1-UNITED TRANSPORT KOALISYON (1-UTAK), PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 206020. April 14, 2015

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-206020/

REYES, J.:

The right to participate in electoral processes is a basic and fundamental right in any democracy. It includes not only the right to vote, but also the right to urge others to vote for a particular candidate. The right to express one's preference for a candidate is likewise part of the fundamental right to free speech. Thus, any governmental restriction on the right to convince others to vote for a candidate carries with it a heavy presumption of invalidity.

This is a petition for certiorari[1] under Rule 64 and Rule 65 of the Rules of Court filed by 1-United Transport Koalisyon (petitioner), a party-list organization, assailing Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615[2] of the Commission on Elections (COMELEC).

The Facts

On February 12, 2001, Republic Act (R.A.) No. 9006, otherwise known as the "Fair Elections Act", was passed. Section 9 thereof provides:

> Sec. 9. Posting of Campaign Materials. - The COMELEC may authorize political parties and party-list groups to erect common poster areas for their candidates in not more than ten (10) public places such as plazas, markets, barangay centers and the like, wherein candidates can post, display or exhibit election propaganda: Provided that the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.
>
> Independent candidates with no political parties may likewise be authorized to erect common poster areas in not more than ten (10) public places, the size of which shall not exceed four (4) by six (6) feet or its equivalent.
>
> Candidates may post any lawful propaganda material in private places with the consent of the owner thereof, and in public places or property which shall be allocated equitably and impartially among the candidates.

On January 15, 2013, the COMELEC promulgated Resolution No. 9615, which provided for the rules implementing R.A. No. 9006 in connection with the May 13, 2013 national and local elections and subsequent elections. Section 7 thereof, which enumerates the prohibited forms of election propaganda, pertinently provides:

> SEC. 7. Prohibited Forms of Election Propaganda. - During the campaign period, it is unlawful:
>
> x x x x x x x x x
>
> (f) To post, display or exhibit any election campaign or propaganda material outside of authorized common poster areas, in public places, or in private properties without the consent of the owner thereof.
>
> (g) Public places referred to in the previous subsection (f) include any of the following:
>
> x x x x x x x x x

> 5. Public utility vehicles such as buses, jeepneys, trains, taxi cabs, ferries, pedicabs and tricycles, whether motorized or not;
>
> 6. Within the premises of public transport terminals, such as bus terminals, airports, seaports, docks, piers, train stations, and the like.

The violation of items [5 and 6] under subsection (g) shall be a cause for the revocation of the public utility franchise and will make the owner and/or operator of the transportation service and/or terminal liable for an election offense under Section 9 of Republic Act No. 9006 as implemented by Section 18 (n) of these Rules.[3]

In its letter[4] dated January 30, 2013, the petitioner, through its president, Melencio F. Vargas, sought clarification from the COMELEC as regards the application of Resolution No. 9615, particularly Section 7(g) items (5) and (6), in relation to Section 7(f), vis-a-vis privately owned public utility vehicles (PUVs) and transport terminals. The petitioner explained that the prohibition stated in the aforementioned provisions impedes the right to free speech of the private owners of PUVs and transport terminals. The petitioner then requested the COMELEC to reconsider the implementation of the assailed provisions and allow private owners of PUVs and transport terminals to post election campaign materials on their vehicles and transport terminals.

On February 5, 2013, the COMELEC en banc issued Minute Resolution No. 13-0214,[5] which denied the petitioner's request to reconsider the implementation of Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615. The COMELEC en banc, adopting the recommendation of Commissioner Christian Robert S. Lim, opined that:

> From the foregoing, x x x the primary fact in consideration here is actually whether 1 -UTAK or any other [PUV] owners in the same position do in fact possess a franchise and/or certificate of public convenience and operate as a public utility. If it does not, then the ruling in Adiong applies squarely. If it does, then its operations, pursuant to Section 4, Article IX-C of the Constitution, will be placed directly under the supervision and regulation of the Commission for the duration of the election period so as to ensure equality of opportunity, time, and space for all candidates in the placement of political advertisements. Having placed their property for use by the general public and having secured a license or permit to do so, 1-UTAK and other PUV owners, as well as transport terminal owners, cannot now complain that their property is subject to regulation by the State. Securing a franchise or a certificate of public convenience in their favor does not exempt them from the burdens imposed by the Constitution, Republic Act No. 9006 x x x, and other related statutes. It must be stressed that the Constitution itself, under Section 6, Article XII, commands that the use of property bears a social function and all economic agents shall contribute to the common good; and there is no higher Common good than that as espoused in R.A. No. 9006 - the equalization of opportunities for all candidates for political office during elections - a policy which Res. No. 9615 merely implements.
>
> As required in Adiong, and in compliance with the O'Brien standards, the prohibition furthers two important and substantial governmental interests - equalizing opportunity, time, and space for all candidates, and putting to a stop excessive campaign spending. The regulation bears a clear and reasonable nexus with these Constitutionally- and statutorily-sanctioned objectives, and the infringement of freedom is merely incidental and limited as to time. The Commission has not taken away all avenues of expression available to PUV and transport terminal owners. They may express their political preferences elsewhere.
>
> The exact purpose for placing political advertisements on a PUV or in transport terminals is exactly because it is public and can be seen by all; and although it is true that private vehicles ply the same route as public vehicles, the exposure of a [PUV] servicing the general, riding public is much more compared to private vehicles. Categorizing PUVs and transport terminals as 'public places' under Section 7 (f) of Reso. No. 9615 is therefore logical. The same reasoning for limiting political advertisements in print media, in radio, and in television therefore holds true for political advertisements in PUVs and transport terminals.[6]

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Hence, the instant petition.

Arguments of the Petitioner

The petitioner maintains that Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 violate the right to free speech of the owners of PUVs and transport terminals; that the prohibition curtails their ideas of who should be voted by the public. The petitioner also claims that there is no substantial public interest threatened by the posting of political advertisements on PUVs and transport terminals to warrant the prohibition imposed by the COMELEC. Further, the petitioner posits that the ownership of the PUVs per se, as well as the transport terminals, remains private and, hence, the owners thereof could not be prohibited by the COMELEC from expressing their political opinion lest their property rights be unduly intruded upon.

Further, assuming that substantial public interest exists in the said prohibition imposed under Resolution No. 9615, the petitioner claims that the curtailment of the right to free speech of the owners of PUVs and transport terminals is much greater than is necessary to achieve the desired governmental purpose, i.e., ensuring equality of opportunity to all candidates in elective office.

Arguments of COMELEC

On the other hand, the COMELEC posits that privately-owned PUVs and transport terminals are public spaces that are subject to its regulation. It explains that under the Constitution, the COMELEC has the power to enforce and administer all laws and regulations relative to the conduct of an election, including the power to regulate the enjoyment or utilization of all franchises and permits for the operation of transportation utilities.

The COMELEC points out that PUVs and private transport terminals hold a captive audience - the commuters, who have no choice but be subjected to the blare of political propaganda. Thus, the COMELEC avers, it is within its constitutional authority to prevent privately-owned PUVs and transport terminals from concurrently serving campaign materials to the captive audience that they transport.

The COMELEC further claims that Resolution No. 9615 is a valid content-neutral regulation and, thus, does not impinge on the constitutional right to freedom of speech. It avers that the assailed regulation is within the constitutional power of the COMELEC pursuant to Section 4, Article IX-C of the Constitution. The COMELEC alleges that the regulation simply aims to ensure equal campaign opportunity, time, and space for all candidates - an important and substantial governmental interest, which is totally unrelated to the suppression of free expression; that any restriction on free speech is merely incidental and is no greater than is essential to the furtherance of the said governmental interest.

The Issue

The petitioner presents the following issues for the Court's resolution:

> I. [WHETHER] RESOLUTION NO. 9615 VIOLATES THE RIGHT TO FREE SPEECH OF THE OWNERS OF [PUVs] AND TRANSPORT TERMINALS.
>
> II. [WHETHER] RESOLUTION NO. 9615 IS VOID AS A RESTRAINT TO FREE SPEECH AND EXPRESSION FOR FAILURE TO SATISFY THE O'BRIEN TEST.
>
> III. [WHETHER] THE CONSTITUTIONAL OBJECTIVE TO GIVE AN EQUAL OPPORTUNITY TO INFORM THE ELECTORATE IS NOT IMPAIRED BY POSTING POLITICAL ADVERTISEMENTS ON PUVs AND TRANSPORT TERMINALS.
>
> IV. [WHETHER] THE OWNERSHIP OF FACILITIES IS DIFFERENT AND INDEPENDENT FROM THE FRANCHISE OR OPERATION OF THE PUBLIC UTILITY, THE FORMER BEING BEYOND THE POWER OF REGULATION BY THE COMELEC.[7]

In sum, the issue presented for the Court's resolution is whether Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615, which prohibits the posting of any election campaign or propaganda material, inter alia, in PUVs and public transport terminals are valid regulations.

Ruling of the Court
The petition is meritorious.

Resolution No. 9615, which was promulgated pursuant to Section 4, Article IX-C of the Constitution and the provisions of R.A. No. 9006, lays down the administrative rules relative to the COMELEC's exercise of its supervisory and regulatory powers over all franchises and permits for the operation of transportation and other public utilities, media of communication or information, and all grants, special privileges, or concessions granted by the Government.

Like any other administrative regulations, Resolution No. 9615, or any part thereof, must not run counter to the Constitution. It is basic that if a law or an administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act shall be valid if it conflicts with the Constitution.[8] In this regard, an administrative regulation, even if it purports to advance a legitimate governmental interest, may not be permitted to run roughshod over the cherished rights of the people enshrined in the Constitution.

Section 7(g) items (5) and (6), in
relation to Section 7(f), of Resolution

No. 9615 are prior restraints on speech.

Free speech may be identified with the liberty to discuss publicly and truthfully any matter of public concern without prior restraint or censorship and subsequent punishment.[9] 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.[10] Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its validity.[11]

Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 unduly infringe on the fundamental right of the people to freedom of speech. Central to the prohibition is the freedom of individuals, i.e., the owners of PUVs and private transport terminals, to express their preference, through the posting of election campaign material in their property, and convince others to agree with them.

Pursuant to the assailed provisions of Resolution No. 9615, posting an election campaign material during an election period in PUVs and transport terminals carries with it the penalty of revocation of the public utility franchise and shall make the owner thereof liable for an election offense. The prohibition constitutes a clear prior restraint on the right to free expression of the owners of PUVs and transport terminals. As a result of the prohibition, owners of PUVs and transport terminals are forcefully and effectively inhibited from expressing their preferences under the pain of indictment for an election offense and the revocation of their franchise or permit to operate.

It is now deeply embedded in our jurisprudence that freedom of speech and of the press enjoys a preferred status in our hierarchy of rights. The rationale is that the preservation of other rights depends on how well we protect our freedom of speech and of the press.[12] It has been our constant holding that this preferred freedom calls all the more for utmost respect when what may be curtailed is the dissemination of information to make more

meaningful the equally vital right of suffrage.[13]

Thus, in Adiong v. COMELEC,[14] the Court struck down the COMELEC's prohibition against the posting of decals and stickers on "mobile places." The Court ratiocinated that:

> Significantly, the freedom of expression curtailed by the questioned prohibition is not so much that of the candidate or the political party. The regulation strikes at the freedom of an individual to express his preference and, by displaying it on his car, to convince others to agree with him. A sticker may be furnished by a candidate but once the car owner agrees to have it placed on his private vehicle, the expression becomes a statement by the owner, primarily his own and not of anybody else. If, in the National Press Club case, the Court was careful to rule out restrictions on reporting by newspaper or radio and television stations and commentators or columnists as long as these are not correctly paid-for advertisements or purchased opinions with less reason can we sanction the prohibition against a sincere manifestation of support and a proclamation of belief by an individual person who pastes a sticker or decal on his private property.[15] (Emphases ours)

The assailed prohibition on posting election campaign materials is an invalid content-neutral regulation repugnant to the free speech clause.

The COMELEC claims that while Section 7(g) items (5) and (6) of Resolution No. 9615 may incidentally restrict the right to free speech of owners of PUVs and transport terminals, the same is nevertheless constitutionally permissible since it is a valid content-neutral regulation.

The Court does not agree.

A content-neutral regulation, i.e., which is merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards,[16] is constitutionally permissible, even if it restricts the right to free speech, provided that the following requisites concur: first, the government regulation is within the constitutional power of the Government; second, it furthers an important or substantial governmental interest; third, the governmental interest is unrelated to the suppression of free expression; and fourth, the incidental restriction on freedom of expression is no greater than is essential to the furtherance of that interest.[17]

Section 7(g) items (5) and (6) of Resolution No. 9615 are content-neutral regulations since they merely control the place where election campaign materials may be posted. However, the prohibition is still repugnant to the free speech clause as it fails to satisfy all of the requisites for a valid content-neutral regulation.

It is conceded that Resolution No. 9615, including the herein assailed provisions, furthers an important and substantial governmental interest, i.e., ensuring equal opportunity, time and space among candidates aimed at the holding of free, orderly, honest, peaceful, and credible elections. It is further conceded that the governmental interest in imposing the said prohibition is unrelated to the suppression of free expression. However, Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615, are not within the constitutionally delegated power of the COMELEC under Section 4, Article IX-C of the Constitution. Also, there is absolutely no necessity to restrict the right to free speech of the owners of PUVs and transport terminals.

The COMELEC may only regulate the franchise or permit to operate

and not the ownership per se of

PUVs and transport terminals.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The prohibition under Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 is not within the COMELEC's constitutionally delegated power of supervision or regulation. It is not disputed that the COMELEC has the power to supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation utilities during an election period. Section 4, Article IX-C of the Constitution, thus provides:

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

Nevertheless, the constitutional grant of supervisory and regulatory powers to the COMELEC over franchises and permits to operate, though seemingly unrestrained, has its limits. Notwithstanding the ostensibly broad supervisory and regulatory powers granted to the COMELEC during an election period under Section 4, Article IX-C of the Constitution, the Court had previously set out the limitations thereon. In Adiong, the Court, while recognizing that the COMELEC has supervisory power vis-a-vis the conduct and manner of elections under Section 4, Article IX-C of the Constitution, nevertheless held that such supervisory power does not extend to the very freedom of an individual to express his preference of candidates in an election by placing election campaign stickers on his vehicle.

In National Press Club v. COMELEC,[18] while the Court upheld the constitutionality of a prohibition on the selling or giving free of charge, except to the COMELEC, of advertising space and commercial time during an election period, it was emphasized that the grant of supervisory and regulatory powers to the COMELEC under Section 4, Article IX-C of the Constitution, is limited to ensuring equal opportunity, time, space, and the right to reply among candidates.

Further, in Social Weather Stations, Inc. v. COMELEC,[19] the Court, notwithstanding the grant of supervisory and regulatory powers to the COMELEC under Section 4, Article IX-C of the Constitution, declared unconstitutional a regulation prohibiting the release of election surveys prior to the election since it "actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by newspaper columnists, radio and [television (TV)] commentators, armchair theorists, and other opinion makers."[20]

In the instant case, the Court further delineates the constitutional grant of supervisory and regulatory powers to the COMELEC during an election period. As worded, Section 4, Article IX-C of the Constitution only grants COMELEC supervisory and regulatory powers over the enjoyment or utilization "of all franchises or permits for the operation," inter alia, of transportation and other public utilities. The COMELEC's constitutionally delegated powers of supervision and regulation do not extend to the ownership per se of PUVs and transport terminals, but only to the franchise or permit to operate the same.

There is a marked difference between the franchise or permit to operate transportation for the use of the public and the ownership per se of the vehicles used for public transport. Thus, in Tatad v. Garcia, Jr.,[21] the Court explained that:

> What private respondent owns are the rail tracks, rolling stocks like the coaches, rail stations, terminals and the power plant, not a public utility. While a franchise is needed to operate these facilities to serve the public, they do not by themselves constitute a public utility. What constitutes a public utility is not their ownership but their

> use to serve the public x x x.
>
> The Constitution, in no uncertain terms, requires a franchise for the operation of a public utility. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public.
>
> x x x x x x x x x
>
> In law, there is a clear distinction between the "operation" of a public utility and the ownership of the facilities and equipment used to serve the public.
>
> x x x x x x x x x
>
> The right to operate a public utility may exist independently and separately from the ownership of the facilities thereof. One can own said facilities without operating them as a public utility, or conversely, one may operate a public utility without owning the facilities used to serve the public. The devotion of property to serve the public may be done by the owner or by the person in control thereof who may not necessarily be the owner thereof.
>
> This dichotomy between the operation of a public utility and the ownership of the facilities used to serve the public can be very well appreciated when we consider the transportation industry. Enfranchised airline and shipping companies may lease their aircraft and vessels instead of owning them themselves.[22] (Emphases ours)

The franchise or permit to operate transportation utilities is a privilege granted to certain persons to engage in the business of transporting people or goods; it does not refer to the ownership of the vehicle per se. Ownership is a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another.[23] Thus, the owner of a thing has the right to enjoy and dispose of a thing, without other limitations than those established by law.[24]

One such limitation established by law, as regards PUVs, is the franchise or permit to operate. However, a franchise or permit to operate a PUV is a limitation only on certain aspects of the ownership of the vehicle pertinent to the franchise or permit granted, but not on the totality of the rights of the owner over the vehicle. Otherwise stated, a restriction on the franchise or permit to operate transportation utilities is necessarily a limitation on ownership, but a limitation on the rights of ownership over the PUV is not necessarily a regulation on the franchise or permit to operate the same.

A franchise or permit to operate transportation utilities pertains to considerations affecting the operation of the PUV as such, e.g., safety of the passengers, routes or zones of operation, maintenance of the vehicle, of reasonable fares, rates, and other charges, or, in certain cases, nationality.[25] Thus, a government issuance, which purports to regulate a franchise or permit to operate PUVs, must pertain to the considerations affecting its operation as such. Otherwise, it becomes a regulation or supervision not on the franchise or permit to operate, but on the very ownership of the vehicle used for public transport.

The expression of ideas or opinion of an owner of a PUV, through the posting of election campaign materials on the vehicle, does not affect considerations pertinent to the operation of the PUV. Surely, posting a decal expressing support for a certain candidate in an election will not in any manner affect the operation of the PUV as such. Regulating the expression of ideas or opinion in a PUV, through the posting of an election campaign material thereon, is not a regulation of the franchise or permit to operate, but a regulation on the very ownership of the vehicle.

The dichotomy between the regulation of the franchise or permit to operate of a PUV and that of the very

ownership thereof is better exemplified in the case of commercial advertisements posted on the vehicle. A prohibition on the posting of commercial advertisements on a PUV is considered a regulation on the ownership of the vehicle per se; the restriction on the enjoyment of the ownership of the vehicle does not have any relation to its operation as a PUV.

On the other hand, prohibitions on the posting of commercial advertisements on windows of buses, because it hinders police authorities from seeing whether the passengers inside are safe, is a regulation on the franchise or permit to operate. It has a direct relation to the operation of the vehicle as a PUV, i.e., the safety of the passengers.

In the same manner, the COMELEC does not have the constitutional power to regulate public transport terminals owned by private persons. The ownership of transport terminals, even if made available for use by the public commuters, likewise remains private. Although owners of public transport terminals may be required by local governments to obtain permits in order to operate, the permit only pertains to circumstances affecting the operation of the transport terminal as such. The regulation of such permit to operate should similarly be limited to circumstances affecting the operation of the transport terminal. A regulation of public transport terminals based on extraneous circumstances, such as prohibiting the posting of election campaign materials thereon, amounts to regulating the ownership of the transport terminal and not merely the permit to operate the same.

Accordingly, Section 7(g) items (5) and (6) of Resolution No. 9615 are not within the constitutionally delegated power of the COMELEC to supervise or regulate the franchise or permit to operate of transportation utilities. The posting of election campaign material on vehicles used for public transport or on transport terminals is not only a form of political expression, but also an act of ownership - it has nothing to do with the franchise or permit to operate the PUV or transport terminal.

The rulings in National Press Club
and Osmena v. COMELEC[26[]] find

no application to this case.

The COMELEC pointed out that the issue presented in the instant case is akin to the Court's rulings in National Press Club and Osmeña. It explained that in both cases, the Court sustained Section II(b) of R.A. No. 6646 or the Electoral Reforms Law of 1997, which prohibits newspapers, radio broadcasting or TV stations, and other mass media from selling or giving print space or airtime for campaign or other political purposes, except to the COMELEC, during the election campaign. The COMELEC averred that if the legislature can empower it to impose an advertising ban on mass media, it could likewise empower it to impose a similar ban on PUVs and transport terminals.

The Court does not agree.

The restriction imposed under Section ll(b) of R.A. No. 6646 has a direct relation to the enjoyment and utilization of the franchise or permit to operate of newspapers, radio broadcasting and TV stations, and other mass media, which the COMELEC has the power to regulate pursuant to Section 4, Article IX-C of the Constitution. The print space or airtime is an integral part of the franchise or permit to operate of mass media utilities. Thus, the restriction under Section ll(b) of R.A. No. 6646 is within the confines of the constitutionally delegated power of the COMELEC under Section 4, Article IX-C of the Constitution.

On the other hand, the prohibition on the posting of election campaign materials under Section 7(g) items (5) and (6) of Resolution No. 9615, as already explained, does not have any relation to the franchise or permit of PUVs and transport terminals to operate as such and, hence, is beyond the power of the COMELEC under Section 4, Article IX-C of the Constitution.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

The restriction on free speech of owners of PUVs and transport terminals is not necessary to

further the stated governmental interest.

Section 7(g) items (5) and (6) of Resolution No. 9615 likewise failed to satisfy the fourth requisite of a valid content-neutral regulation, i.e., the incidental restriction on freedom of expression is no greater than is essential to the furtherance of that interest. There is absolutely no necessity to restrict the right of the owners of PUVs and transport terminals to free speech to further the governmental interest. While ensuring equality of time, space, and opportunity to candidates is an important and substantial governmental interest and is essential to the conduct of an orderly election, this lofty aim may be achieved sans any intrusion on the fundamental right of expression.

First, while Resolution No. 9615 was promulgated by the COMELEC to implement the provisions of R.A. No. 9006, the prohibition on posting of election campaign materials on PUVs and transport terminals was not provided for therein.

Second, there are more than sufficient provisions in our present election laws that would ensure equal time, space, and opportunity to candidates in elections. Section 6 of R.A. No. 9006 mandates that "all registered parties and bona fide candidates shall have equal access to media time and space" and outlines the guidelines to be observed in the implementation thereof, viz:

> Section 6. Equal Access to Media Time and Space. - All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:
>
> 6.1 Print advertisements shall not exceed one-fourth (1/4) page in broadsheet and one-half (1/2) page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period.
>
> 6.2 a. Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than one hundred twenty (120) minutes of television advertisement and one hundred eighty (180) minutes of radio advertisement whether by purchase or donation.
>
> b. Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (90) minutes of radio advertisement whether by purchase or donation.
>
> For this purpose, the COMELEC shall require any broadcast station or entity to submit to the COMELEC a copy of its broadcast logs and certificates of performance for the review and verification of the frequency, date, time and duration of advertisements broadcast for any candidate or political party.
>
> 6.3 All mass media entities shall furnish the COMELEC with a copy of all contracts for advertising, promoting or opposing any political party or the candidacy of any person for public office within five (5) days after its signing. In every case, it shall be signed by the donor, the candidate concerned or by the duly authorized representative of the political party.
>
> 6.4 No franchise or permit to operate a radio or television station shall be granted or issued, suspended or cancelled during the election period. In all instances, the COMELEC shall supervise the use and employment of press, radio and television facilities insofar as the placement of political advertisements is concerned to ensure that candidates are given equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in the Omnibus Election Code and Republic Act No. 7166 on election spending.

> The COMELEC shall ensure that radio or television or cable television broadcasting entities shall not allow the scheduling of any program or permit any sponsor to manifestly favor or oppose any candidate or political party by unduly or repeatedly referring to or including said candidate and/or political party in such program respecting, however, in all instances the right of said broadcast entities to air accounts of significant news or news worthy events and views on matters of public interest.
>
> 6.5 All members of media, television, radio or print, shall scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis. They shall recognize the duty to air the other side and the duty to correct substantive errors promptly.
>
> 6.6 Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall be deemed resigned, if so required by their employer, or shall take a leave of absence from his/her work as such during the campaign period: Provided, That any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party.
>
> 6.7 No movie, cinematograph or documentary portraying the life or biography of a candidate shall be publicly exhibited in a theater, television station or any public forum during the campaign period.
>
> 6.8 No movie, cinematograph or documentary portrayed by an actor or media personality who is himself a candidate shall likewise be publicly exhibited in a theater or any public forum during the campaign period.

Section 9 of R.A. No. 9006 authorizes political parties and party-list groups and independent candidates to erect common poster areas and candidates to post lawful election campaign materials in private places, with the consent of the owner thereof, and in public places or property, which are allocated equitably and impartially.

Further, Section 13[27] of R.A. No. 7166[28] provides for the authorized expenses of registered political parties and candidates for every voter; it affords candidates equal opportunity in their election campaign by regulating the amount that should be spent for each voter. Likewise, Section 14[29] of R.A. No. 7166 requires all candidates and treasurers of registered political parties to submit a statement of all contributions and expenditures in connection with the election. Section 14 is a post-audit measure that aims to ensure that the candidates did not overspend in their election campaign, thereby enforcing the grant of equal opportunity to candidates under Section 13.

A strict implementation of the foregoing provisions of law would suffice to achieve the governmental interest of ensuring equal time, space, and opportunity for candidates in elections. There is thus no necessity of still curtailing the right to free speech of the owners of PUVs and transport terminals by prohibiting them from posting election campaign materials on their properties.

Section 7(g) items (5) and (6) of Resolution

No. 9615 are not justified under the

captive-audience doctrine.

The COMELEC further points out that PUVs and transport terminals hold a "captive audience" - commuters who have no choice but be subjected to the blare of political propaganda. The COMELEC further claims that while owners of privately owned PUVs and transport terminals have a right to express their views to those who wish to listen, they have no right to force their message upon an audience incapable of declining to receive it.

The COMELEC's claim is untenable.

The captive-audience doctrine states that when a listener cannot, as a practical matter, escape from intrusive

speech, the speech can be restricted.[30] The "captive-audience" doctrine recognizes that a listener has a right not to be exposed to an unwanted message in circumstances in which the communication cannot be avoided.[31]

A regulation based on the captive-audience doctrine is in the guise of censorship, which undertakes selectively to shield the public from some kinds of speech on the ground that they are more offensive than others. Such selective restrictions have been upheld only when the speaker intrudes on the privacy of the home or the degree of captivity makes it either impossible or impractical for the unwilling viewer or auditor to avoid exposure.[32]

In Consolidated Edison Co. v. Public Service Commission,[33] the Supreme Court of the United States of America (U.S. Supreme Court) struck down the order of New York Public Service Commission, which prohibits public utility companies from including inserts in monthly bills discussing controversial issues of public policy. The U.S. Supreme Court held that "[t]he prohibition cannot be justified as being necessary to avoid forcing appellant's views on a captive audience, since customers may escape exposure to objectionable material simply by throwing the bill insert into a wastebasket."[34]

Similarly, in Erznoznik v. City of Jacksonville,[35] the U.S. Supreme Court nullified a city ordinance, which made it a public nuisance and a punishable offense for a drive-in movie theater to exhibit films containing nudity, when the screen is visible from a public street or place. The U.S. Supreme Court opined that the degree of captivity is not so great as to make it impracticable for an unwilling viewer to avoid exposure, thus:

> The Jacksonville ordinance discriminates among movies solely on the basis of content. Its effect is to deter drive-in theaters from showing movies containing any nudity, however innocent or even educational. This discrimination cannot be justified as a means of preventing significant intrusions on privacy. The ordinance seeks only to keep these films from being seen from public streets and places where the offended viewer readily can avert his eyes. In short, the screen of a drive-in theater is not "so obtrusive as to make it impossible for an unwilling individual to avoid exposure to it." x x x Thus, we conclude that the limited privacy interest of persons on the public streets cannot justify this censorship of otherwise protected speech on the basis of its content.[36] (Emphasis ours)

Thus, a government regulation based on the captive-audience doctrine may not be justified if the supposed "captive audience" may avoid exposure to the otherwise intrusive speech. The prohibition under Section 7(g) items (5) and (6) of Resolution No. 9615 is not justified under the captive-audience doctrine; the commuters are not forced or compelled to read the election campaign materials posted on PUVs and transport terminals. Nor are they incapable of declining to receive the messages contained in the posted election campaign materials since they may simply avert their eyes if they find the same unbearably intrusive.

The COMELEC, in insisting that it has the right to restrict the posting of election campaign materials on PUVs and transport terminals, cites Lehman v. City of Shaker Heights,[37] a case decided by the U.S. Supreme Court. In Lehman, a policy of the city government, which prohibits political advertisements on government-run buses, was upheld by the U.S. Supreme Court. The U.S. Supreme Court held that the advertising space on the buses was not a public forum, pointing out that advertisement space on government-run buses, "although incidental to the provision of public transportation, is a part of commercial venture."[38] In the same way that other commercial ventures need not accept every proffer of advertising from the general public, the city's transit system has the discretion on the type of advertising that may be displayed on its vehicles.

Concurring in the judgment, Justice Douglas opined that while Lehman, a candidate for state office who sought to avail himself of advertising space on government-run buses, "clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it."[39] Justice Douglas concluded: "the right of the commuters to be free from forced intrusions on their privacy precludes the city from transforming its vehicles of public transportation into forums for the dissemination of

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ideas upon this captive audience."[40]

The COMELEC's reliance on Lehman is utterly misplaced.

In Lehman, the political advertisement was intended for PUVs owned by the city government; the city government, as owner of the buses, had the right to decide which type of advertisements would be placed on its buses. The U.S. Supreme Court gave primacy to the city government's exercise of its managerial decision, viz:

> Revenue earned from long-term commercial advertising could be jeopardized by a requirement that short-term candidacy or issue-oriented advertisements be displayed on car cards. Users would be subjected to the blare of political propaganda. There could be lurking doubts about favoritism, and sticky administrative problems might arise in parceling out limited space to eager politicians. In these circumstances, the managerial decision to limit car card space to innocuous and less controversial commercial and service-oriented advertising does not rise to the dignity of First Amendment violation. Were we to hold to the contrary, display cases in public hospitals, libraries, office buildings, military compounds, and other public facilities immediately would become Hyde Parks open to every would be pamphleteer and politician. This the Constitution does not require.[41] (Emphasis ours)

Lehman actually upholds the freedom of the owner of the utility vehicles, i.e., the city government, in choosing the types of advertisements that would be placed on its properties. In stark contrast, Section 7(g) items (5) and (6) of Resolution No. 9615 curtail the choice of the owners of PUVs and transport terminals on the advertisements that may be posted on their properties.

Also, the city government in Lehman had the right, nay the duty, to refuse political advertisements on their buses. Considering that what were involved were facilities owned by the city government, impartiality, or the appearance thereof, was a necessity. In the instant case, the ownership of PUVs and transport terminals remains private; there exists no valid reason to suppress their political views by proscribing the posting of election campaign materials on their properties.

Prohibiting owners of PUVs and

transport terminals from posting

election campaign materials violates

the equal protection clause.

Section 7(g) items (5) and (6) of Resolution No. 9615 do not only run afoul of the free speech clause, but also of the equal protection clause. One of the basic principles on which this government was founded is that of the equality of right, which is embodied in Section 1, Article III of the 1987 Constitution.[42] "Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others."[43]

"The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken."[44]

Nevertheless, the guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws to all citizens of the state. Equality of operation of statutes does not mean their indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things, which are different in fact, be treated in law as

though they were the same. The equal protection clause does not forbid discrimination as to things that are different.[45]

In order that there can be valid classification so that a discriminatory governmental act may pass the constitutional norm of equal protection, it is necessary that the four requisites of valid classification be complied with, namely: (1) it must be based upon substantial distinctions; (2) it must be germane to the purposes of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the class.[46]

It is conceded that the classification under Section 7(g) items (5) and (6) of Resolution No. 9615 is not limited to existing conditions and applies equally to the members of the purported class. However, the classification remains constitutionally impermissible since it is not based on substantial distinction and is not germane to the purpose of the law.

A distinction exists between PUVs and transport terminals and private vehicles and other properties in that the former, to be considered as such, needs to secure from the government either a franchise or a permit to operate. Nevertheless, as pointed out earlier, the prohibition imposed under Section 7(g) items (5) and (6) of Resolution No. 9615 regulates the ownership per se of the PUV and transport terminals; the prohibition does not in any manner affect the franchise or permit to operate of the PUV and transport terminals.

As regards ownership, there is no substantial distinction between owners of PUVs and transport terminals and owners of private vehicles and other properties. As already explained, the ownership of PUVs and transport terminals, though made available for use by the public, remains private. If owners of private vehicles and other properties are allowed to express their political ideas and opinion by posting election campaign materials on their properties, there is no cogent reason to deny the same preferred right to owners of PUVs and transport terminals. In terms of ownership, the distinction between owners of PUVs and transport terminals and owners of private vehicles and properties is merely superficial. Superficial differences do not make for a valid classification.[47]

The fact that PUVs and transport terminals are made available for use by the public is likewise not substantial justification to set them apart from private vehicles and other properties. Admittedly, any election campaign material that would be posted on PUVs and transport terminals would be seen by many people. However, election campaign materials posted on private vehicles and other places frequented by the public, e.g., commercial establishments, would also be seen by many people. Thus, there is no reason to single out owners of PUVs and transport terminals in the prohibition against posting of election campaign materials.

Further, classifying owners of PUVs and transport terminals apart from owners of private vehicles and other properties bears no relation to the stated purpose of Section 7(g) items (5) and (6) of Resolution No. 9615, i.e., to provide equal time, space and opportunity to candidates in elections. To stress, PUVs and transport terminals are private properties. Indeed, the nexus between the restriction on the freedom of expression of owners of PUVs and transport terminals and the government's interest in ensuring equal time, space, and opportunity for candidates in elections was not established by the COMELEC.

In sum, Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 violate the free speech clause; they are content-neutral regulations, which are not within the constitutional power of the COMELEC issue and are not necessary to further the objective of ensuring equal time, space and opportunity to the candidates. They are not only repugnant to the free speech clause, but are also violative of the equal protection clause, as there is
no substantial distinction between owners of PUVs and transport terminals and owners of private vehicles and other properties.

On a final note, it bears stressing that the freedom to advertise one's political candidacy is clearly a significant part of our freedom of expression. A restriction on this freedom without rhyme or reason is a violation of the most valuable feature of the democratic way of life.[48]

WHEREFORE, in light of the foregoing disquisitions, the instant petition is hereby GRANTED. Section 7(g) items (5) and (6), in relation to Section 7(f), of Resolution No. 9615 issued by the Commission on Elections are hereby declared NULL and VOID for being repugnant to Sections 1 and 4, Article III of the 1987 Constitution.

SO ORDERED.

Sereno, C.J., Carpio, Brion, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Perlas-Bernabe, and Leonen, JJ., concur.

Velasco, Jr., and Jardeleza, JJ., no part.

Leonardo-De Castro, and Villarama, Jr., JJ., on leave.

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___April 14, 2015___ a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 07, 2015 at 10:15 a.m.

Very truly yours,
(SGD)
ENRIQUETA ESGUERRA-VIDAL
Clerk of Court

---

[1] Rollo, pp. 3-31.

[2] Id. at 31-59.

[3] Id. at 37-39.

[4] Id. at 95-99.

[5] Id. at 103-105.

[6] Id. at 104-105.

[7] Id. at 11-12.

[8] Social Justice Society (SJS) v. Dangerous Drugs Board, et al, 591 Phil. 393, 405 (2008).

[9] Reyes, etc. v. Bagatsing, etc., 210 Phil. 457, 465-466 (1983).

[10] Chavez v. Gonzalez, et al., 569 Phil. 155, 203 (2008).

[11] See Bantam Books v. Sullivan, 372 US 58 (1963).

[12] J. Puno, Concurring Opinion, Social Weather Stations, Inc. v. COMELEC, G.R. No. 147571, May 5, 2001,

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

357 SCRA 496, 512.

[13] Mutuc v. COMELEC, 146 Phil. 798, 805-806 (1970).

[14] G.R. No. 103956, March 31, 1992,207 SCRA 712.

[15] Id. at 719.

[16] Chavez v. Gonzalez, et al., supra note 10, at 204.

[17] Social Weather Stations, Inc. v. COMELEC, supra note 12, at 504, citing United States v. O'Brien 391 U.S. 367, 377.

[18] G.R. No. 102653, March 5, 1992, 207 SCRA 1.

[19] G.R. No. 147571, May 5, 2001, 357 SCRA 496.

[20] Id. at 505.

[21] 313 Phil. 296(1995).

[22] Id. at 321-323.

[23] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. II, 1992 ed., p. 45.

[24] Civil Code of the Philippines, Article 428.

[25] 1987 Constitution, Article XII, Section 11.

[26] 351 Phil. 692(1998).

[27] Section 13. Authorized Expenses of Candidates and Political Parties. - The agreement amount that a candidate or registered political party may spend for election campaign shall be as follows:

For candidates. - Ten pesos (P 10.00) for President and Vice-President; and for other candidates Three Pesos (P3.00) for every voter currently registered in the constituency where he filed his certificate of candidacy: Provided, That a candidate without any political party and without support from any political party may be allowed to spend Five Pesos (P5.00) for every such voter; and

For political parties. - Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

Any provision of law to the contrary notwithstanding any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to the payment of any gift tax.

[28] AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES.

[29] Section 14. Statement of Contributions and Expenditures; Effect of Failure to File Statement. -Every candidate and treasurer of the political party shall, within thirty (30) days after the day of the election, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.

No person elected to any public offices shall enter upon the duties of his office until he has filed the statement of

contributions and expenditures herein required.

The same prohibition shall apply if the political party which nominated the winning candidate fails to file the statement required herein within the period prescribed by this Act.

Except candidates for elective barangay office, failure to file the statements or reports in connection with electoral contributions and expenditures are required herein shall constitute an administrative offense for which the offenders shall be liable to pay an administrative fine ranging from One thousand pesos (PI,000.00) to Thirty thousand pesos (P30,000.00), in the discretion of the Commission.

The fine shall be paid within thirty (30) days from receipt of notice of such failure; otherwise, it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender.

It shall be the duty of every city or municipal election registrar to advise in writing, by personal delivery or registered mail, within five (5) days from the date of election all candidates residing in his jurisdiction to comply with their obligation to file their statements of contributions and expenditures.

For the commission of a second or subsequent offense under this section, the administrative fine shall be from Two thousand pesos (P2,000.00) to Sixty thousand pesos (P60,000.00), in the discretion of the Commission. In addition, the offender shall be subject to perpetual disqualification to hold public office.

[30] Black's Law Dictionary, 8[th] Edition, p. 224.

[31] See Pro-Choice Network v. Project Rescue, 799 F. Supp. 1417 (W.D.N.Y. 1992).

[32] See Erznoznik v. City of Jacksonville, 422 U.S. 205, 209 (1975).

[33] 447 U.S. 530(1980).

[34] Id. at 530-531.

[35] 422 U.S. 205 (1975).

[36] Id. at 212.

[37] 418 U.S. 298(1974).

[38] Id. at 303.

[39] Id. at 307.

[40] Id.

[41] Id. at 304.

[42] Philippine Judges Association v. Prado, G.R. No. 105371, November 11, 1993, 227 SCRA 703 711.

[43] City of Manila v. Hon. Laguio, Jr., 495 Phil. 289, 326 (2005).

[44] Biraogo v. The Philippine Truth Commission of 2010, 651 Phil. 374, 459 (2010).

[45] See Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[46] Quinto, et al. v. COMELEC, 621 Phil. 236, 273 (2009).

[47] Cruz, Constitutional Law, 2003 ed., p. 128.

[48] J. Paras, Dissenting Opinion, National Press Club v. COMELEC, supra note 18, at 43.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.