

**ST. ANTHONY COLLEGE OF ROXAS CITY, INC., REPRESENTED BY
SISTER GERALDINE J. DENOGA, D.C., DR. PILITA DE JESUS
LICERALDE, AND DR. ANTON MARI HAO LIM, PETITIONERS, VS.
COMMISSION ...**

G.R. No. 258805. October 10, 2023

Ponente: MARQUEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-258805/>

MARQUEZ, J.:

It is settled that the Commission on Elections (COMELEC) has broad authority to regulate the election paraphernalia of political candidates. The extent of its authority over election paraphernalia owned and displayed by private persons, however, is less well-defined. The instant controversy presents the Court with an opportunity to determine with certainty the metes and bounds of the COMELEC's power to regulate private speech relating to elections and designed to influence the electorate's choice of political candidates.

Before the Court is a Petition for Certiorari, Prohibition, and Mandamus^[1] filed by petitioners St. Anthony College of Roxas City, Inc. (St. Anthony College), represented by Sr. Geraldine J. Denoga, D.C., Dr. Pilita De Jesus Liceralde, and Dr. Anton Mari Hao Lim (Dr. Lim; collectively, St. Anthony College et al.) against the COMELEC, represented by Acting Chairperson Commissioner Socorro B. Inting, and Director James Arthur B. Jimenez, in his capacity as Spokesperson of the COMELEC and Director IV of the COMELEC Department for Education and Information (EID).^[2]

St. Anthony College et al. are owners or co-owners of tarpaulins, posters, murals, and other materials expressing support and soliciting votes for former Vice President Maria Leonor Gerona Robredo (Robredo), who was a presidential candidate in the May 9, 2022 national and local elections.^[3] They allege that these privately-owned materials were displayed in their respective private properties but were "forcefully dismantled, removed, destroyed, defaced, and/or confiscated" by the COMELEC's regional or field election officers pursuant to the COMELEC's "Oplan Baklas."^[4]

According to St. Anthony College et al., the COMELEC's "Oplan Baklas" involves the removal and confiscation of "oversized" tarpaulins, posters, and campaign materials, including those owned by private individuals and posted or installed within their premises, residences, or establishments, pursuant to COMELEC Resolution No. 10730.^[5]

The pertinent provisions of COMELEC Resolution No. 10730 on the size limits of campaign materials and the COMELEC's authority to remove non-compliant materials provide:

SECTION 6. Lawful Election Propaganda. – Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorize expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.

Lawful election propaganda shall include:

....

c. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

....

Parties and candidates are hereby encouraged to use recyclable and environment-friendly materials and avoid those that contain hazardous chemicals and substances in the production of their campaign and election propaganda.

In local government units where local legislation governing the use of plastic and other similar materials exist, parties and candidates shall comply with the same.

Candidates and parties are required to incorporate sign language interpreters and closed captioning in broadcast election propaganda intended for exhibition on television and/or the internet, and are encouraged to ensure the availability of their respective printed campaign materials in Braille.

....

SECTION 20. Posting of Campaign Materials. – Parties and candidates may post lawful campaign material in:

a. Authorized common poster areas in public places, subject to the requirements and/or limitations set forth in the next following section; and

b. Private property, provided that the posting has the consent of the owner thereof and that the applicable provisions of Section 6 herein are complied with. The posting of campaign materials in public places outside of the designated common poster areas, on private property without the consent of the owner, or in violation of Section 6 hereof, and in those places enumerated under Section 7 (f) of these Rules and the like, is prohibited. Persons posting the same shall be liable together with the candidates and other persons who caused the posting. It will be presumed that the candidates and parties caused the posting of campaign materials outside the common poster areas if they do not remove the same within three (3) days from notice issued by the Election Officer of the city or municipality where the election propaganda is posted or displayed. (Annex "D" of COMELEC Resolution 9616, series of 2013)

Members of the PNP and other law enforcement agencies called upon by the Election Officer or other COMELEC officials may file the appropriate charges against the violators of this Section.

SECTION 21. Common Poster Areas. – Parties and independent candidates may, upon authority of the COMELEC, through the City or Municipal Election Officer concerned, construct common poster areas, at their expense, wherein they can post, display, or exhibit their election propaganda to announce or further their candidacy subject to the following requirements and/or limitations:

....

o. No lawful election propaganda materials shall be allowed outside the common poster areas except on private property with the consent of the owner or in such other places mentioned in these Rules and must comply with the allowable size (2ft x 3ft) requirements for posters. Any violation hereof shall be punishable as an election offense;

....

SECTION 24. Headquarters Signboard. – Before the start of the campaign period, only one (1) signboard, not exceeding three (3) feet by eight (8) feet in size, identifying the place as the headquarters of the party of candidates is allowed to be displayed. Parties may put up the signboard announcing their headquarters not earlier than five (5) days before the start of the campaign period. Individual candidates may put up the signboard announcing their headquarters not earlier than the start of the campaign period. Only lawful election propaganda material may be displayed or posted therein and only during the campaign period.

....

SECTION 26. Removal, Confiscation, or Destruction of Prohibited Propaganda Materials. – Any prohibited form of election propaganda shall be stopped, confiscated, removed, destroyed, or torn down by COMELEC representatives, at the expense of the candidate or political party for whose apparent benefit the prohibited election propaganda materials have been produced, displayed, and disseminated.

Any person, party, association, government agency may likewise report to the COMELEC any prohibited form of election propaganda for confiscation, removal, destruction and/or prevention of the distribution of any propaganda material on the ground that the same is illegal, as listed under Section 7 of this Resolution.

The COMELEC may, *motu proprio*, immediately order the removal, destruction and/or confiscation of any prohibited propaganda material, or those materials which contain statements or representations that are illegal. (Emphases and underscoring supplied)

On February 9, 2022, Dr. Lim discovered that COMELEC personnel removed his "oversized" Robredo tarpaulins posted on his private property in Zamboanga City.[6] According to Dr. Lim, the COMELEC also removed "oversized" Robredo tarpaulins owned by other supporters of Robredo and installed within their private residences and/or establishments in Zamboanga City.[7] Two days later, Dr. Lim and other affected supporters sent a demand letter to Atty. Stephen Roy M. Cañete (Atty. Cañete), Election Officer IV of the COMELEC Zamboanga City.[8] In their letter, Dr. Lim and his companions demanded that the COMELEC cease and desist from illegally removing volunteer-funded materials posted in private properties and volunteer centers.[9] As of the date of the Petition, they had yet to receive a response from the COMELEC Zamboanga City or Atty. Cañete.[10]

In a letter dated February 14, 2022, the COMELEC informed St. Anthony College that the "oversized" Robredo tarpaulins placed in front of its building violated COMELEC Resolution No. 10730, and thus directed the school to remove the tarpaulins within 24 hours.[11] Failure to comply would be deemed an election offense.[12] However, St. Anthony College later learned that one of its tarpaulins had already been taken down by the COMELEC on the same day.[13]

Like Dr. Lim, St. Anthony College wrote to the COMELEC maintaining that the latter's order to remove St. Anthony College's election materials from its private property is unconstitutional and declaring its intention to retain the tarpaulins within its private property and to refuse entry to any person seeking to remove or destroy these materials.[14] St. Anthony College also demanded that the COMELEC return all the seized tarpaulins, posters, and other campaign materials.[15]

On February 16, 2022, personnel of the Philippine National Police (PNP), the Bureau of Fire and Protection, and the COMELEC allegedly removed "oversized" Robredo tarpaulins and posters posted inside and outside the "Leni-Kiko" volunteer center in Santiago, Isabela. This volunteer center is owned by the family of Dr. Licalalde.[16] When confronted, the PNP personnel claimed that they were merely complying with the COMELEC's request.[17]

On March 1, 2022, St. Anthony et al. filed the instant Petition, with prayer for temporary restraining order and

motion for the conduct of special raffle. In support of their prayer for a temporary restraining order, they claim paramount necessity to prevent further irreparable and grave damage from the COMELEC's actions.[18]

On March 8, 2022, the Court issued a temporary restraining order.[19]

St. Anthony College et al. invoke the Court's expanded judicial power and argue that a petition for certiorari and prohibition is an appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify the acts of the legislative and executive departments.[20] They claim that they have been "directly, materially, and personally injured" by the COMELEC's unconstitutional interpretation and implementation of Sections 21(o), 24, and 26, COMELEC Resolution No. 10730, and thus have standing to file the instant Petition.[21] The injury they suffered "is not just in the form of expenses in the production of the materials[;] worse their cherished political right to speech and expression have been utterly trampled upon and disregarded. Further, their right to property has also been disregarded by the trespass of the COMELEC representatives and other government officials acting under its authority and stead." [22] They also claim standing based on their public rights as citizens.[23]

As to the requirement of ripeness, St. Anthony College et al. insist that the controversy is sufficiently ripe for adjudication. COMELEC's "erroneous interpretation and implementation of Sections 21(0), 24 and 26 of COMELEC Resolution No. 10730 have both been accomplished and are being threatened to be accomplished, to the detriment of Petitioners, those who may be similarly situated, and the rest of the nation." [24] This "constitutes a justiciable controversy . . . as it involves 'a definite and concrete dispute touching on the legal relations of parties having adverse legal interests.'" [25] "Oplan Baklas" is still being implemented and the COMELEC's acts are capable of repetition, calling for judicial action.[26]

While St. Anthony College et al. acknowledge the hierarchy of courts, the transcendental importance of the constitutional issues raised and the preferred protection given to political speech justify their direct recourse to the Court.[27] They also cite the Court's power to suspend procedural rules in the interest of substantial justice and ask the Court to set aside procedural barriers, if any, in view of the paramount public interest involved in the case.[28]

On the merits, St. Anthony College et al. argue that COMELEC's erroneous interpretation and implementation of Sections 21(o), 24, and 26, COMELEC Resolution No. 10730, constitute grave abuse of discretion amounting to lack or excess of jurisdiction.[29] The COMELEC has no legal basis to regulate the expressions made by St. Anthony College et al. within their private property as its power to regulate the posting of election propaganda under Sections 3 and 6, Republic Act No. 9006,[30] applies only to political parties, party-list groups; and bona fide candidates.[31]

The COMELEC also violated St. Anthony College et al.'s constitutional rights to freedom of speech and expression. Its supervisory power does not extend to individuals expressing their preferred candidates in an election by placing election campaign materials on their own property,[32] and its content-based regulation does not pass the clear and present danger test because the posting of tarpaulins does not endanger any compelling and substantial state interest.[33]

In addition to St. Anthony College et al.'s right of freedom of speech and expression, the COMELEC violated their right not to be deprived of property without due process of law.[34] A regulation on the use of property can only, be valid if it equalizes opportunity, time, and space for all candidates, and puts a stop to excessive campaign spending.[35] These two requisites were not met, as the disputed election materials were produced by volunteer-driven initiatives using their own funds and properties.[36]

For its part, the COMELEC seeks the dismissal of the Petition, arguing that a petition for certiorari, prohibition,

and mandamus is not proper as the assailed actions are not judicial, quasi-judicial, or mandatory acts; rather, they were done in the exercise of the COMELEC's quasi-legislative functions.[37] Even assuming that this is the correct remedy, however, St. Anthony et al. failed to prove grave abuse of discretion on the part of the COMELEC[38] and violated the doctrine of hierarchy of courts, having failed to allege any special and compelling reasons of public interest that would justify their direct recourse to the Court.[39] In addition, St. Anthony et al. did not exhaust administrative remedies. While they filed letter-replies before their respective election officers, they filed the present Petition with the Court without waiting for a response or otherwise pursuing administrative relief before the COMELEC itself.[40]

Responding to the substantive arguments raised by St. Anthony College et al., the COMELEC argues that the election materials owned and displayed by St. Anthony College et al., are "political advertisements" or "election propaganda" as defined under Section 1(16), COMELEC Resolution No. 10730, and are thus subject to regulation by the COMELEC.[41]

The size limitation on posters is also permissible under Section 2(7), Article IX-C, Constitution,[42] which specifically allows the COMELEC to regulate the time, manner, and place of election propaganda.[43] One such regulation is found in Section 3, Republic Act No. 9006, which provides the 2 by 3 feet size limit for posters.[44] Assuming that Section 3, Republic Act No. 9006, is limited to candidates and political parties, the size limitation in Section 82, Batas Pambansa Blg. 881 (Omnibus Election Code)[45] does not distinguish between candidates and private individuals and is thus applicable to St. Anthony College et al. and other private persons.[46] This size restriction "furthers the important and substantial governmental interest of ensuring equal opportunity for public information campaigns among candidates, orderly elections, and minimizing election spending," and does not restrict freedom of expression.[47] It is a content-neutral regulation within the constitutional power of the Government, and is sufficiently justified by a compelling state interest.[48]

We grant the Petition.

In *Diocese of Bacolod v. Commission on Elections*,[49] therein petitioners displayed a privately-owned tarpaulin, 6 by 10 feet in size, on private property.[50] The tarpaulin listed several candidates for election in the May 2013 elections as either "Team Buhay" or "Team Patay".[51]

The COMELEC Law Department deemed the tarpaulin "oversized," i.e., larger than the size limit of 2 by 3 feet under COMELEC Resolution No. 9615,[52] and ordered the petitioners to remove it;[53] otherwise, petitioners would be charged with an election offense.[54] Petitioners filed a petition for certiorari and prohibition with application for preliminary injunction and temporary restraining order with the Court.[55]

The COMELEC raised procedural objections similar to its arguments in this case, claiming that certiorari is an improper remedy and that petitioners violated the doctrine of hierarchy of courts and exhaustion of administrative remedies.

The Court in that case disposed of the objections relating to its jurisdiction vis-à-vis the COMELEC's jurisdiction in election cases as follows:

COMELEC's notice and letter affect preferred speech. Respondents' acts are capable of repetition. Under the conditions in which it was issued and in view of the novelty of this case, it could result in a "chilling effect" that would affect other citizens who want their voices heard on issues during the elections. Other citizens who wish to express their views regarding the election and other related issues may choose not to, for fear of reprisal or sanction by the COMELEC.

Direct resort to this court is allowed to avoid such proscribed conditions. Rule 65 is also the procedural platform for raising grave abuse of discretion.

....

The more relevant provision for jurisdiction in this case is Article VIII, Section 5(1) of the Constitution. This provision provides for this court's original jurisdiction over petitions for certiorari and prohibition. This should be read alongside the expanded jurisdiction of the court in Article VIII, Section 1 of the Constitution.

Certainly, a breach of the fundamental right of expression by COMELEC is grave abuse of discretion. Thus, the constitutionality of the notice and letter coming from COMELEC is within this court's power to review.

During elections, we have the power and the duty to correct any grave abuse of discretion or any act tainted with unconstitutionality on the part of any government branch or instrumentality. This includes actions by the COMELEC. Furthermore, it is this court's constitutional mandate to protect the people against government's infringement of their fundamental rights. This constitutional mandate outweighs the jurisdiction vested with the COMELEC.[56] (Citations omitted; emphases and underscoring supplied)

The Court also dismissed the COMELEC's arguments on petitioners' alleged violation of the doctrine of hierarchy of courts, holding that "the Court has 'full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for certiorari . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition'"[57] and that the petition fell within several exceptions to the doctrine.[58] As to petitioners' alleged failure to exhaust administrative remedies by pursuing available remedies before the COMELEC, the Court held that "[t]he principle of exhaustion of administrative remedies yields in order to protect this fundamental right [to political speech]."[59]

While the Court's decision to allow due course to the petition in *Diocese of Bacolod* was a *pro hac vice* ruling,[60] the same factors considered by the Court in that case are present here. The COMELEC's actions have created a chilling effect, and *St. Anthony College et al.* have been threatened with prosecution for the exercise of their right to political speech.

In addition, direct recourse to the Court is justified under the Court's ruling in *Gios-Samar, Inc. v. Department of Transportation and Communication*.^[61] In that case, the Court clarified that the decisive factor in permitting the invocation of the Court's original jurisdiction in the issuance of extraordinary writs is the nature of the question raised by the parties, and that the Court will only allow direct recourse when the issue raised is a pure question of law.^[62] Thus, "when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case."^[63]

The factual background of the present controversy is not disputed, and the only issue before the Court is a pure question of law, i.e., the extent of the COMELEC's authority to regulate privately-owned election paraphernalia. Accordingly, the case is ripe for adjudication and, as in *Diocese of Bacolod*, it would be "manifest injustice if the Court does not take jurisdiction over this case."^[64]

Diocese of Bacolod also provides guidance on the resolution of the substantive arguments raised by the parties.

In that case, the Court decided in favor of petitioners, with the Court ruling that the COMELEC's regulation of the former's "Team Buhay" and "Team Patay" tarpaulin was unconstitutional. The Court found that their message was primarily an advocacy of a social issue,^[65] as distinguished from election paraphernalia from candidates and political parties, which "are more declarative and descriptive and contain no sophisticated literary allusion to any social objective . . . [and] usually simply exhort the public to vote for a person with a brief description of the attributes of the candidate."^[66] Accordingly, the Court held that "[r]egulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is

unconstitutional." [67]

While the Court found that the "Team Buhay" and "Team Patay" tarpaulin was not election paraphernalia and that the COMELEC's regulation of such material was therefore unconstitutional, the Court also clarified that there may be valid regulation of private speech that amounts to election paraphernalia. To determine whether such a regulation is valid, the Court provided the following test:

This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property. [68] (Citations omitted; emphases and underscoring supplied)

After providing the above test, the Court in *Diocese of Bacolod* held that the subject tarpaulin constituted social advocacy and not election paraphernalia, and that the size restriction under Section 3.3, Republic Act No. 9006, and Section 6(c), COMELEC Resolution No. 9615, would not pass the test of reasonability:

This is not the situation, however, in this case for two reasons. First, as discussed, the principal message in the twin tarpaulins of petitioners consists of a social advocacy.

Second, as pointed out in the concurring opinion of Justice Antonio Carpio, the present law – Section 3.3 of Republic Act No. 9006 and Section 6(c) of COMELEC Resolution No. 9615 – if applied to this case, will not pass the test of reasonability. A fixed size for election posters or tarpaulins without any relation to the distance from the intended average audience will be arbitrary. At certain distances, posters measuring 2 by 3 feet could no longer be read by the general public and, hence, would render speech meaningless. It will amount to the abridgement of speech with political consequences. [69] (Emphasis supplied)

While *Diocese of Bacolod* may not be on all fours with the instant case, considering that it involved social advocacy and not election paraphernalia, the Court has also cited the *Diocese of Bacolod* test in a case involving election surveys, which "partake of the nature of election propaganda." [70] In *Social Weather Stations, Inc. v. Commission on Elections*, [71] the Court cited *Diocese of Bacolod*, and articulated the above test as the "required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate." [72] The Court then applied the *Diocese of Bacolod* test to published election surveys, which have "the tendency to shape voter preferences," and are thus "declarative speech in the context of an electoral campaign properly subject to regulation:"

We thus proceed to evaluate Resolution No. 9674's requirement of disclosing the names of subscribers to election surveys in light of the requisites for valid regulation of declarative speech by private entities in the context of an election campaign:

First, the text of Section 5.2(a) of the Fair Election Act supports the inclusion of subscribers among those persons who "paid for the survey[.]" Thus, Resolution No. 9674 is a regulation finding basis in statute.

COMELEC correctly points out that in Section 5.2(a) of the Fair Election Act, those who "commissioned" and

those who "paid for" the published survey are separated by the disjunctive term "or." This disassociates those who "commissioned" from those who "paid for" and identifies them as alternatives to each other. Section 5.2(a) thus requires the disclosure of two (2) classes of persons: "[first,] those who commissioned or sponsored the survey; and [second,] those who paid for the survey."

The second class makes no distinction between those who pay for a specific survey and those who pay for election surveys in general. Indeed, subscribers do not escape the burden of paying for the component articles comprising a subscription. They may pay for them in aggregate, but they pay for them just the same. From the text of Section 5.2(a), the legislative intent or regulatory concern is clear: "those who have financed, one way or another, the [published] survey" must be disclosed.

Second, not only an important or substantial state interest but even a compelling one reasonably grounds Resolution No. 9674's inclusion of subscribers to election surveys. Thus, regardless of whether an intermediate or a strict standard is used, Resolution No. 9674 passes scrutiny.

It is settled that constitutionally declared principles are a compelling state interest:

Compelling governmental interest would include constitutionally declared principles. We have held, for example, that "the welfare of children and the State's mandate to protect and care for them, as *parens patriae*, constitute a substantial and compelling government interest in regulating . . . utterances in TV broadcast."

Here, we have established that the regulation of election surveys effects the constitutional policy, articulated in Article II, Section 26, and reiterated and affirmed in Article IX-C, Section 4 and Article XIII, Section 26 of the 1987 Constitution, of "guarantee[ing] equal access to opportunities for public service[.]"

Resolution No. 9674 addresses the reality that an election survey is formative as it is descriptive. It can be a means to shape the preference of voters and, thus, the outcome of elections. In the hands of those whose end is to get a candidate elected, it is a means for such end and partakes of the nature of election propaganda. Accordingly, the imperative of "fair" elections impels their regulation.

Lastly, Resolution No. 9674 is "narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression" and is "demonstrably the least restrictive means to achieve that object."

While it does regulate expression (i.e., petitioners' publication of election surveys), it does not go so far as to suppress desired expression. There is neither prohibition nor censorship specifically aimed at election surveys. The freedom to publish election surveys remains. All Resolution No. 9674 does is articulate a regulation as regards the manner of publication, that is, that the disclosure of those who commissioned and/or paid for, including those subscribed to, published election surveys must be made.[73]

In marked contrast to *Diocese of Bacolod*, where the Court found that the restricted speech was in the nature of social advocacy rather than election paraphernalia, the parties do not dispute that the materials subject of the instant controversy are election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency.[74] These materials are "declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only." [75] Accordingly, the application of the *Diocese of Bacolod* test, in accordance with the required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate as enunciated in *Social Weather Stations, Inc. v. Commission on Elections*, [76] is proper.

The Court finds that the COMELEC's implementation of "Oplan Baklas" as to St. Anthony College et al.'s election paraphernalia is unconstitutional as it is not allowed by law.

The COMELEC's argument that the election paraphernalia owned by St. Anthony College et al. fall within the

definition of "political advertisement" or "election propaganda" under Section 1 (16), COMELEC Resolution No. 10730,[77] and are thus subject to regulation ignores the Court's express ruling in *Diocese of Bacolod* on the scope of the COMELEC's regulatory powers under Republic Act No. 9006. As held by the Court in that case, Sections 3 and 9, Republic Act No. 9006, as well as the implementing rules and regulations issued by the COMELEC, apply only to candidates and political parties:

. . . Section 9 of the Fair Election Act on the posting of campaign materials only mentions "parties" and "candidates":

SECTION 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.

Similarly, Section 17 of COMELEC Resolution No. 9615, the rules and regulations implementing the Fair Election Act [for the May 2013 elections], provides as follows:

SECTION 17. Posting of Campaign Materials. — Parties and candidates may post any lawful campaign material in:

- Authorized common poster areas in public places subject to the requirements and/or limitations set forth in the next following section; and
- Private places provided it has the consent of the owner thereof.

The posting of campaign materials in public places outside of the designated common poster areas and those enumerated under Section 7 (g) of these Rules and the like is prohibited. Persons posting the same shall be liable together with the candidates and other persons who caused the posting. It will be presumed that the candidates and parties caused the posting of campaign materials outside the common poster areas if they do not remove the same within three (3) days from notice which shall be issued by the Election Officer of the city or municipality where the unlawful election propaganda are posted or displayed.

Members of the PNP and other law enforcement agencies called upon by the Election Officer or other officials of the COMELEC shall apprehend the violators caught in the act, and file the appropriate charges against them.

Respondents considered the tarpaulin as a campaign material in their issuances. The above provisions regulating the posting of campaign materials only apply to candidates and political parties, and petitioners are neither of the two.

Section 3 of Republic Act No. 9006 on "Lawful Election Propaganda" also states that these are "allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties. . . ." Section 6 of COMELEC Resolution No. 9615 provides for a similar wording.

These provisions show that election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties. Some level of coordination with the candidates and political parties for whom the

election propaganda are released would ensure that these candidates and political parties maintain within the authorized expenses limitation.[78] (Citations omitted; emphases and underscoring supplied)

While the posters and tarpaulins subject of the dispute seek and promote the election of a candidate, they were not produced or displayed "by or on behalf of and in coordination with candidates and political parties." On the contrary, it is undisputed that they were the result of privately-funded and privately-run initiatives and were displayed willingly by their owners on their own private property. Thus, they are beyond the scope of Sections 3 and 9, Republic Act No. 9006. To apply the size restrictions under Republic Act No. 9006 to the political speech of private persons would be to unduly expand the COMELEC's mandate and ignore the law's repeated and express references to candidates and political parties only.

Like their counterpart provisions in COMELEC Resolution No. 9615,[79] which the Court held apply only to candidates and political parties, Sections 6 and 20, COMELEC Resolution No. 10730, refer only to candidates and political parties. Such being the case, they provide no more basis for the COMELEC's actions in 2022 than COMELEC Resolution No. 9615 did in 2013, and the COMELEC cannot rely on the above-cited provisions of Republic Act No. 9006 or its various implementing rules and regulations to justify its intrusion into the private property of St. Anthony College et al. and the taking of their privately-owned election paraphernalia. The arguments raised by St. Anthony College et al. on this point are well-taken.

The COMELEC's argument that the size limitation in Section 82, Omnibus Election Code, does not distinguish between candidates and private individuals and is thus applicable to St. Anthony College et al. and other private persons[80] lacks merit, as Section 82, Omnibus Election Code, was impliedly repealed by Republic Act No. 9006.

While implied repeals are disfavored, they are recognized by the Court when there is clear proof of inconsistency so repugnant that the two laws cannot be enforced.[81] In *Genuino v. Commission on Audit*,[82] the Court cited *Mecano v. Commission on Audit*[83] and held:

While it is true that implied repeals are not favored, they are nevertheless not prohibited. In *Mecano v. Commission on Audit*, the Court held:

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, the one law cannot be enforced without nullifying the other.[84] (Emphasis supplied; citation omitted)

A comparison of Section 82, Omnibus Election Code, and Section 3, Republic Act No. 9006, will demonstrate that these two provisions are irreconcilably inconsistent and cannot be enforced together:

Omnibus Election Code

Republic Act No. 9006

SECTION 82. Lawful election propaganda. – Lawful election propaganda shall include

- a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;
- b. Handwritten or printed letters urging voters to vote for or against any particular candidate;
- c. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two feet by three feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size, shall be allowed: Provided, That said streamers may not be displayed except one week before the date of the meeting or rally and that it shall be

removed within seventy-two hours after said meeting or rally; or

d. All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission's authorization shall be published in two newspapers or general circulation throughout the nation for at least twice within one week after the authorization has been granted. (Emphases supplied)

SECTION 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

For the purpose of this Act, lawful election propaganda shall include:

3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;

3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;

3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

....

3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act. (Emphases supplied)

First, the above-quoted provisions regulate the same subject matter: lawful election propaganda. However, and as pointed out by COMELEC itself, Section 82, Omnibus Election Code, does not contain any language limiting its application to candidates or members of political parties. In contrast, Section 3, Republic Act No. 9006, enumerates "registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions." The express mention of candidates and political parties in Republic Act No. 9006, the later law, limits the definition of election propaganda to materials paid for, and displayed by, candidates and political parties.[85] To rule that Section 82, Omnibus Election Code, permits the COMELEC to regulate private election materials on private property, would render ineffective the limitation introduced by Republic Act No. 9006.

Second, the Omnibus Election Code and Republic Act No. 9006 impose different restrictions on election propaganda. While the size limitations are the same, paragraph c, Section 82, Omnibus Election Code, provides that on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size may be displayed one week before the date of the meeting or rally and must be removed within 72 hours after said meeting or rally. On the other hand, par. 3.3, Section 3, Republic Act No. 9006, provides that these streamers may be displayed five days before the date of the meeting or rally and must be removed within 24 hours after said meeting or rally.

Under the contemporaneous construction rule, "the practice and interpretive regulations by officers,

administrative agencies, departmental heads, and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute." [86] In this regard, it bears emphasis that it is the restriction under par. 3.3, Section 3, Republic Act No. 9006, that the COMELEC implemented in the 2001, 2004, 2007, 2010, 2013, 2016, 2019, and 2022 national and local elections, [87] and not the restriction under par. c, Section 82, Omnibus Election Code. Thus, the COMELEC's own contemporaneous construction demonstrates that Section 3, Republic Act No. 9006, impliedly repealed Section 82, Omnibus Election Code.

Third, Republic Act No. 9006 expressly repealed [88] Section 85, Omnibus Election Code, [89] and Sections 10 and 11, Republic Act No. 6646. [90] This express repeal further bolsters the conclusion that Congress intended for election propaganda to be governed by Republic Act No. 9006, not the Omnibus Election Code or any other law.

This conclusion is further supported by the discussion of the Bicameral Conference Committee on the Disagreeing Provisions of SB No. 1742 and HB No. 9000:

CHAIRMAN ROCO. Yes. Yes. So, okay. Section 3, there is a small item on Section 3, we are now both on lawful election propaganda. That's the . . . We lifted this from Section 82. So they're essentially the same.

CHAIRMAN SYJUCO. Mr. Chairman.

CHAIRMAN ROCO. Yes, please.

CHAIRMAN SYJUCO. Both House and Senate versions seek to amend Section 82 . . . of B.P. Bilang 881. May I propose that the House and Senate versions be merged to read as follows: Section 3. Section 82 of Batas Pambansa Bilang 881, as amended, is hereby further amended to read as follows: "Section 82. Lawful Election Propaganda.

CHAIRMAN SYJUCO. (continuing) . . . cards, decals, stickers or other written or printed materials, the size of which does not exceed 8 and one-half inches in width and 14 inches in length.

....

CHAIRMAN ROCO. Yes. Mr. Chairman, and I mean subject to the members' consent, again in principle, we don't find any difficulty with this. So, this is acceptable, essentially.

Can I just call attention to a styling change. Because we are now making it into a separate statute with the Declaration of Principle. Section 3, we have to be already lawful election propaganda, no. In other words, we will no longer say that Section 82 is hereby amended as follows: The amendatory clause will then be all contained in the repealing of the amendatory clauses. We put it all together so that it becomes a new independent statute. I mean it looks great actually for the new Speaker, especially if we can get this done and approve this on Monday, that on his first week, basically in less than one week, you have a law. [91] (Emphasis and underscoring supplied)

In sum, Congress did not pass Republic Act No. 9006 seeking to carve out a rule specific to candidates and political parties while retaining Section 82, Omnibus Election Code, as the rule applicable to the general public. On the contrary, Congress intended to amend Section 82, Omnibus Election Code, by reproducing it with modifications in Republic Act No. 9006. Consequently, Section 82 has been impliedly repealed by Section 3, Republic Act No. 9006, and COMELEC cannot justify its assailed actions by citing the Omnibus Election Code.

Because neither Republic Act No. 9006 nor the Omnibus Election Code provides statutory basis for COMELEC's implementation of "Oplan Baklas" against private persons with respect to privately-owned election materials displayed on private property, the COMELEC's implementation of "Oplan Baklas" as to the election materials owned and displayed by St. Anthony College et al. is an impermissible encroachment on the latter's right to

freedom of speech and expression.

Absent any legal basis for the removal of St. Anthony College et al.'s election paraphernalia, "Oplan Baklas" also violates their property rights. The COMELEC does not dispute that St. Anthony College et al. own the election materials or properties subject of the present Petition. Thus, the Court's reasoning in Diocese of Bacolod applies squarely to the facts at hand:

Even though the tarpaulin is readily seen by the public, the tarpaulin remains the private property of petitioners. Their right to use their property is likewise protected by the Constitution.

....

COMELEC Resolution No. 9615 and the Fair Election Act intend to prevent the posting of election propaganda in private property without the consent of the owners of such private property. COMELEC has incorrectly implemented these regulations. Consistent with our ruling in *Adiong*, we find that the act of respondents in seeking to restrain petitioners from posting the tarpaulin in their own private property is an impermissible encroachment on the right to property.[92] (Citations omitted; emphasis supplied)

The Court has always protected political speech as one of the most important expressions guaranteed by the Constitution, and freedom of speech and expression is at the core of civil liberties and must be protected at all costs for the sake of democracy.[93] While the Court acknowledges the zeal and dedication with which the COMELEC performs its duties and fulfills its mandate to ensure free and fair elections, the best intentions cannot justify impermissible infringements on constitutional rights. After all:

Nothing less than the electorate's political speech will be affected by the restrictions imposed by COMELEC. Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. We evaluate restrictions on freedom of expression from their effects.[94] (Emphasis and underscoring supplied)

In fine, the COMELEC's implementation of "Oplan Baklas" as against St. Anthony et al., is unconstitutional as it exceeded the bounds of permissible regulation under Republic Act No. 9006 and COMELEC Resolution No. 10730.

ACCORDINGLY, the instant Petition is GRANTED. The temporary restraining order previously issued is made PERMANENT. The seizure and destruction of privately-owned tarpaulins, posters, billboards, murals, and other election materials installed or posted on private properties are declared UNCONSTITUTIONAL. The Commission on Elections is ordered to return and/or restore the election materials belonging to petitioners St. Anthony College of Roxas, Inc., Dr. Pilita De Jesus Liceralde, and Dr. Anton Mari Hao Lim within 15 days from finality of this Decision.

SO ORDERED.

Hernando, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, and Singh, JJ., concur.

Gesmundo, C.J., Please see separate opinion.

Leonen, SAJ., concur. See separate opinion.

Lazaro-Javier, [*] J., on official business but left her vote. See concurrence.

Inting[**] and Kho, Jr., [***] JJ., no part.

M. Lopez, J., Please see dissent.

[*] On official business.

[**] No part.

[***] No part.

[1] Rollo, pp. 3-60.

[2] Id. at 7-9.

[3] Id. at 7-8.

[4] Id. at 8.

[5] Id. at 11. Titled "Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the 'Fair Election Act,' in connection with the May 9, 2022 National and Local Elections" (2021).

[6] Id. at 14.

[7] Id.

[8] Id. at 137-143.

[9] Id.

[10] Id. at 14.

[11] Id. at 14-15.

[12] Id. at 15.

[13] Id.

[14] Id. at 146-149.

[15] Id. at 148.

[16] Id. at 15.

[17] Id.

[18] Id. at 48.

[19] Id. at 150.

[20] Id. at 218-222.

[21] Id. at 19.

[22] Id. at 20.

[23] Id. at 21.

[24] Id. at 23.

[25] Id.

[26] Id.

[27] Id. at 24-26.

[28] Id. at 27.

[29] Id.

[30] Titled the "Fair Election Act" (2001). The cited provisions read:

SECTION 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

....

SECTION 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 no 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.

[31] Rollo, pp. 28-34.

[32] Id. at 35.

[33] Id. at 38-43.

[34] Id. at 43-48.

[35] Id. at 47.

[36] Id.

[37] Id. at 185-188.

[38] Id. at 188-190.

[39] Id. at 190-193.

[40] Id. at 193-198.

[41] The cited provision reads:

16. "Political advertisement," or "election propaganda" refers to any matter broadcasted, published, printed, displayed or exhibited; in any medium, which contains the name, image, logo, brand, insignia, initials, and other symbol or graphic representation that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office. In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.

Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which — when taken as a whole — has for its principal object the endorsement of a candidate only, or which were posted in return for consideration or are otherwise capable of pecuniary estimation. (Emphasis supplied)

[42] The cited provision reads:

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

....

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

[43] Rollo, p. 201.

[44] Id. at 201-202.

[45] The cited provision reads:

SECTION. 82. Lawful election propaganda. - Lawful election propaganda shall include:

- Pamphlets, leaflets, cards decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;
- Handwritten or printed letters urging voters to vote for or against any particular candidate;
- Cloth, paper or cardboard posters, whether framed or posted, with an area exceeding two feet by three feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size, shall be allowed: Provided, That said streamers may not be displayed except one week before the date of the meeting or rally and that it shall be removed within seventy-two hours after said meeting or rally; or
- All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission's authorization shall be published in two newspapers or general circulation throughout the nation for at least twice within one week after the authorization has been granted.

[46] Rollo, pp. 203-204.

[47] Id. at 202-204.

[48] Id. at 204-206.

[49] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[50] Id. at 314.

[51] Id.

[52] Titled "Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the 'Fair Election Act,' in connection to the 13 May 2013 National and Local Elections, and Subsequent Elections" (2013). COMELEC Resolution No. 10730—the Resolution relevant to the present controversy—is the counterpart resolution issued by the COMELEC for the May 2022 Elections.

[53] 751 Phil. 301, 315 (2015) [Per J. Leonen, En Banc].

[54] Id. at 316.

[55] Id. at 317.

[56] Id. at 325-327.

[57] Id. at 330-331, citing *Roque, Jr. v. Commission on Elections*, 615 Phil. 149, 201 (2009) [Per J. Velasco, Jr., En Banc].

[58] Id. at 331-335.

[59] Id. at 343.

[60] See *The Diocese of Bacolod, represented by the Most Rev. Bishop Navarra v. Commission on Elections*, 789 Phil. 197, 208 (2016) [Per J. Leonen, En Banc], where the Court denied the motion for reconsideration filed by COMELEC with finality.

[61] 849 Phil. 120 (2019) [Per J. Jardeleza, En Banc].

[62] *Ocampo v. Macapagal-Arroyo*, G.R. No. 182734, January 10, 2023 [Per J. Gaerlan, En Banc], at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. Citing *Gios-Samar, Inc. v. Department of Transportation and Communication*, 849 Phil. 120 (2019) [Per J. Jardeleza, En Banc].

[63] 849 Phil. 120, at 129 (2019) [Per J. Jardeleza, En Banc].

[64] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 327 (2015) [Per J. Leonen, En Banc].

[65] Id. at 383.

[66] Id. at 384-385.

[67] Id. at 394-395.

[68] Id. at 395.

[69] Id. at 395-396.

[70] *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 517 (2015) [Per J. Leonen, En Banc].

[71] Id.

[72] Id. at 516.

[73] Id. at 517-520.

[74] *Rollo*, pp. 9-10 and 91-106.

[75] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 395 (2015) [Per J. Leonen, En Banc].

[76] *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 516 (2015) [Per J. Leonen, En Banc].

[77] The cited provision reads:

16. "Political advertisement," or "election propaganda" refers to any matter broadcasted, published, printed,

displayed or exhibited, in any medium, which contains the name, image, logo, brand, insignia, initials, and other symbol or graphic representation that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office. In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.

Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which — when taken as a whole — has for its principal object the endorsement of a candidate only, or which were posted in return for consideration or are otherwise capable of pecuniary estimation.

[78] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 347-349 (2015) [Per J. Leonen, En Banc].

[79] Sections 6 and 17, as discussed above.

[80] Rollo, pp. 203-204.

[81] *De Lima v. Guerrero*, 819 Phil. 616, 725 (2017) [Per J. Velasco, Jr., En Banc].

[82] G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, En Banc].

[83] 290-A Phil. 272 (1992) [Per J. Campos, Jr., En Banc].

[84] *Genuino v. Commission on Audit*, G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, En Banc], at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[85] See *Genuino v. Commission on Audit*, G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, En Banc]. In finding that the 1987 Constitution impliedly repealed Presidential Decree No. 1869, the Court emphasized that sec. 2, art. XII-D, 1987 Constitution, expressly mentions government--owned or controlled corporations with original charters, while its counterpart provision in the 1973 Constitution did not:

This repeal by implication becomes even more evident if We take notice of the fact that PD 1869 was enacted in 1983, or before the promulgation of the 1987 Constitution. Thus, when PD 1869 was passed, it was under the authority of the 1973 Constitution, under which Art. XII-D, Sec. 2 states:

SECTION 2. The Commission on Audit shall have the following powers and functions:

(1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues, and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government--owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property.

Interestingly, Art. IX-D, Sec. 3 of the 1987 Constitution which prohibits the passage of a law exempting any government entity from the jurisdiction of the COA, neither existed nor had a counterpart provision in the 1973 Constitution.

While the above-cited provision may seem essentially similar to its counterpart in the 1987 Constitution, a closer look will reveal one significant difference: the provision in the 1987 Constitution specifically mentions government-owned or controlled corporations with original charters, while the 1973 Constitution version did not. In the Court's view, this reveals the clear intention of the framers of the 1987 Constitution to strengthen and widen the audit jurisdiction of the COA. (Emphasis and underscoring supplied)

[86] J. Kho, Concurring and Dissenting Opinion in *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, En Banc], at 17. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

[87] COMELEC Resolution No. 10730, sec. 6(c); COMELEC Resolution No. 10488, sec. 6(d); COMELEC Resolution No. 10049, sec. 6(d); COMELEC Resolution No. 9615, sec. 6(d); COMELEC Resolution No. 8758, sec. 8(d); COMELEC Resolution No. 7767, sec. 10(d); COMELEC Resolution No. 6520, sec. 10(d); COMELEC Resolution No. 3636, sec. 9(c).

[88] Republic Act No. 9006, sec. 14.

[89] SECTION. 85. Prohibited forms of election propaganda. - It shall be unlawful:

- To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging voters to vote for or against any candidate unless they bear the names and addresses of the printer and payor as required in Section 84 hereof;
- To erect, put up, make use of attach, float or display any billboard, tinplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party;
- To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandanas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate;
- To show or display publicly any advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts which may be allowed as hereinafter provided; and
- For any radio broadcasting or television station to sell or give free of charge air time for campaign and other political purposes except as authorized in this Code under the rules and regulations promulgated by the Commission pursuant thereto.

Any prohibited election propaganda gadget or advertisement shall be stopped, confiscated or torn down by the representative of the Commission upon specific authority of the Commission.

[90] SECTION 10. Common Poster Areas. – The Commission shall designate common poster areas in strategic public places such as markets, barangay centers and the like wherein candidates can post, display, or exhibit election propaganda to announce or further their candidacy.

Whenever feasible common billboards may be installed by the Commission and/or non-partisan private or civic organizations which the Commission may authorize whenever available, after due notice and hearing, in strategic places where it may be readily seen or read, with the heaviest pedestrian and/or vehicular traffic in the city or municipality.

The space in such common poster areas or billboards shall be allocated free of charge, if feasible, equitably and impartially among the candidates in the province, city or municipality.

SECTION 11. Prohibited Forms of Election Propaganda. – In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful: (a) to draw, paint, inscribe, write, post, display or publicly exhibit any election propaganda in any place, whether private or public, except in the common poster areas and/or billboards provided in the immediately preceding section, at the candidate's own residence, or at the campaign headquarters of the candidate or political party: Provided, That such posters or

election propaganda shall in no case exceed two (2) feet by three (3) feet in area: Provided, further, That at the site of and on the occasion of a public meeting or rally, streamers, not more than two (2) and not exceeding three (3) feet by eight (8) feet each may be displayed five (5) days before the date of the meeting or rally, and shall be removed within twenty-four (24) hours after said meeting or rally; and (b) for any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

[91] Minutes of the Meeting of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1742 and House Bill No. 9000, November 23, 2000, pp. 8-10.

[92] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 396-398 (2015) [Per J. Leonen, En Banc].

[93] See *GMA Network, Inc. v. Commission on Elections*, 742 Phil. 174, 228 (2014) [Per J. Peralta, En Banc], citing *In the Matter of the Allegations Contained in the Columns of Mr. Macasaet Published in Malaya Dated September 19, 20 and 21, 2007*, 583 Phil. 391, 437 (2008) [Per J. R.T. Reyes, En Banc].

[94] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 325 (2015) [Per J. Leonen, En Banc].

SEPARATE OPINION

GESMUNDO, C.J.:

This case assails the constitutionality of respondent Commission on Elections' (COMELEC) removal of "oversized" campaign materials as posted or installed within private properties.

Records show that petitioners St. Anthony College of Roxas City, Inc., Dr. Pilita De Jesus Liceralde, and Dr. Anton Mari Hao Lim (St. Anthony College et al.), displayed on their private properties some tarpaulins, murals, and other materials expressing support and soliciting votes for a presidential candidate in the 2022 Elections. However, the COMELEC's field officers, implementing Oplan Baklas, forcibly removed said "oversized" materials pursuant to COMELEC Resolution No. 10730.[1]

St. Anthony College et al. argued that the COMELEC's act violated their constitutional rights to free speech and expression. COMELEC, on the other hand, contended that the size limitation for campaign materials under Section 82 of the Omnibus Election Code does not distinguish between candidates and private individuals, and thus, is applicable to St. Anthony College et al. COMELEC averred that the size limitation is a content-neutral regulation.

The ponencia grants the petition. It declares the COMELEC's acts of seizing and destroying privately-owned tarpaulins and other election materials installed or posted on private properties as "unconstitutional." [2] The ponencia holds that the COMELEC's power to regulate election paraphernalia of private citizens is not provided by law, considering that the scope of the COMELEC's regulatory powers under the Fair Election Act [3] covers only to candidates and political parties. It explains, thus:

While the posters and tarpaulins subject of the dispute seek and promote the election of a candidate, they were not produced or displayed "by or on behalf of and in coordination with candidates and political parties." On the contrary, it is undisputed that they were the result of privately-funded and privately-run initiatives and were

displayed willingly by their owners on their own private property. Thus, they are beyond the scope of Sections 3 and 9 [of the Fair Elections Act]. To apply the size restrictions under [the Fair Elections Act] to the political speech of private persons would be to unduly expand the COMELEC's mandate and ignore the law's repeated and express references to candidates and political parties only.[4]

The ponencia later mentions that the reasoning in *Diocese of Bacolod v. COMELEC*[5] applies squarely to the facts of this case.[6] Nevertheless, it acknowledges that the ruling in *Diocese* is *pro hac vice*[7] and that such case involved a social advocacy and not election paraphernalia, unlike the present case. The ponencia finds that the implementation of Oplan Baklas lacks statutory basis,[8] and concludes that such implementation is "unconstitutional as it exceeded the bounds of permissible regulation" under the Fair Election Act and COMELEC Resolution No. 10730.[9]

I concur in the ponencia's result granting the petition, but I write to respectfully share my own perspective on the proper resolution of the case.

First, it is my view that the implementation of Oplan Baklas as against election paraphernalia posted by private citizens on their private properties must be declared *ultra vires* or invalid for lack of statutory basis, although not necessarily unconstitutional. Presently, the COMELEC has no authority under the prevailing statutes to impose the size limitations. Congress has not yet enacted a law which allows the COMELEC to impose size limitations on election paraphernalia posted by private citizens. Accordingly, the implementation of Oplan Baklas is *ultra vires* because it went beyond the statutory authority granted to the COMELEC by Congress.

To elaborate, the COMELEC's constitutional powers relevant to this case are: (a) to "enforce" laws in the conduct of elections,[10] and (b) to "recommend to Congress effective measures" such as "limitation of places where propaganda materials shall be posted." [11] Under current legislation, the Fair Election Act regulates the acts of "candidates" and "registered parties," and not private citizens, in relation to election paraphernalia. This is mirrored in COMELEC Resolution No. 10730[12] which implements the statute in connection with the 2022 National and Local Elections. Hence, the ponencia accurately holds that the statute and the implementing resolution do not grant authority to the COMELEC to regulate election paraphernalia posted by private individuals within their own private properties.

This does not mean, however, that Congress cannot enact a statute in the future authorizing the COMELEC to impose such size limitations on private citizens' election paraphernalia. Nevertheless, the issue of whether said future statute will pass a constitutional scrutiny cannot be decisively concluded unless an actual case or controversy arises involving that legislation.

To stress, it is my view that, if a law is enacted, Congress may authorize the COMELEC to regulate private citizens' act of displaying election paraphernalia during the campaign period.[13] Hence, in this case, the implementation of Oplan Baklas against private owners was only *ultra vires* for lack of statutory authority. Indeed, a government act may be declared invalid or *ultra vires* when it "goes beyond the limits of its delegated legislative authority,"[14] as in the present case. The COMELEC's act, however, is not unconstitutional in the sense that the COMELEC can still be granted such authority by Congress in case a future statute is enacted. Notably, some of the functions exercised by the COMELEC are based on Article IX-C, Section 2 of the Constitution, while some other functions are granted via statute. Pursuant to its plenary power, Congress can confer the COMELEC with additional statutory powers subject only to limitations under the Constitution. The fact that COMELEC is not yet given a statutory authority to perform an act does not mean that such act is unconstitutional, *per se*, for violating the limitations provided under the Constitution.

On the other hand, when a government act exceeds constitutionally-imposed limitations, a subsequent legislation

that authorizes such act would not cure the unconstitutionality. For this reason, a later-granted statutory authority would still be struck down for being unconstitutional. Thus, it would have been better to state precisely that the implementation of Oplan Baklas was an ultra vires act rather than to declare such implementation unconstitutional.

Here, the ponencia has only sufficiently explained that neither the Fair Election Act "nor the Omnibus Election Code provides statutory basis for COMELEC's implementation of Oplan Baklas against private persons with respect to privately-owned election materials" that are displayed on their private properties.[15] Contrary to the ponencia's conclusion, it does not follow from the lack of statutory authority that the COMELEC's assailed act would constitute as an "impermissible encroachment" on free speech and expression.[16] For this reason, it would have been more optimal if the ponencia concluded in this manner:[17]

In fine, the COMELEC's implementation of "Oplan Baklas," as against St. Anthony [College] et al.'s election paraphernalia, is unconstitutional ultra vires or invalid for lack of statutory authority, as it exceeded the bounds of permissible regulation under [Republic Act No.] 9006 and COMELEC Resolution No. 10730. (Emphasis supplied)

Second, I have reservations as regards the ponencia's statement that "the Court's reasoning in [Diocese] applies squarely to the facts at hand[.]"[18] The ponencia repeatedly cites Diocese, seemingly as a precedent in deciding the present case, which squarely involves private citizens' expression through election paraphernalia. This, despite the ponencia's acknowledgement that Diocese does not involve election paraphernalia[19] as to be binding here. The ponencia adds that the COMELEC's assailed act is not only an "impermissible encroachment" on St. Anthony College et al.'s right to free speech and expression but also violates their property rights.[20]

To my mind, while there are certain discussions[21] in Diocese that may be useful in resolving this case, caution must be exercised in anchoring a ruling in the present case on Diocese especially in view of the key differences in factual circumstances. Notably, Diocese involved a social advocacy, for which reason the Court held that the size limitation there amounts to a content-based regulation. This is due in large part to the effect on free expression that is involved in social advocacy. This must be distinguished from the expression in election paraphernalia.

In *Adiong v. COMELEC*,[22] the Court has acknowledged that the line between freedom of expression and permissible regulation is ascertained on a case-to-case basis, viz.:

The variety of opinions expressed by the members of this Court in the recent case of *National Press Club v. Commission on Elections*[] and its companion cases underscores how difficult it is to draw a dividing line between permissible regulation of election campaign activities and indefensible repression committed in the name of free and honest elections. In the *National Press Club* case, the Court had occasion to reiterate the preferred status of freedom of expression even as it validated COMELEC regulation of campaigns through political advertisements. The gray area is rather wide and we have to go on a case to case basis.[23] (Emphasis supplied)

In *Diocese*,[24] the Court carefully differentiated between private individuals' tarpaulins expressing a social advocacy (i.e., Team Patay, Team Buhay) from election paraphernalia that exhort the public to vote for a candidate, both of which may be displayed on privately-owned properties. The Court recognized the possibility of abuse in a case that clearly involves election paraphernalia, to wit:

Of course, candidates and political parties do solicit the help of private individuals for the endorsement of their electoral campaigns.

On the one extreme, this can take illicit forms such as when endorsement materials in the form of tarpaulins, posters, or media advertisements are made ostensibly by "friends" but in reality are really paid for by the

candidate or political party. This skirts the constitutional value that provides for equal opportunities for all candidates.

However, as agreed by the parties during the oral arguments in this case, this is not the situation that confronts us. In such cases, it will simply be a matter for investigation and proof of fraud on the part of the COMELEC.

The guarantee of freedom of expression to individuals without any relationship to any political candidate should not be held hostage by the possibility of abuse by those seeking to be elected. It is true that there can be underhanded, covert, or illicit dealings so as to hide the candidate's real levels of expenditures. However, labelling all expressions of private parties that tend to have an effect on the debate in the elections as election paraphernalia would be too broad a remedy that can stifle genuine speech like in this case. Instead, to address this evil, better and more effective enforcement will be the least restrictive means to the fundamental freedom.

On the other extreme, moved by the credentials and the message of a candidate, others will spend their own resources in order to lend support for the campaigns. This may be without agreement between the speaker and the candidate or his or her political party. In lieu of donating funds to the campaign, they will instead use their resources directly in a way that the candidate or political party would have done so. This may effectively skirt the constitutional and statutory limits of campaign spending.

Again, this is not the situation in this case.[25] (Emphasis supplied)

To emphasize, Diocese points out that not regulating private citizens' manner of expression through election paraphernalia may result in two extremes. First, endorsement materials can be "made ostensibly by 'friends' but in reality are really paid for by the candidate or political party." This strategy "skirts the constitutional value that provides for equal opportunities for all candidates." Second, non-candidates can opt not to donate funds to their candidates' campaign but instead use their resources directly in a way that the candidate or political party would have done so. This may effectively skirt the constitutional and statutory limits of campaign spending.

To further illustrate, a candidate may spend to print an oversized posters in violation of the COMELEC's regulation and then ask private citizens to display such posters on their properties or walls along the highway. Of course, the private citizens may consent to the use of their properties for such purpose. This strategy may amount to an indirect transgression of election rules on the part of the candidate. Based on these considerations, content-based regulation on election paraphernalia appears to be necessary.

In the present case, considering that the COMELEC's assailed act can already be rendered invalid for lack of statutory authority, it is my view that the Court should exercise judicial restraint in delving into the discussion on freedom of expression and determining what amounts to permissible regulation on election paraphernalia. To stress, the Court should take caution in unduly expanding the application of Diocese to situations that squarely involve election paraphernalia.

When the proper case is brought before the Court, it must take into account the two extremes mentioned above when deciding whether to render unconstitutional a future statute that would impose a size limit on election paraphernalia of non-candidates. Such case, however, is not before the Court yet. For now, rendering invalid or ultra vires for lack of statutory basis the implementation of the assailed COMELEC resolution is sufficient.

Here, in exercising judicial restraint by not squarely applying Diocese to the facts of the case at bar, the Court would be giving the legislature the opportunity to craft laws imposing permissible limitations on private citizens' exercise of their freedom of expression through election paraphernalia so that the aforementioned abuses may be avoided. Nevertheless, it must be underscored that such permissible restrictions must constitute only content-neutral regulations and not prohibit the contents of expression.

All told, it is my view that the resolution of this case should be limited to a declaration that the COMELEC

currently lacks statutory authority to impose the size limitations on election paraphernalia that are posted by private citizens within their own properties. Hence, the seizure and destruction of St. Anthony College et al.'s privately-owned election paraphernalia in their private properties are ultra vires for lack of statutory basis.

ACCORDINGLY, I vote to GRANT the Petition to restrain the implementation of Oplan Baklas under COMELEC Resolution No. 10730.

[1] Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the "Fair Election Act," in Connection with the May 9, 2022 National and Local Elections, November 17, 2021.

[2] Ponencia, p. 15.

[3] Republic Act No. 9006, February 12, 2001.

[4] Ponencia, p. 17.

[5] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[6] Ponencia, p. 23.

[7] Id. at 11, citing *The Diocese of Bacolod v. Commission on Elections*, 789 Phil. 197, 208 (2016) [Per J. Leonen, En Banc].

[8] Id. at 23.

[9] Id. at 24.

[10] CONST., art. IX, part C, sec. 2(1).

[11] CONST., art. IX, part C, sec. 2(7).

[12] Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the "Fair Election Act" in Connection with the May 9, 2022 National and Local Elections. November 17, 2021.

[13] *The Diocese of Bacolod v. Commission on Elections*, supra note 5, at 395, where the Court recognized that a "[r]egulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates . . . , only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only."

[14] *Province of Pampanga v. Executive Secretary*, G.R. No. 195987, January 12, 2021 [Per J. Leonen, En Banc].

[15] Ponencia, p. 23.

[16] Id.

[17] See ponencia, p. 24.

[18] Id. at 23.

[19] Id. at 12.

[20] Id. at 23.

[21] See *The Diocese of Bacolod v. Commission on Elections*, supra note 5, at 395. The Court held, thus:

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are

not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.

This is not the situation, however, in this case[.]

[22] G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc].

[23] Id.

[24] Supra note 5.

[25] Id. at 382-383.

CONCURRING OPINION

LEONEN, SAJ.:

Size matters. *Diocese of Bacolod v. Commission on Elections*[1] has shown that for campaign paraphernalia, the form matters as much as the content.

It is true that *Diocese of Bacolod* involved a social advocacy couched in campaign material while this case involves campaign material that purely endorses a chosen candidate. Free speech and expression, however, not only encompass the speech of private persons advocating for certain issues, but also the right of a citizen to freely express to the public whom they want to vote for and why. Sections 21(0), 24, and 26 of COMELEC Resolution No. 10730, series of 2021, are unconstitutional for arbitrarily restricting the size of campaign materials, and therefore, stifling the people's right to freely express their chosen candidates however they choose, within their own private property.

I

Freedom of expression is a core value in our democratic society and is a fundamental right enshrined in Article III, Section 4 of the Constitution:

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.

The freedom is so essential that the protection it grants covers "all media of communication, whether verbal, written, or through assembly. The protection conferred is not limited to a field of interest; it does not regard whether the cause is political or social, or whether it is conventional or unorthodox." [2] *Adiong v. Commission on Elections* [3] states: "All of the protections expressed in the Bill of Rights are important[,] but we have accorded to free speech the status of a preferred freedom." [4]

The right to free speech and expression occupies a preferred position in the hierarchy of our constitutional values. It protects "democratic political process from abusive censorship" and promotes "equal respect for the moral self-determination of all persons[.]" [5] Thus, in *Diocese of Bacolod*:

In a democracy, the citizen's right to freely participate in the exchange of ideas in furtherance of political decision-making is recognized. It deserves the highest protection the courts may provide, as public participation in nation-building is a fundamental principle in our Constitution. As such, their right to engage in free expression of ideas must be given immediate protection by this court.[6]

Political discourses occupy an even higher position within the species of protected speech. Free and uncensored discussion on policy and governance results in an informed electorate, which, in turn, ensures an effective government always accountable to its people. Discussions on public affairs or fair criticisms on public policy allow citizens to determine for themselves which causes to support and which issues are essential to good governance. This is consistent with the constitutional principle that "[s]overeignty resides in the people and all government authority emanates from them." [7] In *Diocese of Bacolod*:

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.[8] (Citations omitted)

Similarly, in an opinion in *Nicolas-Lewis v. Commission on Elections*: [9]

Freedom of expression, as with other cognate constitutional rights, is essential to citizens' participation in a meaningful democracy. Through it, they can participate in public affairs and convey their beliefs and opinion to the public and to the government. Ideas are developed and arguments are refined through public discourse. Freedom of expression grants the people "the dignity of individual thought." When they speak their innermost thoughts, they take their place in society as productive citizens. Through the lens of self-government, free speech guarantees an "ample opportunity for citizens to determine, debate, and resolve public issues." [10] (Citations omitted)

Political speech is "indispensable to the democratic and republican mooring of the [S]tate whereby the sovereignty residing in the people is best and most effectively exercised through free expression." [11] *Diocese of Bacolod* further states:

Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican government or the revision of the basic text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society.[12]

The exercise of free speech and expression, however, is not with unbridled discretion. The State may regulate such exercise pursuant to its inherent police power. But because what is being regulated is a protected fundamental right, regulations will depend on the nature of the speech being regulated. In *Chavez v. Gonzales*: [13]

Some types of speech may be subjected to some regulation by the State under its pervasive police power, in order that it may not be injurious to the equal right of others or those of the community or society. The difference in treatment is expected because the relevant interests of one type of speech, e.g., political speech,

may vary from those of another, e.g., obscene speech. Distinctions have therefore been made in the treatment, analysis, and evaluation of the permissible scope of restrictions on various categories of speech.[14] (Citations omitted)

Nonetheless, political speech, as an exercise of a citizen's sovereignty, is accorded the highest protection, especially during election periods when political speeches and activities can directly influence the electorate's choice of their leaders and representatives. Censorship of political speeches and activities, thus, must be strictly examined and fully substantiated.

II

Prior restraint "refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination." [15] A governmental act that imposes prior restraint on expression "bears a heavy presumption against its validity." [16] In Chavez:

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.[17] (Citations omitted)

In determining whether a government regulation involves prior restraint on free speech and expression, it must also be examined whether the questioned regulation is content-based or content-neutral.

A regulation is content-based if it is concerned with the content of the speech itself.[18]

Given "its inherent and invasive impact" [19] on free speech and expression, a content-based regulation must pass the "strict scrutiny" test to be valid. The governmental interest sought to be protected must be justified by a showing of a "substantive and imminent evil that has taken the life of a reality already on ground" [20] and the words and expression being used "will bring about the substantive evils that Congress has a right to prevent." [21] There must be a compelling State interest, and the regulation must be narrowly tailored and the least restrictive means to achieve that interest.[22]

Newsounds Broadcasting Network, Inc. v. Dy [23] further explains:

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.[24] (Citation omitted)

Invalid prior restraint on the content of the speech results in a chilling effect, preventing the free exchange of ideas in a republican democracy. In his dissent in Soriano v. Laguardia, [25] Chief Justice Reynato Puno explains:

The test is very rigid because it is the communicative impact of the speech that is being regulated. The regulation goes into the heart of the rationale for the right to free speech; that is, that there should be no prohibition of speech merely because public officials disapprove of the speaker's views. Instead, there should be a free trade in the marketplace of ideas and only when the harm caused by the speech cannot be cured by more speech can the government bar the expression or ideas.[26] (Citation omitted)

Content-neutral regulations, on the other hand, regulate not the content of the speech itself, but are "merely concerned with the incidents of the speech, or one that merely controls the time, place[,] or manner, and under well-defined standards[.]"[27] They are subject to "lesser but still heightened scrutiny." [28]

For content-neutral regulations, the "intermediate approach" is applied. Under this, the validity of a regulation only requires that there be substantial State interest to be protected,[29] instead of the compelling interest required in content-based regulations. Content-neutral regulations are "unrelated to the suppression of speech; . . . any restriction on freedom of expression is only incidental and no more than is necessary to achieve the purpose of promoting equality." [30]

The intermediate approach requires the following analysis:

The intermediate approach has been formulated in this manner:

A governmental regulation is sufficiently justified if it is within the constitutional power of the Government, if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest.[31] (Citation omitted)

The right to freely express one's chosen candidate is part of the right of suffrage:

"[S]peech serves one of its greatest public purposes in the context of elections when the free exercise thereof informs the people what the issues are, and who are supporting what issues." At the heart of democracy is every advocate's right to make known what the people need to know, while the meaningful exercise of one's right of suffrage includes the right of every voter to know what they need to know in order to make their choice.[32] (Citations omitted)

It is in the State's interest to protect the integrity of the electoral process by providing safe spaces for people to vote and campaign for their chosen candidates. During the election period, restricting the freedom to speak and express for advocacies or candidates weakens the right of suffrage. Thus, for any prior restraint on political speech to be upheld, the governmental interest should outweigh the people's fundamental rights.

Here, the ponencia struck down as unconstitutional "Oplan Baklas," explaining that in Diocese of Bacolod, this Court held "that the restricted speech was in the nature of social advocacy rather than election paraphernalia,"[33] and that in the present case, "the parties do not dispute that the materials subject of the instant controversy are election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency." [34] The ponencia cited Diocese of Bacolod to say that these are "declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only." [35]

The ponencia explains that while the speech being restricted here is primarily intended to endorse a certain candidate, "there may be valid regulation of private speech that amounts to election paraphernalia." [36] Indeed, Diocese of Bacolod states:

This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The

regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.[37]

Diocese of Bacolod, however, is not the first case that discusses the regulation of election paraphernalia or the restriction of speech of persons who are not candidates or who do not speak as members of a political party.

In *National Press Club v. Commission on Elections*,[38] certain members of the media assailed Section 11(b) of the Electoral Reforms Law of 1987, which prohibited new papers, radio broadcasting or television stations, or any person making use of the mass media from selling or freely giving print space or air time to campaigns or other political purposes other than to the Commission on Elections. Political candidates could only campaign in mass media through the "Comelec time" or "Comelec space" procured by the Commission itself. According to the media members, this amounted to censorship and an abridgment of the free speech of political candidates.

The justices of this Court issued a myriad of separate opinions, but the majority opinion eventually upheld the constitutionality of Section 11(b) and declared:

The flaw in the prohibition under challenge is that while the rich candidate is barred from buying mass media coverage, it nevertheless allows him to spend his funds on other campaign activities also inaccessible to his straitened rival. True enough Section 11(b) does not, by itself or in conjunction with Sections 90 and 92 of the Omnibus Election Code, place political candidates on complete and perfect equality inter se without regard to their financial affluence or lack thereof. But a regulatory measure that is less than perfectly comprehensive or which does not completely obliterate the evil sought to be remedied, is not for that reason alone constitutionally infirm. The Constitution does not, as it cannot, exact perfection in governmental regulation. All it requires, in accepted doctrine, is that the regulatory measure under challenge bear a reasonable nexus with the constitutionally sanctioned objective. That the supervision or regulation of communication and information media is not, in itself, a forbidden modality is made clear by the Constitution itself in Article IX (C) (4).

It is believed that, when so viewed, the limiting impact of Section 11(b) upon the right to free speech of the candidates themselves may be seen to be not unduly repressive or unreasonable. For, once again, there is nothing in Section 11(b) to prevent media reporting of and commentary on pronouncements, activities, written statements of the candidates themselves. All other fora remain accessible to candidates, even for political advertisements. The requisites of fairness and equal opportunity are, after all, designed to benefit the candidates themselves.

Finally, the nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded. Realistically, the only limitation upon the free speech of candidates imposed is on the right of candidates to bombard the helpless electorate with paid advertisements commonly repeated in the mass media ad nauseam. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. It might be supposed that it is easy enough for a person at home simply to flick off his radio or television set. But it is rarely that simple. For the candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels. Or they may directly or indirectly own or control the stations or channels themselves. The contemporary reality in the Philippines is that, in a very real sense, listeners and viewers constitute a "captive audience."

The paid political advertisements introjected into the electronic media and repeated with mind-deadening frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important

as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.[39] (Citations omitted)

In *Adiong v. Commission on Elections*,[40] this Court admitted "how difficult it is to draw a dividing line between permissible regulation of election campaign activities and indefensible repression committed in the name of free and honest elections." [41] This Court added that "[t]he gray area is rather wide and [this Court has] to go on a case[-]to[-]case basis." [42] It emphasized, however, that despite the differing opinions in *National Press Club*, it was unanimous in declaring that "regulation of election activity has its limits":[43]

We examine the limits of regulation and not the limits of free speech. The carefully worded opinion of the Court, through Mr. Justice Feliciano, shows that regulation of election campaign activity may not pass the test of validity if it is too general in its terms or not limited in time and scope in its application, if it restricts one's expression of belief in a candidate or one's opinion of his or her qualifications, if it cuts off the flow of media reporting, and if the regulatory measure bears no clear and reasonable nexus with the constitutionally sanctioned objective.[44]

Section 11(b) was once again challenged in *Osmeña v. Commission on Elections*. [45] The affected political candidates argued that the prohibition actually disadvantaged poorer candidates, since their more affluent rivals could always resort to other means not prohibited by the law, such as airplanes, boats, rallies, parades, and handbills.

In upholding the constitutionality of Section 11(b), this Court held that the law did not prohibit all political advertisements, but "only prohibit[ed] the sale or donation of print space and air time to candidates [and] require[d] the [Commission on Elections] instead to procure space and time in the mass media for allocation, free of charge, to the candidates." [46] This Court found that Section 11(b) was a content-neutral regulation, such that it allocates print space and air time to give all candidates equal time and space, ensuring "free, orderly, honest, peaceful, and credible elections." [47]

Further analyzing and distilling these two cases, this Court in *Diocese of Bacolod* concluded that speech made by candidates and political parties in the context of political campaigns may still be validly regulated as to time, place, and manner:

The scope of the guarantee of free expression takes into consideration the constitutional respect for human potentiality and the effect of speech. It valorizes the ability of human beings to express and their necessity to relate. On the other hand, a complete guarantee must also take into consideration the effects it will have in a deliberative democracy. Skewed distribution of resources as well as the cultural hegemony of the majority may have the effect of drowning out the speech and the messages of those in the minority. In a sense, social inequality does have its effect on the exercise and effect of the guarantee of free speech. Those who have more will have better access to media that reaches a wider audience than those who have less. Those who espouse the more popular ideas will have better reception than the subversive and the dissenters of society. To be really heard and understood, the marginalized view normally undergoes its own degree of struggle.

The traditional view has been to tolerate the viewpoint of the speaker and the content of his or her expression. This view, thus, restricts laws or regulation that allows public officials to make judgments of the value of such viewpoint or message content. This should still be the principal approach.

However, the requirements of the Constitution regarding equality in opportunity must provide limits to some expression during electoral campaigns.

Thus clearly, regulation of speech in the context of electoral campaigns made by candidates or the members of their political parties or their political parties may be regulated as to time, place, and manner. This is the effect of our rulings in *Osmeña v. COMELEC* and *National Press Club v. COMELEC*. [48]

This is not to say that all speech in the context of electoral campaigns are content-neutral regulations.

In *Adiong*, the Commission on Elections announced that lawful election paraphernalia must only be 8.5 inches wide and 14 inches long and must be placed only in designated areas. A senatorial candidate questioned this restriction insofar as it prohibits the posting of campaign decals on mobile areas such as private vehicles.

While the regulation appeared to be content-neutral, regulating in a sense the placement and manner of campaign paraphernalia, this Court found that the regulation actually restricted the content of the speech and encroached on the property rights of private citizens:

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. . . .

The resolution prohibits the posting of decals and stickers not more than eight and one-half (8-1/2) inches in width and fourteen (14) inches in length in any place, including mobile places whether public or private except in areas designated by the COMELEC. Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides that no person shall be deprived of his property without due process of law:

Property is more than the mere thing which a person owns, it includes the right to acquire, use, and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.

Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property.

As earlier stated, we have to consider the fact that in the posting of decals and stickers on cars and other moving vehicles, the candidate needs the consent of the owner of the vehicle. In such a case, the prohibition would not only deprive the owner who consents to such posting of the decals and stickers the use of his property but more important, in the process, it would deprive the citizen of his right to free speech and information:

Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The danger of distribution can so easily be controlled by traditional legal methods leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the constitution, the naked restriction of the dissemination of ideas.[49] (Emphasis supplied, citations omitted)

The expression of one's preferred political candidate is part and parcel of one's right of suffrage. In this case, petitioners placed the disputed campaign paraphernalia on their private property. Thus, the assailed regulation encroached not only on their right to free speech and expression but also on their property rights.

In *Adiong*, an argument was raised over the fairness of such a placement, considering that National Press Club and Osmeña both upheld the restrictions as providing equal media and air time to all candidates, regardless of the amounts in their political coffers. *Adiong*, however, explained that a candidate's wealth should be irrelevant to the right of a private person to freely express their political preferences:

Whether the candidate is rich and, therefore, can afford to dole out more decals and stickers or poor and without the means to spread out the same number of decals and stickers is not as important as the right of the

owner to freely express his choice and exercise his right of free speech. The owner can even prepare his own decals or stickers for posting on his personal property. To strike down this right and enjoin it is impermissible encroachment of his liberties.[50]

In *1-United Transport Koalisyon v. Commission on Elections*,[51] this Court was once again confronted with a Commission on Elections regulation that restricted the posting of campaign paraphernalia on privately owned public utility vehicles and transport terminals at the cost of their franchises. In striking down the regulation, this Court held that it violated the franchise owners' freedom of speech and expression:

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. 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.[52] (Citations omitted)

This Court explained that there was no substantial distinction between the placement of a political decal on a private vehicle and its placement on a public utility vehicle. Both involved the owner's fundamental freedom to freely express their chosen candidate:

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.

....

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.[53]

These prior cases, including *Diocese of Bacolod*, clearly explain that during an election period, the free speech and expression of private persons do not only cover their expression of social issues and advocacies, but also their right to freely express and support their chosen candidate.

This case appears to have a sharp similarity to the facts in *Diocese of Bacolod* because the Commission on Elections has imposed yet again the size of campaign paraphernalia even when placed on private property.

III

COMELEC Resolution No. 10730, Section 6 provides:

SECTION 6. Lawful Election Propaganda. — Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorize expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.

Lawful election propaganda shall include:

....

c.

Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally[.]

Section 21 of the same Resolution provides:

SECTION 21. Common Poster Areas. — Parties and independent candidates may, upon authority of the COMELEC, through the City or Municipal Election Officer concerned, construct common poster areas, at their expense, wherein they can post, display, or exhibit their election propaganda to announce or further their candidacy subject to the following requirements and/or limitations:

....

o.

No lawful election propaganda materials shall be allowed outside the common poster areas except on private property with the consent of the owner or in such other places mentioned in these Rules and must comply with the allowable size (2ft x 3ft) requirements for posters. Any violation hereof shall be punishable as an election offense[.]

Sections 25 and 26 likewise provide:

SECTION 24. Headquarters Signboard. — Before the start of the campaign period, only one (1) signboard, not exceeding three (3) feet by eight (8) feet in size, identifying the place as the headquarters of the party or candidates is allowed to be displayed. Parties may put up the signboard announcing their headquarters not earlier than five (5) days before the start of the campaign period. Individual candidates may put up the signboard announcing their headquarters not earlier than the start of the campaign period. Only lawful election propaganda material may be displayed or posted therein and only during the campaign period.

....

SECTION 26. Removal, Confiscation, or Destruction of Prohibited Propaganda Materials. — Any prohibited form of election propaganda shall be stopped, confiscated, removed, destroyed, or torn down by COMELEC representatives, at the expense of the candidate or political party for whose apparent benefit the prohibited election propaganda materials have been produced, displayed, and disseminated.

Any person, party, association, government agency may likewise report to the COMELEC any prohibited form of election propaganda for confiscation, removal, destruction and/or prevention of the distribution of any propaganda material on the ground that the same is illegal, as listed under Section 7 of this Resolution.

The COMELEC may, motu proprio, immediately order the removal, destruction and/or confiscation of any

prohibited propaganda material, or those materials which contain statements or representations that are illegal.

The ponencia correctly concludes that these provisions are an arbitrary imposition, reaching into the right of the speaker to speak to their intended audience and effectively stifling their right to free expression.

Indeed, the form of the expression matters as much as its content. In *Diocese of Bacolod*:

The form of expression is just as important as the information conveyed that it forms part of the expression. The present case is in point.

It is easy to discern why size matters.

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

Second, the size of the tarpaulin may underscore the importance of the message to the reader. From an ordinary person's perspective, those who post their messages in larger fonts care more about their message than those who carry their messages in smaller media. The perceived importance given by the speakers, in this case petitioners, to their cause is also part of the message. The effectivity of communication sometimes relies on the emphasis put by the speakers and on the credibility of the speakers themselves. Certainly, larger segments of the public may tend to be more convinced of the point made by authoritative figures when they make the effort to emphasize their messages.

Third, larger spaces allow for more messages. Larger spaces, therefore, may translate to more opportunities to amplify, explain, and argue points which the speakers might want to communicate. Rather than simply placing the names and images of political candidates and an expression of support, larger spaces can allow for brief but memorable presentations of the candidates' platforms for governance. Larger spaces allow for more precise inceptions of ideas, catalyze reactions to advocacies, and contribute more to a more educated and reasoned electorate. A more educated electorate will increase the possibilities of both good governance and accountability in our government.

These points become more salient when it is the electorate, not the candidates or the political parties, that speaks. Too often, the terms of public discussion during elections are framed and kept hostage by brief and catchy but meaningless sound bites extolling the character of the candidate. Worse, elections sideline political arguments and privilege the endorsement by celebrities. Rather than provide obstacles to their speech, government should in fact encourage it. Between the candidates and the electorate, the latter have the better incentive to demand discussion of the more important issues. Between the candidates and the electorate, the former have better incentives to avoid difficult political standpoints and instead focus on appearances and empty promises.

Large tarpaulins, therefore, are not analogous to time and place. They are fundamentally part of expression protected under Article III, Section 4 of the Constitution.[54] (Citation omitted)

Restricting the size of the medium also restricts its reach on its intended audience. A smaller tarpaulin only reaches a small audience. A two-by-three feet tarpaulin placed on a large building may render it unreadable and ineffective. Lessening its size lessens its communicative impact.

As discussed in *Diocese of Bacolod*, speech made by candidates or members of their political parties may be regulated as to time, place, and manner. Consequently, this Court provided for a four-fold test to determine whether the regulation of election paraphernalia may be considered valid:

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message.[55] (Emphasis supplied)

The assailed provisions of COMELEC Resolution No. 10730 do not pass this four-fold test.

According to the Commission on Elections, the restriction "furtheres the important and substantial governmental interest of ensuring equal opportunity for public information campaigns among candidates, orderly elections, and minimizing election spending[.]"[56] The ponencia's facts, however, show that the election materials used by petitioners were from their own funds and initiatives and were completely volunteer-driven.[57]

The imposition of a size restriction on campaign material made by private persons, spent from their own money, and placed on their own private property is neither reasonable nor "narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression." [58] The size limitation itself is arbitrary, since the Commission on Elections has not validly explained why it should be limited to two by three feet.

Prior cases have seen this Court repeatedly uphold the primacy of the right to free speech and expression, especially when the exercise of this right affects the right of suffrage. The Commission on Elections' repeated imposition of size restrictions on campaign material produced and exhibited by private citizens on their private property is not the least restrictive means by which campaign opportunities between electoral candidates can be equalized.

ACCORDINGLY, I vote to GRANT the Petition and make PERMANENT the Temporary Restraining Order. I further vote to declare Section 21(o), Section 24, and Section 26 of COMELEC Resolution No. 10730, series of 2021, as UNCONSTITUTIONAL.

[1] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

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

[3] G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, En Banc].

[4] Id. (Citations omitted)

[5] Diocese of Bacolod v. Commission on Elections, 751 Phil. 301, 332 (2015) [Per J. Leonen, En Banc].

[6] Id. at 332.

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

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

[9] 859 Phil. 560 (2019) [Per J. J. Reyes, Jr., En Banc].

[10] J. Leonen, Separate Concurring Opinion in Nicolas-Lewis v. Commission on Elections, 859 Phil. 560, 614 (2019) [Per J. J. Reyes, Jr., En Banc].

- [11] See J. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 420 (2014) [Per J. Abad, En Banc].
- [12] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 325 (2015) [Per J. Leonen, En Banc].
- [13] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].
- [14] *Id.* at 199.
- [15] *Chavez v. Gonzales*, 569 Phil. 155, 203 (2008) [Per C.J. Puno, En Banc].
- [16] *1-United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 84 (2015) [Per J. Reyes, En Banc].
- [17] *Chavez v. Gonzales*, 569 Phil. 155, 203-204 (2008) [Per C.J. Puno, En Banc].
- [18] See *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].
- [19] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per C.J. Puno, En Banc].
- [20] *Id.* (Citation omitted)
- [21] *Cabansag v. Fernandez*, 102 Phil. 152, 163 (1957) [Per J. Bautista Angelo, First Division].
- [22] See *Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625 (2009) [Per J. Tinga, Second Division].
- [23] 602 Phil. 255 (2009) [Per J. Tinga, Second Division].
- [24] *Id.* at 274.
- [25] 605 Phil. 43 (2009) [Per J. Velasco, Jr., En Banc].
- [26] *Id.* at 163.
- [27] *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].
- [28] *Id.*
- [29] *Osmeña v. Commission on Elections*, 351 Phil. 692, 718 (1998) [Per J. Mendoza, En Banc].
- [30] *Id.*
- [31] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per C.J. Puno, En Banc].
- [32] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 372 (2015) [Per J. Leonen, En Banc].
- [33] *Ponencia*, p. 12.
- [34] *Id.*
- [35] *Id.*, citing *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 395 (2015) [Per J. Leonen, En Banc].
- [36] *Ponencia*, pp. 11-12.
- [37] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 372 (2015) [Per J. Leonen, En Banc].
- [38] 283 Phil. 795 (1992) [Per J. Feliciano, En Banc].

- [39] Id. at 815-817.
- [40] G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, En Banc].
- [41] Id.
- [42] Id.
- [43] Id.
- [44] Id.
- [45] 351 Phil. 692 (1998) [Per J. Mendoza, En Banc].
- [46] Id. at 708-709.
- [47] Id. at 709.
- [48] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 394 (2015) [Per J. Leonen, En Banc].
- [49] *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, En Banc].
- [50] Id.
- [51] 758 Phil. 67 (2015) [Per J. Reyes, En Banc].
- [52] Id. at 85.
- [53] Id. at 91-92.
- [54] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 358-359 (2015) [Per J. Leonen, En Banc].
- [55] Id. at 395.
- [56] Ponencia, p. 9. (Citation omitted)
- [57] Id. at 7.
- [58] *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 395 (2015) [Per J. Leonen, En Banc].

CONCURRENCE

LAZARO-JAVIER, J.:

In his erudite ponencia, our esteemed colleague Associate Justice Jose Midas Marquez (Associate Justice Marquez) declares as unconstitutional the Commission on Elections (COMELEC) implementation of "Oplan Baklas" for a) encroaching upon petitioners' right to freedom of speech and expression,[1] as well as b) their property rights.

I agree that the COMELEC's "Oplan Baklas" or the removal, defacement, destruction of "oversized" tarpaulins, posters, and murals owned by petitioners St. Anthony, et al., posted or installed within their respective private properties, and endorsing the Presidency of Maria Leonor Robredo, amounted to an arbitrary exercise of power.

Section 3 in relation to Section 9 of Republic Act No. 9006 or the Fair Election Act, which is the enabling law of COMELEC Resolution No. 10730, specifically decrees that the regulation on posting of campaign materials or lawful election propaganda covers only registered political parties, national, regional, sectoral parties or

organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions, not individuals who are non-candidates, viz.:

Section 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC). (Emphasis supplied)

xxx xxx xxx

Section 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 (1) 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. (Emphasis supplied)

Sections 6 and 20 of COMELEC Resolution No. 10730 bear similar wording, thus:

SECTION 6. Lawful Election Propaganda. - Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorize expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.

xxx xxx xxx

SECTION 20. Posting of Campaign Materials. – Parties and candidates may post lawful campaign material in:

- a. Authorized common poster areas in public places, subject to the requirements and/or limitations set forth in the next following section; and
- b. Private property, provided that the posting has the consent of the owner thereof and that the applicable provisions of Section 6 herein are complied with.

The posting of campaign materials in public places outside of the designated common poster areas, on private property without the consent of the owner, or in violation of Section 6 hereof, and in those places enumerated under Section 7 (f) of these Rules and the like, is prohibited. Persons posting the same shall be liable together with the candidates and other persons who caused the posting. It will be presumed that the candidates and parties caused the posting of campaign materials outside the common poster areas if they do not remove the same within three (3) days from notice issued by the Election Officer of the city or municipality where the election propaganda is posted or displayed. (Annex "D" of COMELEC Resolution 9616, series of 2013)

Members of the PNP and other law enforcement agencies called upon by the Election Officer or other COMELEC officials may file the appropriate charges against the violators of this Section. (Emphasis supplied)

When the language of the law is clear, there is no room for interpretation, only application.[2]

Here, there is no dispute that petitioners are non-candidates expressing their support for Leni Robredo's Presidency in the 2022 National Elections. The size proscriptions under COMELEC Resolution No. 10730 in

connection with Republic Act No. 9006, therefore, do not apply to them. The COMELEC, thus, misapplied the subject Resolution and acted in an arbitrary and oppressive manner beyond what the law allows it to do. In the same vein, the expenses for the subject posters, tarpaulins, and murals came from petitioners' own pockets; they were posted, installed, or drawn on petitioners' private properties on their own volition and without the prodding or instruction of any candidate. The COMELEC's arbitrary regulation in its "Oplan Baklas" campaign is therefore void for overbreadth as it offends petitioners' protected freedom of expression to choose their candidate and property rights.

I thank my good friend Associate Justice Marquez for his clarification that the constitutional infirmity does not refer to Sections 21(o), 24, and 26 of COMELEC Resolution No. 10730[3] which in fact resonate Section 3 of the enabling law Republic Act No. 9006 as shown in the following matrix:

COMELEC Resolution No. 10730

Republic Act No. 9006

SECTION 21. Common Poster Areas. – Parties and independent candidates may, upon authority of the COMELEC, through the City or Municipal Election Officer concerned, construct common poster areas, at their expense, wherein they can post, display, or exhibit their election propaganda to announce or further their candidacy subject to the following requirements and/or limitations:

xxx

o. No lawful election propaganda materials shall be allowed outside the common poster areas except on private property with the consent of the owner or in such other places mentioned in these Rules and must comply with the allowable size (2ft x 3ft) requirements for posters. Any violation hereof shall be punishable as an election offense;

SECTION 24. Headquarters Signboard. - Before the start of the campaign period, only one (1) signboard, not exceeding three (3) feet by eight (8) feet in size, identifying the place as the headquarters of the party or candidates is allowed to be displayed. Parties may put up the signboard announcing their headquarters not earlier than five (5) days before the start of the campaign period. Individual candidates may put up the signboard announcing their headquarters not earlier than the start of the campaign period. Only lawful election propaganda material may be displayed or posted therein and only during the campaign period.

Section 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

For the purpose of this Act, lawful election propaganda shall include:

3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;

3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;

3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the

holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

3.4. Paid advertisements in print or broadcast media: Provided, That the advertisements shall follow the requirements set forth in Section 4 of this Act; and

3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.

Admittedly, Section 24 of COMELEC Resolution No. 10730 imposes the three feet by eight feet size restriction on signboards displayed in the headquarters of the political party or candidate, while in Section 3 of Republic Act No. 9006, the same size limitation is imposed on streamers at a public meeting or rally. The fixed-size impositions under Section 3 of Republic Act 9006 are nonetheless exactly replicated in Section 6 of COMELEC Resolution No. 10730, thus:

Republic Act No. 9006

COMELEC Resolution No. 10730

Section 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

For the purpose of this Act, lawful election propaganda shall include:

3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;

3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;

3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

3.4. Paid advertisements in print or broadcast media: Provided, That the advertisements shall follow the requirements set forth in Section 4 of this Act; and

3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.

SECTION 6. Lawful Election Propaganda. - Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorize expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.

Lawful election propaganda shall include:

a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one-half inches (8 ½") in width and fourteen inches (14") in length;

b. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate

for public office;

c. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

d. Paid advertisements in print or broadcast media: Provided, That the advertisements shall allow the requirements set forth in Section 9 hereof;

e. All other forms of election propaganda not prohibited by the Omnibus Election Code or these rules
xxx

On the other hand, Section 26 of COMELEC Resolution No. 10730 on the "Removal, Confiscation, or Destruction of Prohibited Propaganda Materials" conforms with the COMELEC's wide latitude and authority to protect the integrity of elections,[4] ensuring that only permissible propaganda materials shall be posted and displayed. Section 26 is likewise incidental to achieving the purpose of preventing illegal campaigning, minimizing election overspending, and promoting equality of opportunities for public information among all candidates and the electorate. No less than the Constitution authorizes the COMELEC to regulate communication and information with the objective of holding free, orderly, honest, and credible elections.[5]

In fine, there is nothing in Sections 21(o), 24, and 26 of COMELEC Resolution No. 10730 which departed from the spirit and intent of the law. What departed therefrom was COMELEC's arbitrary and erroneous implementation of the aforesaid provisions of COMELEC Resolution No. 10730. It is this action of the Comelec which ought to be voided, as correctly pronounced in the ponencia.

[1] Draft ponencia, p. 16.

[2] Power Sector Assets and Liabilities Management (PSALM) Corp. v. Commission on Audit, G.R. No. 247924, November 16, 2021 [Per J. Lazaro-Javier, En Banc].

[3] Cover Letter by the Ponente dated August 11, 2023.

[4] Dumarpa v. Commission on Elections, 707 Phil. 382 (2013) [Per J. Perez, En Banc].

[5] Article IX (C) of the 1987 Constitution:

Sec. 4. The Commission [on Elections] 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.

DISSENTING OPINION

M. LOPEZ, J.:

On November 17, 2021, the Commission on Elections (COMELEC) promulgated Resolution No. 10730 or the "Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the Fair Election Act in connection with the May 9, 2022 National and Local Elections." Specifically, the Resolution echoed Section 3 of Republic Act (RA) No. 9006 and defined "lawful election propaganda" to include "[p]amphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one-half inches (8 1/2") in width and fourteen inches (14") in length"[1] and "[c]loth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet xxx."[2] Moreover, the Resolution authorized the removal, confiscation, or destruction of prohibited propaganda materials.[3] The COMELEC then launched Oplan Baklas which seeks to abate unlawful election propaganda or campaign materials.

The petitioners, who are non-candidates, publicly displayed oversized election paraphernalia in the form of posters and tarpaulins, among others, within their private properties during the campaign period for national elective positions.[4] The COMELEC removed the election propaganda due to non-conformity with the size restrictions. Aggrieved, the petitioners assailed the constitutionality of Oplan Baklas for violating their constitutional freedom of speech and expression, and the right to use their private properties. The petitioners also argued that no law prohibits them from posting oversized election paraphernalia on their private properties.

The majority ruled that Oplan Baklas is unconstitutional and explained that Section 3 of RA No. 9006 on lawful election propaganda only covers candidates and political parties and not private individuals. The size restrictions are likewise inapplicable because the oversized election paraphernalia were not displayed on behalf of or in coordination with the endorsed candidates and political parties. In other words, the COMELEC cannot prohibit private individuals from displaying oversized election propaganda on private properties lest they infringe the rights to property, free speech, and expression.[5]

I respectfully differ.

I submit that the petitioners are not exempted from the application of the law. All persons, including non-candidates, must comply with the size restrictions of election propaganda. Section 3 of RA No. 9006 did not limit its coverage to candidates and political parties. More importantly, the COMELEC has the authority to enforce the size restrictions against the petitioners as part of its constitutional duty to enforce and administer all laws and regulations relative to the conduct of election.[6] In examining the validity of Oplan Baklas, this opinion will discuss whether the seized posters and tarpaulins are considered election propaganda; and whether the size restrictions of election propaganda are applicable to private individuals.

RA No. 9006 defined the term "lawful election propaganda" as "[e]lection propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections."[7] Similarly, Resolution No. 10730 adopted this definition and included the "internet or any other medium," to wit: "[e]lection propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorize expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC."[8]

Verily, the term "election propaganda" has a specific meaning under election laws and must be understood in the context of Batas Pambansa Blg. 881 or the Omnibus Election Code of the Philippines[9] (OEC) which defined

"election campaign" or "partisan political activity" as an "act designed to promote the election or defeat of a particular candidate or candidates to a public office x x x,"[10] which shall include "[p]ublishing or distributing campaign literature or materials designed to support or oppose the election of any candidate" or "[d]irectly or indirectly soliciting votes, pledges or support for or against a candidate." [11] The proponents of RA No. 9006 were careful not to use another term to avoid any unintentional repeal of existing election laws. Senator Miriam Palma Defensor Santiago clarified during the legislative interpellation that the use of the term "election propaganda" was deliberate and should be understood as a general term that includes political advertisement, viz.:

Senator Santiago[.]

x x x x

I would like to deal first with the title which uses the term "Election Propaganda" and then go to Section I which has the subtitle also using the term "election propaganda." However, after the subtitle of Section 1, the first sentence uses another term. It uses "political advertisements[.]" However, the term "political advertisements" is used in the main body or in the main text of the bill found in Section 1.

On this point, please allow me to explain as follows: Our Election Code, by which I refer to BP Blg. 881, uses the term "election propaganda" as a general term, instead of "political advertisement." The term "political advertisement" as in political advertisement or propaganda is used only once in the penultimate sentence of the Election Code, Section 86.

Political advertisement, therefore, is only one of the methods in the whole arsenal of election propaganda. This should be understood very well in our Hall because in the process of amending election propaganda through mass media, which is actually political advertisement, Congress might unintentionally amend or repeal existing provisions of other forms of election propaganda classified under the law as lawful or prohibited.

What is election propaganda? Election propaganda should also be understood in the manner that it is defined by law. Election propaganda is designed to promote the election or defeat of a particular candidate or candidates to a public office[.]

Under the present Election Code, this prohibition, violation of which is an election offense, applies to a candidate, a voter, a political party or an association of persons. There are types of election propaganda. Under our existing law, election propaganda is of two types: (1) election propaganda advertisement; and (2) election propaganda gadget.

Election propaganda advertisements, in turn, are classified into: (1) printed materials; (2) audiovisual by cinematography, audiovisual units or other screen projections; (3) through print media, meaning the newspapers; or (4) through broadcast media, meaning radio or television.

And so, at the end of this lengthy explanation, may I please raise the question: Would the distinguished sponsor clarify whether the term of choice for this Chamber is election propaganda or political advertisement, election propaganda being, I believe, a broader term?

Senator Roco. Yes. The election propaganda is used precisely because it is broader, Mr. President. Then the other sections of existing law, Batas Pambansa Blg. 881, are not modified, and therefore, the definition or the use of the term "election propaganda" under Section 82 of Batas Pambansa Blg. 881, for instance, will remain as defining lawful election propaganda.

The use of political advertisements was intended to distinguish only the first line referring to national elective positions and to the access of local elective officials to political advertisements[.]

Senator Santiago. Would the gentleman have any objection if, during amendment stage, I propose that in the first two lines of Section 1, the term used should be "election propaganda" to make this second line consistent

with the title and with the subtitle of that same Section 1?

Senator Roco. In fact, Mr. President, if we can further improve it, I think we got snagged with the term "advertising" only because of reference to the Truth in Advertising Act[.][12] (Emphasis supplied)

In the Bicameral Conference, Senator Sergio R. Osmeña III confirmed that the word "propaganda" is a broad term covering software, advertising, and campaign material and that the proponents do not want to deviate from the concept of "election propaganda" under the OEC, thus:

SEN. OSMENA (S). May I just put on record my continuing confusion over the use of the word "propaganda?" Because in the Philippine context it refers to both, the software and the advertising and campaign materials. Actually, this bill is a bill that will amend the use of -- allow political advertising. That was the original bill when they say election ad ban that's why he says ad. And yet, of course, on an election code, he uses propaganda as advertising and vice-versa when propaganda, actually is "Vote Syjuco." That is propaganda. "He's a good man." And what [we're] really talking about here is campaign materials and advertising.

So with that in mind, Mr. Chairman, I wanted to put that on record that we do tend to use the word "propaganda" interchangeably with the campaign materials and advertising.

THE CHAIRMAN. (REP SYJUCO). Mr. Chairman.

THE CHAIRMAN (SEN. ROCO). Yes.

THE CHAIRMAN (REP. SYJUCO). I believe the point of Senator Osmeña is well-taken. What would Senator Osmeña suggest then that we use?

SEN. OSMENA (S). Well, Mr. Chairman, I had wanted to use "lawful election campaign materials and advertising." But, unfortunately, if you look at the BP 881 it uses also propaganda so it tends to mix the two. As a matter of fact, if you look at the House version, Section 82 is "lawful election propaganda" and then the first line says "all political advertisements." So, it really refers to advertising rather than the software, the idea which is propaganda. Because if you say we will allow propaganda, propaganda is always allowed in any election. "Vote Congressman Padilla because he's an excellent Congressman," that is a propaganda. Now, how you communicate that to the people, whether it's through television, radio, print, is the advertising or the campaign material part of it.

THE CHAIRMAN. (SEN ROCO). Yeah, Mr. Chairman. Actually both our versions talk of propaganda so I don't think that is worth debating. Because your House version, House Bill 9000 seeks to amend 82 – Lawful Election Propaganda, and we use Lawful Election Propaganda. And to modify the words now we will have to modify all the other election rules.

x x x x

SEN. LEGARDE-LEVISTE. Mr. Chairman. I think that we should refer to the [COMELEC] Code, no, or Election Code and find out how they use propaganda and make ours consistent with the code.

THE CHAIRMAN (SEN. ROCO). That's correct. What we have now is consistent[.]

SEN. OSMENA. x x x What we are really saying is election advertising is now--paid advertising is now going to be allowed[.]

x x x x

THE CHAIRMAN (REP SYJUCO). I understand, Mr. Chairman, that the word "propaganda" is consistent with the established use thereof.

THE CHAIRMAN (SEN. ROCO). Yes.

THE CHAIRMAN (REP. SYJUCO). And I understand the concern to maintain such consistency and not create confusion. So, I personally have no objection to use of the word "propaganda." We were trying to seek out a better word but considering the effects of the use of a new terminology and the confusion that may result from there, let us maintain the word "propaganda".[13] (Emphasis supplied)

It must be emphasized that the controlling test is whether the campaign material and paraphernalia were designed to promote the election or defeat of a particular candidate or candidates. Corollarily, election campaign materials and paraphernalia cannot be considered as election propaganda absent a candidate. On this score, the OEC provided that a "candidate" is "any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties." [14] RA No. 9369 [15] later clarified that "[a]ny person who files his certificate of candidacy x x x shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy." [16] Cognizant of these requisites, Resolution No. 10730 defined the terms "candidate" and "election propaganda" as follow:

SECTION 1. Definitions - As used in this Resolution:

x x x x

2. "Candidate" refers to any person seeking an elective public office, who has filed his or her certificate of candidacy, and who has not died, withdrawn his or her certificate of candidacy, had his or her certificate of candidacy denied due course or cancelled, or has been otherwise disqualified before the start of the campaign period for which he or she filed his certificate of candidacy. Provided, that, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period.

It also refers to any registered national, regional, or sectoral party, organization or coalition thereof that has filed a manifestation of intent to participate under the party-list system, which has not withdrawn the said manifestation, or which has not been disqualified before the start of the campaign period.

x x x x

16. "Political advertisement" or "election propaganda" refers to any matter broadcasted, published, printed, displayed or exhibited, in any medium, which contains the name, image, logo, brand, insignia, initials, and other symbol or graphic representation that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office. In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.

Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which – when taken as a whole – has for its principal object the endorsement of a candidate only, or which were posted in return for consideration or are otherwise capable of pecuniary estimation. (Emphasis supplied)

On this point, election campaign materials and paraphernalia will be considered as election propaganda if the following requisites concur: (1) there must be a candidate for public office; (2) the materials and paraphernalia were designed to promote the election or defeat of a particular candidate; and (3) the materials and paraphernalia were published or distributed. Here, it is undisputed that Vice-President Ma. Leonor Robredo is a presidential candidate, and the posters and tarpaulins were removed during the campaign period.[17] The petitioners also admitted that the campaign materials are "election paraphernalia plainly and primarily intended to endorse the

candidacy of Robredo and cause her election to the presidency." [18] Lastly, the posters and tarpaulins were displayed in public view. Taken together, the seized campaign materials are clearly election propaganda within the framework of existing election laws. This opinion will now discuss whether the size restrictions of election propaganda are applicable to private individuals.

Notably, both RA No. 9006 and Resolution No. 10730 provided identical size restrictions of election propaganda. Yet, the majority employed descriptive phrases like "election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency"; [19] "declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only"; and "privately-owned election paraphernalia" [20] to exclude the seized campaign materials from the ambit of election propaganda. The majority also held that Section 3 of RA No. 9006 only covers candidates and political parties and not private individuals. [21] As justification, the majority applied the statement in *Diocese of Bacolod v. COMELEC* [22] that "election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties. [23] However, this statement must be limited to materials containing social advocacy during the campaign period. The Decision in *Diocese of Bacolod* examined the validity of measures regulating materials that primarily advanced social advocacies. The ruling concerns "regular" speech and not election propaganda. The majority defended the application of the *Diocese of Bacolod* by citing the case of *Social Weather Stations, Inc. v. COMELEC* [24] which involved election surveys. [25] However, the Court was categorical in *Social Weather Stations, Inc.* that an election survey is not considered as election propaganda. The Court in that case explicitly stated that "what is involved here is not election propaganda per se. Election surveys, on their face, do not state or allude to preferred candidates. As a means, election surveys are ambivalent. x x x." Hence, the cited case law is not authoritative. Besides, Section 5 of RA No. 9006, not Section 3, governs election survey.

At any rate, Section 3 of RA No. 9006 did not limit its application to candidates and political parties. Thus, it is irrelevant whether the person who used the campaign materials and paraphernalia or caused their publication or distribution, is a political party, candidate, or non-candidate. There should be no distinction in the application of the law where none is indicated. [26] A contrary interpretation would force the Court to dip its foot in the forbidden waters of judicial legislation and to veer away from the concept of election propaganda as discussed above. Indeed, the exclusion of private individuals from the coverage of size restrictions of election propaganda has no textual support, undermines the objective of election laws, and opens a constitutional challenge on whether a valid distinction exists between candidates and non--candidates in the exercise of their rights to property, free speech, and expression. To be sure, Section 3 of RA No. 9006 may be analyzed and dissected in three parts referring to the medium, content, and limitations, viz.:

Section 3 of R.A. No. 9006

"Whether on television, cable television, radio, newspapers or any other medium is hereby allowed"

Medium

"For all registered political parties, national, regional, sectoral parties or organizations participating under the

party-list elections and for all bona fide candidates seeking national and local elective office"

Content

"Subject to the limitation on authorize expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC)"

Limitations

As regards the medium of election propaganda, the phrase "is hereby allowed" only marks the end of the total political advertisement ban. There is nothing in the provision that qualifies between a political party, candidate, or non-candidate. In his sponsorship speech, Senator Raul S. Roco expounded why the political advertisement ban should be lifted, thus:

Under the 1973 Constitution, President Marcos promulgated Presidential Decree No. 1296, "The 1978 Election Code" which provided what constituted lawful election propaganda (sec. 37) and the prohibited forms of election propaganda (sec. 39).

x x x x

The Decree did not prohibit election propaganda through mass media but merely regulated the sale of air time for political purposes (sec. 41). Again, there were provisions for "COMELEC Space" (sec. 45) and "COMELEC Time" (sec. 46).

x x x x

The present law is found in Batas Pambansa Blg. 881, the "Omnibus Election Code of the Philippines[.]" [I]ts regulatory features are found chiefly in the following sections:

SECTION 85. Prohibited forms of election propaganda;

SECTION 86. Regulation of election propaganda through mass media;

SECTION 90. COMELEC space; and

SECTION 92. COMELEC time.

On 5 January 1988, President Aquino signed into law Republic Act No. 6646, otherwise known as "The Electoral Reforms Law of 1987."

x x x x

Departing radically from the preceding statutes, the law does not only regulate political advertisements but prohibits "any newspaper, radio broadcasting or television station or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881." (sec.

11(b), RA 6646).

The Constitutional Challenge to RA 6646

The constitutionality of the political ad ban law was challenged in the case of National Press Club vs. Commission on Elections, 207 SCRA 1, 5 March 1992.

The Supreme Court sustained the validity of the statute. It characterized the political ad ban as "equalizing" the situations of rich and poor candidates. Section 11(b) of Republic Act No. 6646 prohibits the sale or donation of print space and air time "for campaign or other political purposes" except to the Comelec[.]

Citing Article IX C, Section 9 of the Constitution, the Court ruled that the Comelec has thus been expressly authorized by the Constitution to supervise and regulate the enjoyment and utilization of the franchises or permits for the operation of media and communication and information. It also cited Article II, Section 26 of the Constitution which provides that, "The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law[.]"

Justice Isagani A. Cruz filed a strong dissent. Regardless of the financial disparity among the candidates, the law is unconstitutional as it constitutes censorship.

x x x x

"But the most serious objection to Section 11(b) is that it constitutes prior restraint on the dissemination of ideas. In a word it is censorship[.]"

x x x x

As Justice Hugo Gutierrez, who also cast a dissenting vote, bluntly put it: "Section 11(b) of R.A. 6646 will certainly achieve one result--keep the voters ignorant of who the candidates are and what they stand for." (at p. 28).[27]

Anent the contents of election propaganda, a plain reading of Section 3 of RA No. 9006 does not provide a distinction between a political party, candidate, or non-candidate. The provision focuses on the election propaganda and not the person who used or caused their publication or distribution. The phraseology of law does not even support the ruling that election propaganda refers to "matter done by or on behalf of and in coordination with candidates and political parties." [28] Section 3 of RA No. 9006 used the preposition "for" which served as "a function word to indicate the object or recipient of a perception, desire, or activity." [29] As such, the substance of the election propaganda must pertain to the political parties and candidates. This is because election propaganda must promote the election or defeat of candidates or a particular candidate. Again, campaign materials and paraphernalia can hardly fall as election propaganda if their contents pertain to non-candidates. The majority's interpretation as to the distinction between political parties, candidates, and non-candidates would probably be correct if the law uses the preposition "by" which is often used in a passive sentence to signify an actor or the doer of an action. However, this is not the case. A restrictive reading of the law to exclude non-candidates is arbitrary.

Worse, non-candidates may circumvent the size restrictions and simply argue that the campaign materials and paraphernalia were not displayed on behalf of or in coordination with the endorsed candidates and political parties. For instance, traditional political parties that do not participate in the elections may exploit this loophole and promote candidates without worrying about the limitations prescribed in the law. These traditional political parties will just claim that they do not officially nominate the endorsed candidates. Another example is candidates who opted to run independently after they refused to accept the official nominations of their political parties. This begs the question of whether the political parties are exempted from the size restrictions of election propaganda since they were not published or distributed on behalf of or in coordination with the promoted candidates. A

scenario also comes to mind whether the husband of an independent mayoralty candidate may post oversized election propaganda on his private property to promote the candidacy of a gubernatorial candidate. The husband of the mayoralty candidate may prove that the posting of election propaganda is voluntary and without coordination from the gubernatorial candidate. The husband is a non-candidate who is exempted from the size restriction in so far as the gubernatorial candidate is concerned. However, the husband cannot do so for his wife who is a mayoralty candidate and must comply with the size restrictions of election propaganda.

The above situations undermine the objectives why RA No. 9006 was enacted in the first place, i.e., to assure free, orderly, honest, peaceful, and credible elections and to ensure equal opportunity to public service. The construction of the law offered by the majority would provide a backdoor for unscrupulous candidates and political parties to evade campaign speech regulations. I reiterate the observations of former Senior Associate Justice Antonio T. Carpio in his Separate Concurring Opinion in the Diocese of Bacolod that treating private campaign speech as absolutely protected would defeat the noble goals of the law, to wit:

To hold the COMELEC without authority to enforce Section 3.3 of RA 9006 against non-candidates and non-political parties despite the absence of any prohibition under that law, is not only to defeat the constitutional intent behind the regulation of "minimiz[ing] election spending" but also to open a backdoor through which candidates and political parties can indirectly circumvent the myriad campaign speech regulations the government adopted to ensure fair and orderly elections.

"Election spending" refers not only to expenses of political parties and candidates but also to expenses of their supporters. (Otherwise, all the limitations on election spending and on what constitutes lawful election propaganda would be meaningless). Freeing non-candidates and non-parties from the coverage of RA 9006 allows them to (1) print campaign ad banners and posters of any size and in any quantity, (2) place TV and radio ads in national and local stations for any length of time, and (3) place full-page print ads in broadsheets, tabloids [,]and related media. Obviously, printing posters of any size, placing full-page print ads, and running extended broadcast ads all entail gargantuan costs. Yet, under the ponencia's holding, so long as these are done by non-candidates and non-political parties, the state is powerless to regulate them.

The second evil which results [sic] from treating private campaign speech as absolutely protected (and thus beyond the power of the state to regulate) is that candidates and political parties, faced with the limitations on the size of print ads and maximum air time for TV and radio ads under RA 9006, will have a ready means of circumventing these limitations by simply channeling their campaign propaganda activities to supporters who do not happen to be candidates or political parties. Thus, voters during an election season can one day wake up to find print media and broadcast airwaves blanketed with political ads, running full-page and airing night and day, respectively, to promote certain candidates, all paid for by a non-candidate billionaire supporter. Such bifurcated application of RA 9006's limitations on the sizes of print ads (Section 6.1) and maximum broadcast time for TV and radio campaign ads (Section 6.2) defeats the purpose of regulating campaign speech.[30] (Emphasis supplied)

Finally, I share the COMELEC's view that Section 82 of the OEC is applicable to the petitioners. Section 82 of the OEC does not contain the phrase "is hereby allowed for" which, as the majority interpreted, served to restrict the application of Section 3 of RA No. 9006 to political parties and candidates. Moreover, Section 82 of the OEC neither distinguish between candidates and non-candidates nor qualify that campaign materials and paraphernalia must be distributed or published by political parties or candidates before they may be considered as election propaganda, thus:

SECTION 82. Lawful election propaganda. - Lawful election propaganda shall include

a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;

x x x x

c. Cloth, paper or cardboard posters, whether framed or posted, with an area exceeding two feet by three feet, x x x.

Nevertheless, the majority concluded that Section 3 of RA No. 9006 impliedly repealed Section 82 of the OEC due to irreconcilable inconsistency. Contrary to the majority view, the difference between the two laws only pertain to the description of lawful election propaganda. The apparent repugnancy may be harmonized. The majority construed Section 3 of RA No. 9006 as applicable only to candidates and political parties. In contrast, Section 82 of the OEC subsists as a good law with respect to non-candidates. Hence, the petitioners who are non-candidates must at the very least comply with the size restrictions under Section 82 of the OEC.

In sum, the Oplan Baklas is consistent with the COMELEC's constitutional duty to enforce and administer all laws and regulations relative to the conduct of election. The COMELEC did not exceed its authority in removing the oversized election propaganda. Thus, I vote to dismiss the Petition.

[1] Resolution No. 10730, sec. 6(a).

[2] Resolution No. 10730, sec. 6(c).

[3] Resolution No. 10730, sec. 26.

[4] Decision, pp. 2 & 15.

[5] Id. at 17.

[6] CONST., art. IX-C, sec. 2(1).

[7] Republic Act No. 9006, sec. 3.

[8] Resolution No. 10730, sec. 6.

[9] Approved on December 3, 1985.

[10] Batas Pambansa Blg. 881 (1985), sec. 79(b).

[11] Batas Pambansa Blg. 881 (1985), sec. 79(b)(4) and (5).

[12] Senate TSP 102, No. 92, August 21, 2000, BILL ON SECOND READING, (S. No. 1742 – Lifting of the Policial Ad Ban (Continuation), pp. 99-101.

[13] Senate TCM 10, Bicameral Conference Committee Meeting on the Disagreeing Provisions of S. No. 1742 and H. No. 9000 (Fair Election Practices Act) [Committee on Electoral Reforms, Suffrage and People's Participation], November 23, 2000, pp. 19-23.

[14] Batas Pambansa Blg. 881 (1985), sec. 79(a).

[15] AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES", Republic Act No. 9369, Approved on January 23, 2007.

[16] Republic Act No. 9369, sec. 13.

[17] Decision, p. 5.

[18] Id. at 15.

[19] Id.

[20] Id. at 17.

[21] Id. at 15. "The COMELEC's argument that the election paraphernalia owned by St. Anthony College et al. fall within the definition of "political advertisement" or "election propaganda" under sec. 1 (16), COMELEC Resolution No. 10730, are thus subject to regulation ignores the Court's express ruling in *Diocese of Bacolod* on the scope of the COMELEC's regulatory powers under RA 9006. As held in that case, Sections 3 and 9, RA 9006, as well as the implementing rules and regulations issued by the COMELEC, apply only to candidates and political parties: x x x" (Emphasis supplied)

[22] 751 Phil. 301, 349 (2015) [Per J. Leonen, En Banc].

[23] The majority refers to the following observations in the *Diocese of Bacolod*: "These provisions show that election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties. Some level of coordination with the candidates and political parties for whom the election propaganda are released would ensure that these candidates and political parties maintain within the authorized expenses limitation." (Emphasis supplied)

[24] 757 Phil. 483 (2015) [Per J. Leonen, En Banc].

[25] Decision, p. 13. The majority ruled that "[w]hile *Diocese of Bacolod* may not be on all fours, with the instant case, considering that it involved social advocacy and not election paraphernalia, the Court has also cited the *Diocese of Bacolod* test in a case involving election surveys, which "partake the nature of election propaganda." In *Social Weather Stations, Inc. v. COMELEC*, the Court cited *Diocese of Bacolod*, and articulated the above test as the "required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate. The Court then applied the *Diocese of Bacolod* test to published election surveys, which have "the tendency to shape voter preferences," and are thus "declarative speech in the context of an electoral campaign properly subject to regulation."

[26] RUBEN E. AGPALO, STATUTORY CONSTRUCTION 290 (2009).

[27] Senate TSP 102, No. 92, May 22, 2000, BILL ON SECOND READING, (S. No. 1742 – Lifting the Political ad Ban), Sponsorship Speech of Senator Raul S. Roco, pp. 97-100.

[28] COMELEC, supra note 22.

[29] MERRIAM WEBSTER DICTIONARY, "for," available at <<https://www.merriamwebster.com/dictionary/for>> (last accessed on October 25, 2023).

[30] COMELEC, supra note 22, at 406-407.

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.