determine the public places where a procession or meeting may be conducted but did not empower the mayor to deny the permit. *Primicias* explained that the right to free speech and assembly is not curtailed as the ordinance merely secures the "convenient use of the streets and public places by others, and to provide adequate and proper policing to minimize the risk of disorder." [73]

Reyes v. Bagatsing[74] involved a permit to conduct a march and rally at Luneta Park up to the United States Embassy. Refusing to issue the permit due to intelligence reports of subversive elements, the Manila mayor suggested another area instead.[75] This Court granted the mandatory injunction, allowing the rally to proceed. It held that the exercise of the rights to free speech and peaceful assembly cannot be frustrated unless there is a clear and present danger of a substantive evil that the State must prevent, which in that case the government failed to show.[76] *Reyes* reiterated the rationale in *Primicias* that the requirements of a special license do not violate the rights of assembly, of free speech, and of the press as long as the considerations for issuing it are limited to time, place, and manner and the authority has no arbitrary discretion to refuse its issuance.[77]

The guide in *Reyes* was subsequently codified in *Batas Pambansa Blg. 880*, or the Public Assembly Act of 1985, which this Court upheld as a valid content-neutral regulation in *Bayan v. Ermita*. [78]

Bayan explained that the restriction in *Batas Pambansa Blg. 880* is content-neutral as it merely regulates the time, place, and manner of the conduct of assemblies. This Court, applying the clear and present danger test, held that the law is not a prior restraint because the content of the speech is not relevant to the regulation.[79]

In the more recent case of *Diocese of Bacolod v. Commission on Elections*,[80] tarpaulins containing a classification of electoral candidates based on their stand on the Reproductive Health Law was put up on the front walls of a cathedral. The Commission on Elections ordered their removal for exceeding the prescribed size of election paraphernalia, and justified this as a content-neutral regulation because only the size was regulated.[81]

We held that the regulation was content-based because the content of the materials cannot be divorced from the size of its medium. The larger the size of the tarpaulin, the more efficient it is in communicating its message, as it is more readable and attracts more attention. Moreover, the size underscores the importance of the message, and the larger space allows for more messages.[82] In any case, even if the order were a content-neutral regulation, we pointed out that the Commission on Elections cannot regulate the speech of the petitioners, who were not electoral candidates.[83]

Meanwhile, in *Newsounds Broadcasting Network, Inc. v. Dy*,[84] this Court explained the application of the strict scrutiny test to content-based regulations:

The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of government to prove that their actions do not infringe upon petitioners' constitutional

rights. As content regulation cannot be done in the absence of any compelling reason, the burden lies with the government to establish such compelling reason to infringe the right to free expression.[85] (Citations omitted)

In content-neutral regulations, the intermediate approach is employed. The government must clearly show that the restriction furthers a substantial government interest, that the interest is unrelated to the suppression of the speech, and that the restriction is not greater than what is essential to facilitate the interest.[86]

While there is greater suspicion toward content-based regulation, content-neutral regulations are subject to "lesser but still heightened scrutiny." [87] It may be struck down if the incidental restriction on the exercise of free speech is greater than what is required to attain the governmental interest.[88] The regulation must be "reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken[.]"[89]

Further, while governmental restrictions that touch on the exercise of free expression may be allowed, the government must prove that it is precise. It cannot "sweep unnecessarily broadly and thereby invade the area of protected freedoms." [90] In *In re Gonzales*:

[E]ven though the governmental purposes be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. For precision of regulation is the touchstone in an area so closely related to our most precious freedoms.

Under the circumstances then, a majority of the Court feels compelled to view the statutory provisions in question as unconstitutional on their face inasmuch as they appear to range too widely and indiscriminately across the fundamental liberties associated with freedom of the mind.[91]

Even if the government's interest and purpose is legitimate and substantial, it cannot be imposed through means that "stifle fundamental personal liberties, when the end can be more narrowly achieved." [92]

Guided by these discussions, I submit that any form of government regulation that burdens and touches upon the work of the free press in its production and publication of news—whether in the guise of accreditation, registration, admission, or exclusion—constitutes prior restraint. Accordingly, such a policy is presumed unconstitutional, and the government must prove its constitutionality.

In weighing the constitutionality of the regulation, the courts' approach is two-tiered: first, they should examine it closely and characterize whether it is content-based or content-neutral; and second, they must apply the corresponding tests—clear and present danger test and strict scrutiny tests for content-based regulation, and intermediate approach test for content-neutral regulation.

While the resolution of these abstract concepts boil down on a case-by-case basis, courts should, in both instances, base their findings on concrete variables[93] such as the purpose sought to be achieved, extent of censorship, arbitrariness of the regulation, and other similar factors.

As to purpose, to overcome the burden of its unconstitutionality, the regulation must state clear, precise, reasonable, and narrowly defined objectives for restraining the press. Vague or general justifications will not suffice.

When evaluating the extent of censorship, the courts must assess the limitations placed on what and how information is published, broadcasted, or disseminated. As the content restrictions are presumed unconstitutional, the level and degree of censorship should be carefully considered, particularly when it pertains to matters of public interest and concern.

As to arbitrariness, regulations in the guise of intimidation or even monitoring of the press, especially when specific targets are singled out, are by itself arbitrary, capricious, and whimsical. To withstand scrutiny, such

regulations must be strictly examined as opposed to regulations that apply equally to all members of the press.

IV

Customs Memorandum Order No. 37-2011 is a content-based regulation that infringes on the right of petitioners to free speech and free press. It fails the clear and present danger and strict scrutiny tests. In any case, even if it is treated as a content-neutral regulation, it still fails the intermediate scrutiny test.

The Memorandum Order goes beyond mere regulation of the time, place, and manner of the press work inside the vicinity. A careful reading of the requirements reveals its real function.

The Memorandum Order prescribes a minimum qualification on media practitioners who may be granted permission to interview its officials and employees. It also requires multiple and redundant documents, unduly burdening media practitioners. It likewise sets a minimum capacity of weekly circulation and proof of its consistent circulation.

Moreover, the documentary requirements go into the content and publication of media practitioners. For reporters, writers, and photographers, it requires submission of two articles, recordings, or photographs, and a copy of the publication for their application.

While the 2015 Memorandum Order simplified these documentary requirements, it still suffers from the same infirmities. In both Memoranda, the Bureau of Customs grants itself wide discretion to cancel a media practitioner's permit based on whether there is compliance with the Philippine Journalist's Code of Ethics.

The Philippine Journalist's Code of Ethics was adopted by the National Union of Journalists of the Philippines, Philippine Press Institute, and National Press Club in 1988.[94] It espouses the practice that journalism should be accurate and fair, and mandates accountability and transparency in the profession.[95] It states:

1.

I shall scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis. I recognize the duty to air the other side and the duty to correct substantive errors promptly.

2.

I shall not violate confidential information on material given me in the exercise of my calling.

3.

I shall resort only to fair and honest methods in my effort to obtain news, photographs and/or documents, and shall properly identify myself as a representative of the press when obtaining any personal interview intended for publication.

4.

I shall refrain from writing reports which will adversely affect a private reputation unless the public interests justifies it. At the same time, I shall write vigorously for public access to information, as provided for in the constitution.

5.

I shall not let personal motives or interests influence me in the performance of my duties; nor shall I accept or offer any present, gift or other consideration of a nature which may cast doubt on my professional integrity.

6.

I shall not commit any act of plagiarism.

7.

I shall not in any manner ridicule, cast aspersions on or degrade any person by reason of sex, creed, religious belief, political conviction, cultural and ethnic origin.

8.

I shall presume persons accused of crime of being innocent until proven otherwise. I shall exercise caution in publishing names of minors, and women involved in criminal cases so that they may not unjustly lose their standing in society.

9.

I shall not take unfair advantage of a fellow journalist.

10.

I shall accept only such tasks as are compatible with the integrity and dignity of my profession, invoking the "conscience clause" when duties imposed on me conflict with the voice of my conscience.

11.

I shall comport myself in public or while performing my duties as journalist in such manner as to maintain the dignity of my profession. When in doubt, decency should be my watchword.[96]

The Journalist's Code of Ethics goes deeply into the contents of news reports. It provides a guide into the interpretation of the news, the use and handling of confidential information, and how news is written and delivered to the public. By using it as a measure and condition in the revocation of the permit, the Bureau of Customs will necessarily assess the language and substance of petitioners' work. Depending on its own evaluation, it has the discretion to issue or cancel a media practitioner's accreditation. This is a content-based regulation.

Further, the Memorandum Order is a form of prior restraint because it prescribes requirements, terms, and conditions on the approval and revocation of the permit, which petitioners need before they can interview and, subsequently, publish and broadcast their work.

Accordingly, the Memorandum Order is presumed unconstitutional, and it is the government's burden to prove its constitutionality. On that score, it failed to overcome this burden.

The Memorandum Order fails the clear and present danger test. Here, the Bureau of Customs argues that its issuance is for the orderly conduct of media interviews, and ensures that only legitimate personnel from accredited media outlets can access its premises. Yet, there is no showing of any substantial and extremely serious evil sought to be prevented, and such an excuse is not a reason grave and compelling enough to institute guidelines that infringe on free speech and press. Consequently, the regulation also fails the strict scrutiny test. The guidelines purport to be for administrative purposes, but they have an invasive impact on constitutional rights.

In any case, even if the Memorandum Order were treated as a content-neutral regulation, it would still be struck down for failing the intermediate approach test. The restriction is greater than what is essential to achieve its interest. The guidelines are not reasonable and narrowly drawn.

First, the Bureau of Customs cannot regulate the work of petitioners. Adherence to the Journalist's Code of Ethics is not a legal, statutory obligation. Unlike other professional codes such as the Code of Professional Responsibilities for lawyers, there is no institutional mechanism to enforce the Journalist's Code of Ethics.

Instead, compliance with it is carried out through self-regulation.[97] Journalists and media organizations discipline their own members. For instance, complaints about unfair media practices may be reported directly to voluntary regulatory bodies such as the Philippine Press Council or the Kapisanan ng mga Brodkaster ng Pilipinas. There are limited instances when ethical violations overlap and result in violations of civil and criminal laws. In these cases, legal actions may be filed against erring journalists but only if the action has legal consequences, such as libel.[98]

Philippine journalism today is not regulated by a statutory body that polices media conduct. Statutory regulation of media raises controversy, as it risks government interference with the power to effectively silence the media.[99] Since the Bureau of Customs has no power to be a media regulatory body, it cannot enforce the Journalist's Code of Ethics as a condition to its permit. While compliance is already a responsibility of media practitioners, the State cannot weaponize it as a permit requirement.

Besides, the Bureau of Customs is not qualified to assess whether a media practitioner complies with the Journalist's Code of Ethics. The loose language of the guidelines gives the government a wide discretion on determining whether there is a violation.

Second, the imposition of multiple documentary requisites and the Bureau of Customs' insistence to be regulators of the Journalist's Code of Ethics do not serve the objective of having an orderly conduct of interviews. Even if the 2015 Memorandum Order simplified the documentary requirements, the same terms and conditions on the permit remain. It does not improve or guarantee the quality and integrity of the media practitioners' news gathering, reporting, and accountability. In all, the regulation engenders more harm by unduly burdening media practitioners and keeping watch over their conduct.

Information gathering is necessary to journalistic work. When the State hampers this task, it harms the role of the press in a democracy. Any regulation that goes into the content of the press, as in this case, only stifles the exercise of free expression, speech, and of the press.

ACCORDINGLY, I vote to GRANT the Petition.

[1] *Guy v. Tulfo*, 851 Phil. 748, 772 (2019) [Per J. Leonen, Third Division].

[2] NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, *ETHICAL GUIDE FOR FILIPINO JOURNALISTS* 26 (2021).

[3] *Rollo*, p. 24.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 24–25.

[7] *Id.* at 25–26.

[8] *Id.* at 26.

[9] *Id.*

- [10] Id. at 5–6.
- [11] Id. at 15–16.
- [12] Id. at 17.
- [13] Id.
- [14] Id. at 18.
- [15] Id. at 95–97.
- [16] Id. at 98–99.
- [17] Id. at 98.
- [18] Id. at 99.
- [19] Id. at 100.
- [20] Id. at 108.
- [21] Id. at 109.
- [22] Ponencia, p. 10.
- [23] Id. at 14.
- [24] 898 Phil. 522 (2021) [Per J. Leonen, En Banc].
- [25] Id. at 604–605.
- [26] *Timbol v. Commission on Elections*, 754 Phil. 578, 585 (2015) [Per J. Leonen, En Banc]. (Citation omitted)
- [27] 841 Phil. 475 (2018) [Per J. Perlas-Bernabe, Second Division].
- [28] Id. at 478–480.
- [29] Id. at 483–484.
- [30] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].
- [31] Id. at 755.
- [32] G.R. No. 246126, June 27, 2023 [Per J. Singh, En Banc].
- [33] Id. (Citation omitted)
- [34] Id. at 11.
- [35] J. Leonen, Dissenting Opinion in *Ranada v. Office of the President, et al*, G.R. No. 246126, June 27, 2023 [Per J. Singh, En Banc].
- [36] CONST., art. III, sec. 4.
- [37] *Reyes v. Bagatsing*, 210 Phil. 457, 475 (1983) [Per C.J. Fernando, En Banc].
- [38] Id.
- [39] 151-A Phil. 656 (1973) [Per J. Makasiar, First Division].

[40] Id. at 676.

[41] CONST., art. II, sec. 1.

[42] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 359–360 (2015) [Per J. Leonen, En Banc].

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

[44] Id. at 359–360.

[45] Id. at 360. (Citation omitted)

[46] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[47] Id. at 493.

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

[49] Id. at 6–7.

[50] *Guy v. Tulfo*, 851 Phil. 748 (2019) [Per J. Leonen, Third Division].

[51] Id. at 752.

[52] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 368 (2015) [Per J. Leonen, En Banc]. (Citation omitted)

[53] Id. at 325.

[54] *Nicolas-Lewis v. Commission on Elections*, 859 Phil. 560, 586 (2019) [Per J. J.C. Reyes, Jr., En Banc].

[55] J. Kapunan, Concurring and Dissenting Opinion in *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 945 (1996) [Per J. Puno, En Banc].

[56] Id. at 954.

[57] *Chavez v. Gonzales*, 569 Phil. 155, 202 (2008) [Per C.J. Puno, En Banc].

[58] Id. at 203.

[59] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[60] Id. at 203–204.

[61] J. Sandoval-Gutierrez, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 224 (2008) [Per C.J. Puno, En Banc].

[62] J. Carpio, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 240 (2008) [Per C.J. Puno, En Banc].

[63] *ABS-CBN Broadcasting Corp. v. Commission on Elections*, 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[64] *Calleja v. Executive Secretary*, G.R. Nos. 252578 et al., December 7, 2021 [Per J. Carandang, En Banc].

[65] Id.

[66] *Primicias v. Fugoso*, 80 Phil. 71, 75 (1948) [Per J. Feria, En Banc].

- [67] Newsounds Broadcasting Network, Inc. v. Dy, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].
- [68] The Diocese of Bacolod v. Commission on Elections, 751 Phil. 301, 373 (2015) [Per J. Leonen, En Banc].
- [69] Newsounds Broadcasting Network, Inc. v. Dy, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].
- [70] Chavez v. Gonzales, 569 Phil. 155, 207–208 (2008) [Per C.J. Puno, En Banc].
- [71] Id. at 206.
- [72] 80 Phil. 71 (1948) [Per J. Feria, En Banc].
- [73] Id. at 77.
- [74] 210 Phil. 457 (1983) [Per C.J. Fernando, En Banc].
- [75] Id. at 465.
- [76] Id. at 466.
- [77] Id. at 470.
- [78] 522 Phil. 201 (2006) [Per J. Azcuna, En Banc].
- [79] Id. at 233–234.
- [80] The Diocese of Bacolod v. Commission on Elections, 751 Phil. 301–450 (2015) [Per J. Leonen, En Banc].
- [81] Id. at 373.
- [82] Id. at 374, 377, 382.
- [83] Id. at 394–395.
- [84] 602 Phil. 255 (2009) [Per J. Tinga, Second Division].
- [85] Id. at 274.
- [86] See ABS-CBN Broadcasting Corp. v. Commission on Elections, 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].
- [87] Newsounds Broadcasting Network, Inc. v. Dy, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].
- [88] Chavez v. Gonzales, 569 Phil. 155, 207 (2008) [Per C.J. Puno, En Banc].
- [89] Id.
- [90] In re Gonzales, 137 Phil. 471, 507 (1969) [Per J. Fernando, En Banc].
- [91] Id.
- [92] ABS-CBN Broadcasting Corp. v. Commission on Elections, 380 Phil. 780, 795 (2000) [Per J. Panganiban, En Banc].
- [93] Sy v. Sandiganbayan, 841 Phil. 475, 487 (2018) [Per J. Perlas-Bernabe, Second Division].
- [94] NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, ETHICAL GUIDE FOR FILIPINO JOURNALISTS 26 (2021).
- [95] Guy v. Tulfo, 851 Phil. 748, 772 (2019) [Per J. Leonen, Third Division].

[96] JOURNALIST'S CODE OF ETHICS (1988).

[97] NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, ETHICAL GUIDE FOR FILIPINO JOURNALISTS 26 (2021).

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

[99] CHRIS FROST, JOURNALISM ETHICS AND REGULATION 215 (3[rd] ed., 2011).

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