EN BANC

[G.R. No. 223705, August 14, 2019]

LOIDA NICOLAS-LEWIS, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

DECISION

REYES, J. JR., J.:

On grounds of violation of the freedom of speech, of expression, and of assembly; denial of substantive due process; violation of the equal protection clause; and violation of the territoriality principle in criminal cases, Loida Nicolas-Lewis (petitioner) seeks to declare as unconstitutional Section 36.8 of Republic Act (R.A.) No. 9189, as amended by R.A. No. 10590[1] and Section 74(II)(8) of the Commission on Elections (COMELEC) Resolution No. 10035,[2] which prohibit the engagement of any person in partisan political activities abroad during the 30-day overseas voting period.

Relevant Antecedents

On February 13, 2003, R.A. No. 9189, entitled "An Act Providing for a System of Overseas Absentee Voting by Qualified Citizens of the Philippines Abroad, Appropriating Funds Therefor, and for other Purposes," also known as "The Overseas Absentee Voting Act of 2003," was enacted. Its purpose is to ensure equal opportunity to all qualified Filipino citizens abroad to exercise the fundamental right of suffrage pursuant to Section 2, Article V[3] of the 1987 Constitution.

In 2012, certain amendments to R.A. No. 9189 were proposed both by the House of Representatives and the Senate through House Bill No. 6542 and Senate Bill No. 3312, respectively.

Consequently, R.A. No. 9189 was amended by R.A. No. 10590 or "The Overseas Voting Act of 2013."

Of relevance in the instant petition is Section 37 of R.A. No. 10590 which renumbered Section 24 of R.A. No. 9189 and amended the same as follows:

> SEC. 36. Prohibited Acts. - In addition to the prohibited acts provided by law, it shall be unlawful:
>
> x x x x
>
> 36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period;

x x x x

> The provision of existing laws to the contrary notwithstanding, and with due regard to the Principle of Double Criminality, the prohibited acts described in this section are electoral offenses and shall be punishable in the Philippines.

On January 13, 2016, the COMELEC promulgated Resolution No. 10035 entitled "General Instructions for the Special Board of Election Inspectors and Special Ballot Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes under Republic Act No. 9189, x x x as amended by Republic Act No. 10590 for Purposes of the May 9, 2016 National and Local Elections." Section 74(II)(8), Article XVII thereof provides for the same prohibition above-cited, *viz*.:

> Sec. 74. Election offenses/prohibited acts. -
>
> x x x x
>
> II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003", as amended
>
> x x x x
>
> 8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.
>
> x x x x
>
> The provision of existing laws to the contrary notwithstanding, and with due regard to the Principle of Double Criminality, the prohibited acts described in this section are electoral offenses and shall be punishable in the Philippines.
>
> x x x x

Petitioner possesses dual citizenship (Filipino and American), whose right to vote under R.A. No. 9189, as amended, or the absentee voting system, was upheld by the Court *En Banc* in the 2006 case of *Nicolas-Lewis, v. COMELEC*.[4]

Petitioner alleges, albeit notably *sans* support, that she, "together with thousands of Filipinos all over the world," were prohibited by different Philippine consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates, especially for the positions of President and Vice-President for the 2016 Elections, pursuant to the above-cited provisions.[5]

Hence, this petition.

Considering the urgency of the matter as the May 2016 presidential and vice-presidential elections were forthcoming when the petition was filed, the Court, in its April 19, 2016 Resolution[6] partially granted the application for temporary restraining order (TRO), enjoining the COMELEC, its deputies and other related instrumentalities

from implementing the questioned provisions, except within Philippine Embassies, Consulates, and other Posts where overseas voters may exercise their right to vote pursuant to the Overseas Voting System, where partisan political activities shall still be prohibited until further orders from the Court.

Issues

Notably, the questioned provision in COMELEC Resolution No. 10035 merely echoed that of Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590. Also, said Resolution was issued for purposes of the May 9, 2016 Elections only, which already came to pass.

Thus, ultimately, this Court is called upon to resolve the issue on whether Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is unconstitutional for violating the right to speech, expression, assembly, and suffrage; for denial of substantive due process and equal protection of laws; and for violating the territoriality principle of our criminal law.

The Court's Ruling

The Court is once again confronted with the task of harmonizing fundamental interests in our constitutional and democratic society. On one hand are the constitutionally-guaranteed rights, specifically, the rights to free speech, expression, assembly, suffrage, due process and equal protection of laws, which this Court is mandated to protect. On the other is the State action or its constitutionally-bounden duty to preserve the sanctity and the integrity of the electoral process, which the Court is mandated to uphold. It is imperative, thus, to cast a legally-sound and pragmatic balance between these paramount interests.

Essentially, petitioner urges the Court to review the questioned provision, premised on the claim that "he and all the Filipino voters all over the world" have experienced its detrimental effect when she, "together with thousands of similarly situated Filipinos all over the world," were allegedly prohibited by different Philippine consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates in the 2016 Elections.

The Office of the Solicitor General (OSG), however, argues that these allegations do not only lack veracity, but also failed to demonstrate how petitioner, or overseas Filipino voters for that matter, were left to sustain or are in the immediate danger to sustain direct injury as a result of the enforcement of the assailed provision. Significant details such as the true nature of the activities allegedly conducted by the petitioner and the alleged thousands of overseas Filipino voters all over the world and the circumstances that led to the alleged prohibition made by the Philippine consulates, if at all, were not asserted which could have clearly demonstrated the claimed detrimental effect caused by the operation of the questioned law to her and all the Filipino voters abroad. Hence, the OSG posits that petitioner failed to establish that this case involves a justiciable controversy to warrant the Court's review of a co-equal branch's act.

Contrary to the OSG's position, the instant petition involves an actual case or justiciable

controversy, warranting the Court's exercise of the power of judicial review.

Indeed, whether under the traditional or the expanded setting, the power of judicial review is subject to certain limitations, one of which is that there must be an actual case or controversy calling for the exercise of judicial power.[7] In the recent case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[8] the Court expounded on this requisite, *viz*.:

> x x x [A]n actual case or controversy is one which ["]involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.["] In other words, "**there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**." According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "**by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act**."
>
> Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.**

Relatedly, in *Ifurung v. Morales*,[9] the Court explained that:

> [G]rave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law, or existing jurisprudence. We have already ruled that petitions for *certiorari* and prohibition filed before the Court "are the remedies by which grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the [g]overnment may be determined under the Constitution," and explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but **also to set right, undo, and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the [g]overnment, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions***."

Thus, "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right, but in fact the duty of the judiciary to settle the dispute. The question, thus, posed is judicial rather than political. The duty to

adjudicate remains to assure that the supremacy of the Constitution is upheld."[10]

Guided by the foregoing principles, the Court finds that there exists an actual justiciable controversy in this case given the "evident clash of the parties' legal claims" [11] as to whether the questioned provision infringe upon the constitutionally-guaranteed freedom of expression of the petitioner, as well as all the Filipinos overseas. Petitioner's allegations and arguments presented a *prima facie* case of grave abuse of discretion which necessarily obliges the Court to take cognizance of the case and resolve the paramount constitutional issue raised. The case is likewise ripe for adjudication considering that the questioned provision continues to be in effect until the Court issued the TRO above-cited, enjoining its implementation. While it may be true that petitioner failed to particularly allege the details of her claimed direct injury, the petition has clearly and sufficiently alleged the existence of an immediate or threatened injury sustained and being sustained by her, as well as all the overseas Filipinos, on their exercise of free speech by the continuing implementation of the challenged provision. A judicial review of the case presented is, thus, undeniably warranted.

Besides, in *Gonzales v. COMELEC*,[12] the Court ruled that when the basic liberties of free speech, freedom of assembly and freedom of association are invoked to nullify a statute designed to maintain the purity and integrity of the electoral process by Congress calling a halt to the undesirable practice of prolonged political campaign or partisan political activities, the question confronting the Court is one of transcendental significance, warranting this Court's exercise of its power of judicial review.[13]

Verily, in discharging its solemn duty as the final arbiter of constitutional issues, the Court shall not shirk from its obligation to determine novel issues, or issues of first impression, with far-reaching implications.[14]

That being so, this Court shall now endeavor to settle the constitutional issue raised in the petition promptly and definitely.

Petitioner assails the constitutionality of Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, which prohibits "any person to engage in partisan political activity abroad during the 30-day overseas voting period." A violation of this provision entails penal and administrative sanctions.

Section 79(b) of the Omnibus Election Code defines partisan political activity as follows:

> Section 79. Definitions. - x x x
>
> x x x x
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> (b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:
>
> > (1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or

undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

Basically, on its face, the questioned provision prohibits the act of campaigning for or against any candidate during the voting period abroad.

In the main, petitioner argues that the prohibition is a violation of Article III, Section 4 of the 1987 Constitution. Petitioner explains that the prohibited partisan political activities as defined under the law are acts of exercising free speech, expression, and assembly. Corollary, these activities are necessary for the voters to be informed of the character, platforms, and agenda of the candidates to the end of having an educated decision on who to vote for. As such, it is petitioner's position that the prohibition on partisan political activities is a clear curtailment of the most cherished and highly-esteemed right to free speech, expression, and assembly, as well as the right to suffrage.

Specifically, petitioner argue that the questioned prohibition constitutes a content-based prior restraint on the overseas Filipino voters' right to express their political inclinations, views and opinions on the candidates, hence, must be given the presumption of unconstitutionality and subjected to the strictest scrutiny, *i.e.*, overcoming the clear and present danger rule.

We resolve.

Freedom of expression has gained recognition as a fundamental principle of every democratic government, and given a preferred right that stands on a higher level than substantive economic freedom or other liberties.[15] In no equivocal terms did the fundamental law of the land prohibit the abridgement of the freedom of expression. Section 4, Article II of the 1987 Constitution expressly states:

> 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.

A fundamental part of this cherished freedom is the right to participate in electoral processes, which includes not only the right to vote, but also the right to express one's preference for a candidate or the right to influence others to vote or otherwise not vote for a particular candidate. This Court has always recognized that these expressions are basic and fundamental rights in a democratic polity[16] as they are means to assure individual self-fulfillment, to attain the truth, to secure participation by the people in social and political decision-making, and to maintain the balance between stability and change.[17]

Rightfully so, since time immemorial, "[i]t has been our constant holding that this preferred freedom [of expression] calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage."[18] In the recent case of *1-United Transport Koalisyon (1-UTAK) v. COMELEC*,[19] the Court *En Banc* pronounced that any governmental restriction on the right to convince oth rs to vote for or against a candidate - a protected expression - carries with it a heavy presumption of invalidity.

To be sure, this rather potent deviation from our conventional adherence to the presumption of constitutionality enjoyed by legislative acts is not without basis. Nothing is more settled than that any law or regulation must not run counter to the Constitution as it is the basic law to which all laws must conform. Thus, while admittedly, these rights, no matter how sacrosanct, are not absolute and may be regulated like any other right, in every case where a limitation is placed on their exercise, the judiciary is called to examine the effects of the challenged governmental action[20] considering that our Constitution emphatically mandates that no law shall be passed abridging free speech and expression. Simply put, a law or statute regulating or restricting free speech and expression is an outright departure from the express mandate of the Constitution against the enactment of laws abridging free speech and expression, warranting, thus, the presumption against its validity.

In this regard, therefore, a law or regulation, even if it purports to advance a legitimate governmental interest, may not be permitted to run roughshod over the cherished rights of the people enshrined in the Constitution.[21] It is only when the challenged restriction survives the appropriate test will the presumption against its validity be overthrown.

The question now is what measure of judicial scrutiny should be used to gauge the challenged provision.

Over the years, guided by notable historical circumstances in our nation and related American constitutional law doctrines on the First Amendment, certain tests of judicial scrutiny were developed to determine the validity or invalidity of free speech restrictions in our jurisdiction.

Foremost, a facial review of a law or statute encroaching upon the freedom of speech on the ground of overbreadth or vagueness is acceptable in our jurisdiction. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms.[22] Put differently, an overbroad law or statute needlessly restricts even constitutionally-protected rights. On the other hand, a law or statute suffers from vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application.[23]

It is noteworthy, however, that facial invalidation of laws is generally disfavored as it results to entirely striking down the challenged law or statute on the ground that they may be applied to parties not before the Court whose activities are constitutionally protected. It disregards the case and controversy requirement of the Constitution in judicial review, and permits decisions to be made without concrete factual settings and in sterile abstract contexts,[24] deviating, thus, from the traditional rules governing constitutional adjudication. Hence, an on-its-face invalidation of the law has consistently been considered as a "manifestly strong medicine" to be used "sparingly and only as a last resort."[25]

The allowance of a review of a law or statute on its face in free speech cases is justified, however, by the aim to avert the "chilling effect" on protected speech, the exercise of which should not at all times be abridged.[26] The Court elucidated:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, **the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity**."[27] (Emphasis supplied, citation omitted)

Restraints on freedom of expression are also evaluated by either or a combination of the following theoretical tests, to wit: (a) the dangerous tendency doctrine,[28] which were used in early Philippine case laws; (b) the clear and present danger rule,[29] which was generally adhered to in more recent cases; and (c) the balancing of interests test,[30] which was also recognized in our jurisprudence.

In the landmark case of *Chavez v. Gonzales*,[31] the Court laid down a more detailed approach in dealing with free speech regulations. Its approach was premised on the rational consideration that "the determination x x x of whether there is an impermissible restraint on the freedom of speech has always been based on the circumstances of each case, including the nature of the restraint." The Court discussed:

> Given that deeply ensconced our fundamental law is the hostility against all prior restraints on speech, and any act that restrains speech is presumed invalid, and "any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows," it is important to stress that not all prior restraints on speech are invalid. Certain previous restraints may be permitted by the Constitution, but determined only upon a careful evaluation of the challenged act as against the appropriate test by which it should be measured against.
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> **Hence, it is not enough to determine whether the challenged act constitutes some form of restraint on the freedom of speech. A distinction has to be made whether the restraint is (1) a content-neutral regulation**, *i.e.*, merely concerned with the incidents of speech, or one that merely controls the time, place, or manner, and under well[-]defined standards; **or (2) a content-based restraint or censorship**, *i.e.*, the restriction is based on the subject matter of the utterance or speech. The cast of the restriction determines the test by which the challenged act is assayed with.
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> **When the speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an intermediate approach-somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions.** The test is called intermediate because the Court will not merely rubberstamp the validity of a law but also require that the restrictions be narrowly-tailored to promote an important or significant governmental interest that is unrelated to the suppression of expression. **The intermediate approach has been formulated in this manner:**
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> > **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.**

On the other hand, a governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny in light of its

> inherent and invasive impact. Only when the challenged act has overcome the clear and present danger rule will it pass constitutional muster, with the government having the burden of overcoming the presumed unconstitutionality.
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> Unless the government can overthrow this presumption, the content-based restraint will be struck down.
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> With respect to content-based restrictions, the government must also show the type of harm the speech sought to be restrained would bring about - especially the gravity and the imminence of the threatened harm - otherwise the prior restraint will be invalid. Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."
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> The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.
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> Also, the incidental restriction on speech must be no greater than what is essential to the furtherance of that interest. A restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. The regulation, therefore, must be reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken.
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> Thus, when the prior restraint partakes of a content-neutral regulation, it is subjected to an intermediate review. A content-based regulation, however, bears a heavy presumption of invalidity and is measured against the clear and present danger rule. The latter will pass constitutional muster only if justified by a compelling reason, and the restrictions imposed are neither overbroad nor vague. (Emphasis supplied, citations omitted)[32]

The paramount consideration in the analysis of the challenged provision, therefore, is the nature of the restraint on protected speech, whether it is content-based or otherwise, content-neutral. As explained in *Chavez*, a content-based regulation is evaluated using the clear and present danger rule, while courts will subject content-neutral restraints to intermediate scrutiny.

Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, is an impermissible content-neutral regulation for being overbroad, violating, thus, the free speech clause under Section 4, Article III of the 1987 Constitution.

The questioned provision is clearly a restraint on one's exercise of right to campaign or disseminate campaign-related information. Prior restraint refers to official

governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[33] Undoubtedly, the prohibition under the questioned legislative act restrains speech or expression, in the form of engagement in partisan political activities, before they are spoken or made.

The restraint, however, partakes of a content - neutral regulation as it merely involves a regulation of the incidents of the expression, specifically the time and place to exercise the same. It does not, in any manner, affect or target the actual content of the message. It is not concerned with the words used, the perspective expressed, the message relayed, or the speaker's views. More specifically, the prohibition does not seek to regulate the exercise of the right to campaign on the basis of the particular message it conveys. It does not, in any manner, target the actual content of the message. It is easily understandable that the restriction was not adopted because of the government's disagreement with the message the subject speech or expression relays.[34] There was no intention on the part of the government to make any distinction based on the speaker's perspectives in the implementation of the regulation. [35] Simply put, regardless of the content of the campaign message or the idea it seeks to convey, whether it is for or, otherwise against a certain candidate, the prohibition was intended to be applied *during the voting period abroad*.

The fact that the questioned regulation applies only to political speech or election-related speech does not, by itself, make it a content-based regulation. It is too obvious to state that every law or regulation would apply to a particular type of speech such as commercial speech or political speech. It does not follow, however, that these regulations affect or target the content of the speech or expression to easily and sweepingly identify it as a content-based regulation. Instead, the particular law or regulation must be judiciously examined on what it actually intends to regulate to properly determine whether it amounts to a content-neutral or content-based regulation as contemplated under our jurisprudential laws. To rule otherwise would result to the absurd interpretation that every law or regulation relating to a particular speech is a content-based regulation. Such perspective would then unjustifiably disregard the well-established jurisprudential distinction between content-neutral and content-based regulations.

To be sure, not all regulations against political speech are content based. Several regulations on this type of speech had been declared content neutral by this Court in previous cases. In *National Press Club v. COMELEC*,[36] the Court ruled that while the questioned provision therein preventing the sale or donation of print space or airtime for political advertisement during the campaign period - of course, limits the right of speech and access to mass media, it does not authorize intervention with the content of the political advertisements, which every candidate is free to present within their respective COMELEC time and space. In the case of *1-UTAK*[37] above-cited, the questioned prohibition on posting election campaign materials in public utility vehicles was classified as a content neutral regulation by the Court, albeit declared an invalid one for not passing the intermediate test.

Being a content-neutral regulation, we, therefore, measure the same against the intermediate test, *viz*.: (1) the regulation is within the constitutional power of the

government; (2) it furthers an important or substantial governmental interest; (3) such governmental interest is unrelated to the suppression of the free expression; and (4) the incidental restriction on the alleged freedom of expression is no greater than what is essential to the furtherance of the governmental interest.[38]

Our point of inquiry focuses on the fourth criterion in the said test, *i.e.*, that **the regulation should be no greater than what is essential to the furtherance of the governmental interest**.

The failure to meet the fourth criterion is fatal to the regulation's validity as even if it is within the Constitutional power of the government agency or instrumentality concerned and it furthers an important or substantial governmental interest which is unrelated to the suppression of speech, the regulation shall still be invalidated if the restriction on freedom of expression is greater than what is necessary to achieve the invoked governmental purpose.[39]

In the judicial review of laws or statutes, especially those that impose a restriction on the exercise of protected expression, it is important that we look not only at the legislative intent pr motive in imposing the restriction, but more so at the effects of such restriction when implemented. The restriction must not be broad and should only be narrowly-tailored to achieve the purpose. It must be demonstrable. It must allow alternative avenues for the actor to make speech.[40]

As stated, the prohibition is aimed at ensuring the conduct of honest and orderly elections to uphold the credibility of the ballots. Indeed, these are necessary and commendable goals of any democratic society. However, no matter how noble these aims may be, they cannot be attained by sacrificing the fundamental right of expression when such aim can be more narrowly pursued by not encroaching on protected speech merely because of the apprehension that such speech creates the danger of the evils sought to be prevented.[41]

In this case, the challenged provision's sweeping and absolute prohibition against all forms of expression considered as partisan political activities without any qualification is more than what is essential to the furtherance of the contemplated governmental interest. On its face, the challenged law provides for an absolute and substantial suppression of speech as it leaves no ample alternative means for one to freely exercise his or her fundamental right to participate in partisan political activities. Consider:

The use of the unqualified term "**abroad**" would bring any intelligible reader to the conclusion that the prohibition was intended to also be extraterritorial in application. *Generalia verba sunt generaliter inteligencia*.[42] General words are understood in a general sense. The basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning, unless a contrary intent is manifest from the law itself.[43] Thus, since the Congress did not qualify the word "abroad" to any particular location, it should then be understood to include any and all location abroad. Regardless, therefore, of whether the exercise of the protected expression is

undertaken within or without our jurisdiction, it is made punishable under the challenged provision couched in pervasive terms.

To reiterate, the perceived danger sought to be prevented by the restraint is the purported risk of compromising the integrity and order of our elections. Sensibly, such risk may occur only within premises where voting is conducted, *i.e.*, in embassies, consulates, and other foreign service establishments. There is, therefore, no rhyme or reason to impose a limitation on the protected right to participate in partisan political activities exercised beyond said places.

While it may be argued that the Congress could not be presumed to have enacted a ridiculous rule that transgresses the elementary principle of territoriality in penalizing offenses, however, the general language of the law itself contradicts such argument.

For the same reason, we cannot accept the OSG's argument that the prohibition was intended to apply to candidates only, whose exercise of the right to campaign may be regulated as to time, place, and manner, citing the case of *The Diocese of Bacolod v. COMELEC*.[44] Again, the overbroad language of the questioned provision, *i.e.*, "**any person**" is prohibited to engage in any partisan political activity within the voting period abroad, betrays such argument. The general term "any person" should be understood to mean "any person" in its general sense as it was not clearly intended to be restricted to mean "candidates only."

It may not be amiss to point out, at this juncture, that a facial invalidation of the questioned statute is warranted to counter the "chilling effect" on protected speech that comes from its overbreadth as any person may simply restrain himself from speaking or engaging in any partisan political activity anywhere in order to avoid being charged of an electoral offense. Indeed, an overbroad law that "chills one into silence" should be invalidated on its face.

Neither was there any provision in the Implementing Rules and Regulations (IRR) of the challenged law which clearly qualifies the application of the questioned prohibition within our jurisdiction and to candidates only. COMELEC Resolution No. 9843[45] or the IRR of R.A. No. 9189, as amended, which should have provided for well-defined and narrowly-tailored standards to guide our executive officials on how to implement the law, as well as to guide the public on how to comply with it, failed to do so.

Article 63, Rule 15 of the said IRR similarly provides for an all-encompassing provision, which reads:

RULE 15
CAMPAIGNING ABROAD

> ART. 63. ***Regulation on campaigning abroad*.** - The use of campaign materials, as well as the limits on campaign spending shall be governed by the laws and regulations applicable in the Philippines and subject to the limitations imposed by laws of the host country, if applicable.

> Personal campaigning of candidates shall be subject to the laws of the host country.
>
> **All forms of campaigning within the thirty (30)[-]day voting period shall be prohibited.** (Emphasis supplied)

What is more, while Section 64 thereof provides for specific rules on campaigning, it absolutely prohibits engagement in partisan political activities within our jurisdiction (embassies, consulates, and other foreign service establishments), not only during the voting period, but *even during the campaign period*, or simply *during the entire election period, viz*.:

> ART. 64. ***Specific rules on campaigning*.** - **The following rules shall apply during the campaign period, including the day of the election:**
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> 1) The "port courtesies" that embassies, consulates and other foreign service establishments may extend to candidates shall not go beyond welcoming them at the airport and providing them with briefing materials about the host country, and shall at all times be subject to the availability of the personnel and funding for these activities.
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> 2) The embassies, consulates and other foreign service establishments shall continue to assist candidates engaged in official Philippine government activities at the host country and in making the representations with the host government.
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> 3) Members of the Foreign Service Corps may attend public social/civic/religious affairs where candidates may also be present, provided that these officers and employees do not take part in the solicitation of votes and do not express public support for candidates.
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> 4) While nothing in the Overseas Voting Act of 2003 as amended shall be deemed to prohibit free discussion regarding politics or candidates for public office, members of the Foreign Service Corps cannot publicly endorse any candidate or political party nor take part in activities involving such public endorsement.
>
> **5) No partisan political activity shall be allowed within the premises of the embassy, consulate and other foreign service establishment.**
>
> 6) Government-sponsored or permitted information dissemination activities shall be strictly non-partisan and cannot be conducted where a candidate is present.
>
> 7) A Member of the Foreign Service Corps cannot be asked to directly organize any meeting in behalf of a party or candidate, or assist in organizing or act as liaison in organizing any such meeting. The prohibition shall apply to all meetings - social, civic, religious meetings - where a candidate is present. (Emphases supplied)

By banning partisan political activities or campaigning even *during the campaign period* within embassies, consulates, and other foreign service establishments, regardless of whether it applies only to candidates or whether the prohibition extends to private persons, it goes beyond the objective of maintaining order during the voting period and ensuring a credible election. To be sure, there cart be no legally acceptable justification, whether measured against the strictest scrutiny or the most lenient review, to absolutely or unqualifiedly disallow one to campaign within our jurisdiction during the campaign period.

Most certainly, thus, the challenged provision, whether on its face or read with its IRR, constitutes a restriction on free speech that is greater than what is essential to the furtherance of the governmental interest it aims to achieve. Section 36.8 of R.A. No. 9189 should be struck down for being overbroad as it does not provide for well-defined standards, resulting to the ambiguity of its application, which produces a chilling effect on the exercise of free speech and expression, and ultimately, resulting to the unnecessary invasion of the area of protected freedoms.[46]

For the foregoing reasons, this Court declares Section 36.8 of R.A. No. 9189, as amended by R.A. No. 10590, unconstitutional for violating Section 4, Article III of the 1987 Constitution.

To be clear, this Court does not discount the fact that our leaders, chosen to maneuver this nation's political ventures, are put in position through an electoral process and as such, the government is constitutionally mandated to ensure sound, free, honest, peaceful, and credible elections, the same being indispensable in our democratic society. In our goal to achieve such peaceful and credible democratic process, however, we cannot likewise disparage the most exalted freedom of expression, which is undeniably recognized as the bedrock of every democratic society, it being an "indispensable condition of nearly every other form of freedom."[47] After all, the conduct of elections is premised upon every democratic citizen's right to participate in the conduct of public affairs and social and political decision-making through the exercise of the freedom of expression. A restraint on such a vital constitutional right through an overbroad statute cannot, thus, be countenanced and given judicial *imprimatur*. As pronounced by the Court in the landmark case of *Adiong v. COMELEC*: [48]

> When faced with border line situations where freedom to speak by a candidate or party and freedom to know on the part of the electorate are invoked against actions intended for maintaining clean and free elections, the police, local officials and COMELEC, should lean in favor of freedom. For in the ultimate analysis, the freedom of the citizen and the State's power to regulate are not antagonistic. There can be no free and honest elections if in the efforts to maintain them, the freedom to speak and the right to know are unduly curtailed.

WHEREFORE, premises considered, the petition is **GRANTED**. The Court declares Section 36.8 of Republic Act No. 9189, as amended by Republic Act No. 10590 as **UNCONSTITUTIONAL**. The temporary restraining order issued by this Court on April 19, 2016 is hereby made **PERMANENT** and its application is accordingly extended

within Philippine Embassies, Consulates, and other posts where overseas voters may exercise their right to vote pursuant to the Overseas Voting System.

SO ORDERED.

Bersamin, C. J., Carpio, Peralta, A. Reyes, Jr., Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.
Perlas-Bernabe, J., Please see Concurring Opinion.
Leonen, J., See separate concurring opinion in the result.
Jardeleza, J., See separate concurring.
Caguioa, J., I join the separate concurring opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 14, 2019 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 5, 2019 at 11:05 a.m.

Very truly yours,

(SGD) EDGAR O. ARICHETA
Clerk of Court

---

[1] Approved on May 27, 2013.

[2] Promulgated on January 13, 2016.

[3] Sec. 2. The Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad. x x x.

[4] *Nicolas-Lewis v. COMELEC*, 529 Phil. 642 (2006).

[5] *Rollo*, p. 8.

[6] Id. 94-95.

[7] *Peralta v. Philippine Postal Corporation*,G.R. No. 223395, December 4, 2018; *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374, 438 (2010).

[8] G.R. No. 225442, August 8, 2017, 835 SCRA 350, 385.

[9] G.R. No. 232131, April 24, 2018.

[10] Id.

[11] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, supra note 8, at 385-386.

[12] *Gonzales v. COMELEC*, 137 Phil. 471 (1969).

[13] *Estipona, Jr. v. Judge Lobrigo*, G.R. No. 226679,August 15, 2017, 837 SCRA 160, 171.

[14] Id.

[15] *Chavez v. Gonzales*, 569 Phil. 155, 195 (2008).

[16] *The Diocese of Bacolod v. COMELEC*, 751 Phil. 301, 444 (2015), citing *National Press Club v. COMELEC*, 283 Phil. 795, 810 (1992).

[17] *ABS-CBN Broadcasting Corporation v. COMELEC*, 380 Phil. 780, 792 (2000).

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

[19] 758 Phil. 67 (2015).

[20] *BAYAN v. Ermita*, 522 Phil. 201, 224 (2006), citing *Reyes v. Bagatsing*, 210 Phil. 457, 467 (1983).

[21] Id.

[22] *Disini v. The Secretary of Justice*, 727 Phil. 28, 121 (2014).

[23] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 488 (2010).

[24] *Estrada v. Sandiganbayan*, 421 Phil. 290, 355 (2001).

[25] *David v. Macapagal-Arroyo*, 522 Phil. 705, 726 (2006).

[26] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 23, at 489.

[27] Id. at 485-486.

[28] This test permits limitations on speech once a rational connection has been

established between the speech restrained and the danger contemplated; *Chavez v. Gonzales*, supra note 15, at 200.

[29] This rule rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent; *Chavez v. Gonzales*, id.

[30] This is used as a standard when courts need to balance conflicting social values and individual interests, and requires a conscious and detailed consideration of the interplay of interests observable in a given situation; *Chavez v. Gonzales*, id.

[31] Supra note 15.

[32] Id. at 204-208.

[33] *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, supra note 19, at 84.

[34] *See Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972), wherein the U.S. Supreme Court held that the government may not grant a forum to acceptable views yet deny it from those who "express less favored or more controversial views." <https://supreme.justia.com/cases/federal/us/408/92/> (visited August 9, 2019).

[35] *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989 <https://supreme.justia.com/cases/federal/us/491/781/> (visited August 9, 2019).

[36] Supra note 16.

[37] *1-United Transport Koalisyon (1-UTAK) v. COMELEC*, supra note 19.

[38] *Chavez v. Gonzales*, supra note 15.

[39] *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 588 (2001).

[40] *The Diocese of Bacolod v. COMELEC*, supra note 16, at 381.

[41] *Social Weather Stations, Inc. v. COMELEC*, supra at 590.

[42] *Gutierrez v. The House of Representatives Committee on Justice*, 658 Phil. 322, 382 (2011).

[43] *Philippine Consumers Foundation, Inc. v. National Telecommunications Commission*, 216 Phil. 185, 195 (1984).

[44] Supra note 16.

[45] Promulgated on January 15, 2014.

[46] *Disini v. The Secretary of Justice*, supra note 22.

[47] *ABS-CBN Broadcasting Corporation v. COMELEC*, supra note 17.

[48] G.R. No. 103956, March 31, 1992, 207 SCRA 712, 717.

CONCURRING OPINION

PERLAS-BERNABE, J.:

At the onset, I concur that Section 36.8 of Republic Act No. (RA) 9189,[1] as amended by RA 10590[2] (Section 36.8), is a content-neutral regulation, for which the intermediate scrutiny test should be made to apply.[3] The said provision reads:

> Section 36. *Prohibited Acts*. - In addition to the prohibited acts provided by law, it shall be unlawful:
>
> x x x x
>
> 36.8. **For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period**[.] (Emphasis supplied)

The distinction between content-neutral and content-based regulations is well-settled in our jurisprudence. In *Newsounds Broadcasting Network Inc. v. Dy*:[4]

> [J]urisprudence distinguishes between a **content-neutral** regulation, *i.e.*, merely concerned with **the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards**; and a **content-based** restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech.[5] (Emphases supplied)

In *Ward v. Rock Against Racism*,[6] the Supreme Court of the United States of America stated that the principal inquiry in determining content-neutrality is whether the government has adopted such regulation "***because of disagreement with the message it conveys***."[7]

As I see it, Section 36.8 is primarily a regulation on the ***place*** (*i.e.*, overseas/abroad) and ***time*** (*i.e.*, during the thirty [30]-day overseas voting period) in which political speech (particularly, those considered as "partisan political activity") may be uttered under the standards the provision prescribes. The government's purpose therefor is not

so much on prohibiting "the message or idea of the expression"[8] *per se*, but rather on regulating "the time, place or manner of the expression."[9] As such, Section 36.8 should only be classified as a content-neutral regulation, and not a content-based one.

Being a content-neutral regulation, case law states that the **intermediate scrutiny test** should be made to apply. In the Separate Concurring Opinion of Senior Associate Justice Antonio T. Carpio in *Chavez v. Gonzales*,[10] he discussed:

> If the prior restraint is not aimed at the message or idea of the expression, it is content-neutral even if it burdens expression. A content neutral restraint is a restraint which regulates the time, place or manner of the expression in public places without any restraint on the content of the expression. **Courts will subject content-neutral restraints to intermediate scrutiny.**
>
> An example of a content-neutral restraint is a permit specifying the date, time and route of a rally passing through busy public streets. A content-neutral prior restraint on protected expression which does not touch on the content of the expression enjoys the presumption of validity and is thus enforceable subject to appeal to the courts. **Courts will uphold time, place or manner restraints if they are content-neutral, narrowly tailored to serve a significant government interest, and leave open ample alternative channels of expression.**[11] (Emphases and underscoring supplied)

Following the intermediate scrutiny approach, a content-neutral regulation is valid if it meets these parameters: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free expression; and (4) **the incidental restriction on freedoms of speech, expression, and press is no greater than what is essential to the furtherance of that interest**.[12] In relation to the fourth element, a restriction that is so broad that it encompasses more than what is required to satisfy the governmental interest will be invalidated. In other words, the regulation must be "**narrowly tailored**" to fit the regulation's purpose.[13] In my view, Section 36.8 fails to satisfy this fourth parameter of the intermediate scrutiny approach,[14] and hence, unconstitutional for the reasons explained below.

The purpose of the thirty (30)-day prohibition, based on respondent the Commission on Elections' (COMELEC) Comment,[15] is "to ensure the holding of an honest and orderly election that upholds the secrecy and sanctity of the ballot" or "to maintain public order during election day."[16] Although the law's objective is clearly constitutive of "an important or substantial governmental interest," **Section 36.8's sweeping restriction of all forms of speech considered as partisan political activity abroad, without any qualification whatsoever concerning the location where such disorder may emanate**, *is more than essential to the furtherance of the above-stated interest*. To my mind, the perceived danger of election-related disorder would only be extant when partisan political activity is allowed in places that fall within the jurisdictional reach of our election laws, *e.g.*, within the premises of the embassy,

consulate, and other foreign service establishment, and not beyond it. Stated otherwise, the possibility of election-related discord discernibly arises only in places where our election laws remain operative; conversely, where foreign election laws apply, the possibility of election-related discord becomes a domestic concern of that country, and not ours. Hence, by **generally banning partisan political activity regardless of the location where the political speech is specifically uttered abroad**, Section 36.8 **goes over and beyond the objective** of ensuring "the holding of an honest and orderly [Philippine (not foreign)] election that upholds the secrecy and sanctity of the ballot" and "to maintain public order during election day."

While the COMELEC argues that the thirty (30)-day prohibition only applies in the designated polling precincts[17] located in the above-stated places abroad, the general language of the law itself betrays such argumentation. On its face, Section 36.8 broadly prohibits "partisan political activity **abroad** during the thirty (30)-day overseas voting period."[18] It is a rule in statutory construction that "a word of general significance in a statute [- *such as the word abroad* -] is to be taken in its ordinary and comprehensive sense, unless it is shown that the word is intended to be given a different or restricted meaning,"[19] which exception was not shown to obtain in the present case. Hence, Section 36.8, as worded, foists a prohibition on partisan political activity (including political speech) that generally applies in all places abroad.

In any case, even assuming that Section 36.8 was intended to restrictively apply only within the premises of the embassy, consulate, and other foreign service establishment as the COMELEC argues,[20] it is my view that this intent is not amply reflected in the provision or even amply clarified in its implementing rules.[21] Hence, there is an ambiguity in the law's scope that ultimately has the effect of "chilling" the free speech of our citizens residing overseas. In one case, it was observed that "where vague statutes regulate behavior that is even close to constitutionally protected, courts fear [that] a chilling effect will impinge on constitutional rights."[22] Verily, this observation gains peculiar significance when it comes to regulations that affect political speech. This is because, in *The Diocese of Bacolod v. COMELEC*,[23] the Court has ruled that " [p]olitical speech enjoys preferred protection within our constitutional order. x x x. [I]f ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression, the subject of fair and honest elections would be at the top.[24] Sovereignty resides in the people [and] [p]olitical speech is a direct exercise of the sovereignty."[25]

In fine, Section 36.8 of RA 9189, as amended by RA 10590, is a content-neutral regulation that, however, constitutes a restriction of free speech that is greater than what is essential to the furtherance of the public interest it was intended to meet. Thus, based on the above-discussed considerations, I vote to **GRANT** the petition and **DECLARE** the subject provision as unconstitutional.

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[1] Entitled "AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE OVERSEAS

ABSENTEE VOTING ACT OF 2003," approved on February 13, 2003.

[2] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 9189, ENTITLED 'AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.'" otherwise known as "THE OVERSEAS VOTING ACT OF 2013," approved on May 27, 2013.

[3] See *ponencia*, pp. 12-13.

[4] 602 Phil. 255 (2009).

[5] Id. at 271.

[6] 491 U.S. 781 (1989).

[7] See id. See also *Police Department of City of Chicago v. Mosley*, 408 U.S. 92 (1972), wherein the Supreme Court of the United States of America held that government may not grant a forum to acceptable views yet deny it from those who "express less favored or more controversial views."

[8] See Separate Concurring Opinion of Senior Associate Justice Antonio T. Carpio in *Chavez v. Gonzales*.

[9] 569 Phil. 155, 238 (2008). Id.

[10] Id.

[11] Id. at 238.

[12] See *ponencia in Chavez v. Gonzales*, id. at 205-206; citing *Osmeña v. COMELEC*, 351 Phil. 692, 717 (1998).

[13] See *Chavez v. Gonzales*, id. at 210 and 238; emphasis supplied. See also *Ward v. Rock Against Racism*, supra note 6.

[14] In *Gonzales v. COMELEC*, the Court held that "even though the governmental purposes be legitimate and substantial, they cannot be pursued by means that **broadly stifle fundamental personal liberties when the end can be more narrowly achieved**," as in this case. Indeed, "**precision of regulation is the touchstone in an area so closely related to our most precious freedoms**." (137 Phil. 471, 507 [1969]; emphases supplied)

[15] Dated April 23, 2016.

[16] See Comment, p. 29.

[17] See id. at 21.

[18] Emphasis and underscoring supplied.

[19] *Naval v. COMELEC*, 738 Phil. 506, 535 (2014).

[20] See Comment, p. 21.

[21] See COMELEC Resolution No. 9843, entitled "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10590, OTHERWISE KNOWN AS 'AN ACT AMENDING REPUBLIC ACT NO. 9189, ENTITLED 'AN ACT PROVIDING FOR A SYSTEM OF OVERSEAS ABSENTEE VOTING BY QUALIFIED CITIZENS OF THE PHILIPPINES ABROAD, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES,'" otherwise known as "THE RULES AND REGULATIONS IMPLEMENTING THE OVERSEAS VOTING ACT OF 2003, As AMENDED," approved on January 15, 2014.

[22] See Dissenting Opinion of Retired Associate Justice Dante O. Tinga in *Spouses Romualdez v. COMELEC*, 576 Phil. 357, 433 (2008).

[23] 751 Phil. 301 (2015).

[24] Id. at 343, citing Senior Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Chavez v. Gonzales*, supra note 8, at 245.

[25] *The Diocese of Bacolod v. COMELEC*; id. at 343.

SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur in the result. Nonetheless, I maintain that the provisions in question should be stricken down as they are forms of prior restraint and content-based illicit prohibition on the exercise of the primordial right to freedom of expression.

During elections, active deliberations prompted by the exercise of the freedoms of speech, expression, and association of the electorate itself should remain untrammeled. Our assurance of authentic democracy depends on safe spaces for vigorous discussion. The provisions in question do the exact opposite. Curtailing political speech during the elections is presumptively unconstitutional.

The very first section in the Declaration of Principles and State Policies of the Constitution states:

> SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all authority emanates from them.

The electoral exercise is a significant forum for the sovereign. It is during this time that the primordial and fundamental protection for the speech of every voter and every citizen is most sacred. It is this type of political speech that lies at the core of the guarantee of freedom of expression in Article III, Section 4 of the Constitution.

Therefore, any limitation on speech by the electorate must be justified on legitimate grounds that are clear and indubitable and with means that are narrowly tailored and only specifically calibrated to achieve those purposes.

Unfortunately, neither Section 36.8[1] of the Overseas Absentee Voting Act of 2013 nor Section 74(II)(8) of Commission on Elections Resolution No. 10035[2] can be justified as to its clear purpose or its narrowly circumscribed and calibrated means. Both impose a prohibition that unduly stifles the votes of Filipinos abroad when we should amplify their ideas, especially during elections, and even more so that a multitude of them are overseas workers whose sacrifices are just as abundant.

Rather than a scalpel to precisely remove a specific evil, these regulations carelessly wield a wayward machete, striking negligent blows on the fundamental rights of Filipinos living overseas.

In my view, and after a careful examination of the case and a cautious review of our jurisprudence, the 30-day prohibition on partisan political activities abroad violates the fundamental right of freedom of expression.

Foremost, the assailed provisions are content-based regulations because they specifically target a kind of speech identified by its political element. While they seem to merely regulate the time allowed in conducting partisan political activities, their prohibition actually cuts deep into the expression's communicative impact and political consequences. Thus, being content-based regulations, the strict scrutiny test must be applied. They must bear a heavy presumption of unconstitutionality.

It is uncertain what clear, present, and substantial dangers are sought to be curtailed in the different countries where the prohibition is applied. Respondent Commission on Elections failed to discharge its burden of proving that the State has a compelling interest in prohibiting partisan political activities abroad. It has not shown why the prohibition is necessary to maintain public order abroad during the election period. As they failed to overcome the presumption of the law's invalidity, the assailed provisions must be stricken down.

Absent any compelling State interest, the constitutionally preferred status of free speech must be upheld.

I

The Constitution guarantees protection to the exercise of free speech, recognizing that

free speech is fundamental in a democratic and republican State.[3] Freedom of expression is enshrined in Article III, Section 4 of the 1987 Constitution, which states:

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

This essential right springs from the constitutional touchstone that "[s]overeignty resides in the people and all authority emanates from them."[4] This is why the extent of freedom of expression is broad. It protects almost 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.[5]

To have a proper understanding and evaluation of this fundamental freedom, it is necessary to know how and why freedom of expression occupied a core value in our society, along with the influences that shaped the contours of our free speech clause.

Prior to being enacted in the present Bill of Rights, our free speech clause was worded differently in the 1899 Malolos Constitution:

ARTICLE 20. Neither shall any Filipino be deprived:

> 1. Of the right to freely express his ideas or opinions, orally or in writing, through the use of the press or other similar means.

The framing of the Malolos Constitution, while copied from the Spanish Constitution, should be understood in view of the country's inadequate protection to free speech during the Spanish rule.[6] At that time, there was an increasing demand for reforms for free speech and free press.[7] Apparent from the text is that the protection to free speech clause is tightly interweaved with a guaranteed free press, as the printing press was the main medium through which free speech was exercised then.

Before the printing press, the societal outlook had been authoritarian, and the medieval church had the central authority to determine what was true and false.[8] Slowly, after the dawn of the Renaissance and Reformation and the birth of the printing press, the modern concept of freedom of thought and expression developed.[9] Particularly, in England, the monopoly of the king and the church on the societal truth eroded with the advent of dissent through the new medium of print.[10]

With the growing threat of the printing press, different forms of control on expression and discourse were used, such as treason, seditious libel, and domination of the press through state monopoly and licensing.[11] By the end of the 17th century, the Bill of Rights was introduced, gradually relaxing control on the press. Nevertheless, state control was still in place through subsidizing and taxation.[12]

From the English common law, the concept of freedom of speech and the press was

inherited by the United States through its adoption of the First Amendment.[13] By the dawn of the 20th century, disputes on free speech and the press mostly involved the role of newspapers and periodicals, particularly "those of a different political persuasion than the party in power-in acting as critics of the ."[14]

The roots of our own free speech clause can be traced back to the U.S. First Amendment. In 1900, U.S. President William McKinley introduced a differently worded free speech clause through the Magna Carta of Philippine Liberty. Heavily influenced by the First Amendment, it read: "That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances."[15] This was echoed in the organic acts of the Philippine Bill of 1902 and the Jones Law of 1916.[16] With the increasing desire for independence, the free exercise of speech and the press became indispensable for our people.

The free speech clause eventually flowed through our jurisprudence. In the 1922 case of *United States v. Perfecto*,[17] the right of the people to free exercise of speech and of assembly has been acknowledged as fundamental in our democratic and republican state:

> The interest of civilized society and the maintenance of good demand a full and free discussion of all affairs of public interest. Complete liberty to comment upon the administration of Government, as well as the conduct of public men, is necessary for free speech. The people are not obliged, under modem civilized governments, to speak of the conduct of their officials, their servants, in whispers or with bated breath.
>
> The right to assemble and petition the Government, and to make requests and demands upon public officials, is a necessary consequence of republican and democratic institutions, and the complement of the right of free speech.[18] (Citations omitted)

The right to free speech was accorded constitutional protection in the 1935 Constitution, and eventually, the 1973 Constitution, which retained the same wording of the free speech clause:

> No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

Free speech has since enjoyed a preferred position in the scheme of our constitutional values.[19] In *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Company, Inc.*:[20]

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

> the influential and powerful, and of oligarchs - political, economic or otherwise.
>
> In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."[21]

Free speech was accorded with even greater protection and wider coverage with the enactment of the 1987 Constitution, which added the more expansive word "expression" in the free speech clause.

Freedom of speech has gained constitutional value among liberal democratic societies.[22] This is because free speech promotes liberal and democratic values. Particularly, it protects "democratic political process from abusive censorship"[23] and promotes "equal respect for the moral self-determination of all persons[.]"[24]

The significance of freedom of expression in our jurisdiction has been oft-repeated in recent jurisprudence. Paraphrasing *In re: Gonzales v. Commission on Elections*,[25] this Court in *Chavez v. Gonzales*[26] elucidated:

> [T]he vital need of a constitutional democracy for freedom of expression is undeniable, whether as a means assuring individual self-fulfillment; of attaining the truth; of assuring participation by the people in social, including political, decision-making; and of maintaining the balance between stability and change. As early as the 1920s, the trend as reflected in Philippine and American decisions was to recognize the broadest scope and assure the widest latitude for this constitutional guarantee. The trend represents a profound commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open.[27] (Citations omitted)

Further, in *The Diocese of Bacolod v. Commission of Elections*:[28]

> 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.[29]

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.[30] Ideas are developed and arguments are refined through public discourse. Freedom of expression grants the people "the dignity of individual thought."[31] When they speak their innermost thoughts, they take their place in society as productive citizens.[32] Through the lens of self-government, free speech guarantees an "ample

opportunity for citizens to determine, debate, and resolve public issues."[33]

Speech that enlivens political discourse is the lifeblood of democracy. A free and robust discussion in the political arena allows for an informed electorate to confront its on a more or less equal footing.[34] Without free speech, the robs the people of their sovereignty, leaving them in an echo chamber of autocracy. Freedom of speech protects the "democratic political process from the abusive censorship of political debate by the transient majority which has democratically achieved political power."[35]

In *The 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 positions to represent the people. On this note, the theory on deliberative democracy may evolve to the right of the people to make accountable. Necessarily, this includes the right of the people to criticize acts made pursuant to governmental functions.[36] (Citations omitted)

Speech with political consequences occupies a higher position in the hierarchy of protected speeches and is conferred with a greater degree of protection. The difference in the treatment lies in the varying interests in each type of speech. Nevertheless, the exercise of freedom of speech may be regulated by the State pursuant to its sovereign police power. In prescribing regulations, distinctions are made depending on the nature of the speech involved. In *Chavez*:

> 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.[37] (Citations omitted)

This Court recognized in *The Diocese of Bacolod* that political speech occupies a preferred rank within our constitutional order, it being a direct exercise of the sovereignty of the people.[38] In a separate opinion in *Chavez*, Associate Justice Antonio Carpio underscored that "if ever there is a hierarchy of protected expressions, political expression would occupy the highest rank[.]"[39]

In contrast, other types of speeches, such as commercial speech, are treated in this jurisdiction as "low value speeches."[40]

In *Disini, Jr., v. Secretary of Justice*,[41] this Court has recognized that "[c]ommercial speech . . . is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression[.]"[42] This is because, as I opined in that case, the protection accorded to commercial speech is anchored on its informative character and it merely caters to the market.[43]

Since the value of protection accorded to commercial speech is only to the extent of its channel to inform, advertising is not on par with other forms of expression.

In contrast, political speech is "indispensable to the democratic and republican mooring of the state whereby the sovereignty residing in the people is best and most effectively exercised through free expression."[44]

The rationale behind this distinction lies in the nature and impact of political speech:

> 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 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.[45]

Media law professor Eric Barendt explained it succinctly in his book, *Freedom of Speech*:

> To confine freedom of expression to political speech (or at any rate to protect it most rigorously in this context) does reduce the scale of the difficulty. Political speech is immune from restriction, because it is a dialogue between members of the electorate and between governors and governed, and is, therefore, conducive, rather than inimical, to the operation of a constitutional democracy. The same is not so obviously true of other categories of 'speech', for which the protection of the free speech may be claimed-pornography or commercial advertising.[46]

Philosopher and free speech advocate Alexander Meiklejohn similarly forwarded this thesis in arguing "that the principle of freedom of speech was rooted in principles of self-government, and that there should be absolute protection for the discussion of public issues, but considerably less protection for speech that did not discuss issues of public interest."[47]

As a direct exercise of the people's sovereignty, political expression is accorded the highest protection. This is even more heightened during the election period, when political activities and speech are propelled by the electorate's ideals and choice of

representatives. Given the crucial importance of political expression in our democracy, it should be favored and guarded against any illicit and unwarranted censorship.

II

To be a true channel of democracy, free speech must be exercised without prior restraint or censorship and subsequent punishment. In Associate Justice Santiago Kapunan's separate opinion in *Iglesia ni Cristo v. Court of Appeals*:[48]

> The rights of free expression and free exercise of religion occupy a unique and special place in our constellation of civil rights. The primacy our society accords these freedoms determines the mode it chooses to regulate their expression. But the idea that an ordinary statute or decree could, by its effects, nullify both the freedom of religion and the freedom of expression puts an ominous gloss on these liberties. Censorship law as a means of regulation and as a form of prior restraint is anathema to a society which places high significance to these values.[49]

Prior restraint is an official governmental restriction on any form of expression in advance of its actual utterance, dissemination, or publication. Thus, freedom from prior restraint is freedom from censorship, regardless of its form and the branch of that wielded it. When a governmental act is in prior restraint of expression, it bears a heavy presumption against its validity.[50] In *Chavez*:

> Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from 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.[51] (Citations omitted)

On the other hand, subsequent punishment is the imposition of liability on the individual exercising his or her freedom. The penalty may be penal, civil, or administrative.[52]

Prior restraint is deemed a more severe restriction on expression than subsequent punishment because while he latter dissuades expression, ideas are still disseminated to the public. On the other hand, prior restraint prevents even the dissemination of ideas.[53]

Even if there is no prior restraint, the exercise of expression may still be subject to subsequent punishment, either civilly or criminally. If the expression is not subject to the lesser restriction of subsequent punishment, it follows that it cannot also be subject to the greater restriction of prior restraint. On the other hand, if the expression warrants prior restraint, it is unavoidably subject to subsequent punishment.[54]

Because our Constitution favors freedom of expression, any form of prior restraint is an exemption and bears a heavy presumption of invalidity.[55]

Nevertheless, free speech is not absolute, and not all prior restraint regulations are held invalid. Free speech must "not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society."[56]

Doctrinally, this Court has settled the applicable tests in determining the validity of free speech regulations. To justify an intrusion on expression, we employ two (2) tests, namely: (1) the clear and present danger test; and (2) the dangerous tendency test.

In *Cabansag v. Fernandez*,[57] this Court laid down what these tests entail:

> The [clear and present danger test], as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.
>
> . . . .
>
> The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree.
>
> The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt.

> This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.[58] (Citations omitted)

As its designation connotes, the clear and present danger test demands that the danger not only be clear, but also present. In contrast, the dangerous tendency test does not require that the danger be present. In *In Re: Gonzales*:[59]

> The term clear seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. Present refers to the time element. It used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable.[60]

The clear and present danger test has undergone changes from its inception in *Schenck v. U.S.*,[61] where it was applied to speeches espousing anti- action.[62]

In the 1951 case of *Dennis v. U.S.*,[63] the imminence requirement of the test was diminished. That case, which involved communist conspiracy, adopted Judge Learned Hand's framework, where it must be asked "whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."[64]

Nevertheless, in the 1969 case of *Brandenburg v. Ohio*,[65] the U.S. High Court not only restored the imminence requirement, but added "an intent requirement which according to a noted commentator ensured that only speech directed at inciting lawlessness could be punished."[66]

As the prevailing standard, *Brandenburg* limits the clear and present danger test's application "to expression where there is 'imminent lawless action.'"[67]

The *Brandenburg* standard was applied in *Reyes v. Bagatsing*.[68] In *Reyes*, this Court required the existence of grave and imminent danger to justify the procurement of permit for use of public streets. It held:

> By way of a summary. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger

> test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, - even more so than on the other departments - rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitiously (*sic*) termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they db precedence and primacy.[69]

This standard was applied in the recent case of *Chavez*:

> [T]he clear and present danger rule . . . rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."[70] (Citations omitted)

In *ABS-CBN Broadcasting Corporation v. Commission on Elections*,[71] this Court explained that to justify a restriction on expression, a substantial interest must be clearly shown:

> A government regulation is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.
>
> Hence, even though the government's purposes are legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties, when the end can be more narrowly achieved.[72] (Citations omitted)

In cases involving expression that strengthens suffrage, all the more should freedom of expression be protected and upheld.[73] It is the government's interest that the sanctity and integrity of the electoral process are preserved and the right to vote is protected by providing safe and accessible areas for voting and campaigning. However, to uphold a restriction, the governmental interest must outweigh the people's freedom of expression.[74]

In this case, the regulations are forms of prior restraint on political speech because

they disallow certain partisan political activities and expression before they are conducted and uttered. Specifically, Section 36.8 of the Overseas Absentee Voting Act of 2013 and Section 74(II)(8) of Commission on Elections Resolution No. 10035 declare unlawful the engagement of Filipinos abroad in partisan political activities during the 30-day overseas voting period.

This results in a chilling effect that would discourage Filipinos abroad to express their opinion and political ideals during elections. Thus, being forms of prior restraint on the people's political expression, the assailed provisions bear a heavy presumption of invalidity.

III

When faced with contentions involving prior restraint on free speech, it is important to create a distinction between content-based and content-neutral regulations. Whether a regulation is content-based or content-neutral spells out the difference in the test applied in assaying a governmental regulation.

A regulation is content-neutral if it is "merely concerned with the incidents of the speech, or one that merely controls the time, place[,] or manner, and under well-defined standards[,]"[75] regardless of the content of the speech. On the other hand, content-based restraint or censorship is based on the subject matter of the expression.[76]

In a content-based regulation, the governmental action is tested with the strictest scrutiny "in light of its inherent and invasive impact."[77] It bears a heavy presumption of unconstitutionality. To pass constitutional muster, the regulation has to overcome the cleat and present danger rule.[78]

Thus, the government must show the type of harm sought to be prevented by the content-based regulation. It must be based on a "substantive and imminent evil that has taken the life of a reality already on ground."[79] There must be an inquiry on whether the words used will "bring about the substantive evils that Congress has a right to prevent."[80] To justify the regulation, strict scrutiny requires a compelling State interest, and that it is narrowly tailored and the least restrictive means to achieve that interest.[81]

In his dissent in *Soriano v. Laguardia*,[82] Chief Justice Reynato Puno explained the rationale behind the application of the strict scrutiny test:

> *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 bar the expression of ideas.[83] (Emphasis supplied, citation omitted)

In *Newsounds Broadcasting Network, Inc. v. Dy*:[84]

> The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of 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 to establish such compelling reason to infringe the right to free expression.[85]

While content-based regulations are "treated as more suspect than content-neutral"[86] regulations due to discrimination in regulating the expression, content-neutral regulations are subject to "lesser but still heightened scrutiny."[87]

In content-neutral regulations, the intermediate approach is applied where only a substantial al interest is required to be established.[88] This is lower than the stringent standard of compelling State interest required in content-based regulations, since content-neutral regulations are not designed to suppress free speech but only its incidents.[89]

Through the intermediate approach, the validity of a content-neutral regulation is analyzed along the following parameters: (1) whether it is within the government's constitutional power; (2) whether it furthers an important or substantial governmental interest; (3) whether the governmental interest is unrelated to the suppression of free expression; and (4) whether the incidental restriction on freedoms of speech, expression, and the press is no greater than is essential to the furtherance of that interest.[90]

Nevertheless, content-neutral regulations may still be invalidated if the incidental. restriction on expressive freedom is greater than is essential to achieve the governmental interest.[91] The regulation must be "reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken";[92] otherwise, it must be struck down.

This Court has recognized that the right of suffrage necessarily includes the right to express one's chosen candidate to the public.[93] Especially during the election period, the right to free speech and expression is fundamental and consequential:

> "[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.[94] (Citations omitted)

During the election period, citizens seek information on candidates and campaigns and, upon reaching a choice, campaign and persuade other people to likewise vote for their

candidate. At this time, people are most engaged in political discourse. Expressing a political ideology and campaigning for a candidate cannot be divorced from one's right of suffrage. Even electoral candidates rely on their supporters to campaign for them. Thus, any speech or act that directly involves the right of suffrage is a political activity by the people themselves.

In *Social Weather Stations, Inc. v. Commission on Elections*,[95] this Court discussed the regulation of speech in the context of campaigns done by non-candidates or non-members of political parties:

> Regulation 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. Such regulation is inconsistent with the guarantee of according the fullest possible range of opinions coming from the electorate including those that can catalyze candid, uninhibited, and robust debate in the criteria for the choice of a candidate.
>
> 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.[96]

In *Social Weather Stations, Inc.*, this Court considered the parameters within which a regulation may be held valid:

> Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech cf 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.*[97] (Emphasis in the original)

Here, petitioner Loida Nicolas-Lewis assails the constitutionality and validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035. These are uniform provisions that prohibit partisan political activities abroad during the 30-day overseas voting period.[98]

Section 36(8) of the Overseas Absentee Voting Act states:

> SECTION 36. Prohibited Acts. - In addition to the prohibited acts provided by law, it shall be unlawful:

. . . .

36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

Section 74(II)(8) of the Commission on Elections Resolution No. 10035 states:

Sec. 74. Election offenses / prohibited acts. -

II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003", as amended

. . . .

(8) For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.

The definition of "partisan political activity" is found in Section 79(b) of Batas Pambansa Blg. 881, or the Omnibus Election Code. It states:

(b) The term "election campaign" or "partisan political activity" refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

(1) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

(2) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

(3) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

(4) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

(5) Directly or indirectly soliciting votes, pledges or support for or against a candidate.

The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party

> convention shall not be construed as part of any election campaign or partisan political activity contemplated under this Article.

From this, it can easily be determined that the assailed provisions are content-based regulations precisely because they specifically target a kind of speech identified by its political element. Contrary to respondent's submission,[99] the assailed provisions are not content-neutral. While they seem to merely limit the time allowed in conducting partisan political activities, they should be evaluated without losing sight of the nature of the expression they seek to regulate.

In her separate opinion, Associate Justice Estela Perlas-Bernabe characterized the regulations as forms of content-neutral restriction, arguing that they merely regulate the place and time in which political speech may be uttered. I disagree.

The prohibition on the conduct of partisan political activities does not merely control the incidents or manner of the political expression, but actually regulates the content of the expression. As admitted by respondent, the limits are placed on the conduct of partisan political activities to subdue the "violence and atrocities"[100] that mar the electoral process. This means that the regulation is anchored on the content, nature, and effect of the prohibited activities.

Although guised as merely limiting the manner of the expression, the assailed provisions cut deep into the expression's communicative impact and political consequences. The regulations are not merely incidental.

Considering a regulation as content-neutral is only appropriate when the governmental interest and purpose are clear and unambiguous. In this case, the government's purpose in placing a 30-day restriction on political activities abroad is unclear.

To sustain the validity of Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035, they must be evaluated with strict scrutiny. To pass constitutional muster, there must be a showing of a compelling State interest in the 30-day prohibition of partisan political activities abroad.

However, there are no clear, present, and substantial electoral dangers that will be prevented by the prohibition they impose. It is unclear if the substantial. dangers and evils sought to be curtailed even exist in every foreign jurisdiction where the prohibition is applied.

It cannot be assumed that the same "horrendous and unforgivable atrocities"[101] during the election period in the Philippines are present and recurring in each and every country where Filipinos are situated. Every country has a unique election experience; it is uncertain if our overseas voters have been through any electoral conflict or violence to justify the State's restraint on free speech abroad. The prohibition applied to partisan political activities within the Philippines cannot be applied as a blanket prohibition that covers overseas voting. The cannot instate a regulation that unduly interferes with protected expression.

In overseas voting, Philippine embassies, consulates, and foreign service establishments are designated as polling precincts.[102] Filipinos abroad would need to allot hours of travel to get to them without the benefit of an election holiday. A longer duration of a 30-day voting period abroad is, therefore, understandable. The longer voting period is enacted to encourage Filipinos overseas to participate in the elections.

Considering the Philippines' experience during the election period, the two-day prohibition on partisan political activities here bears a crucial role in subduing the dire consequences and abuses that attend it. The tail end of the election campaign period is the peak of candidates' and political parties' efforts to secure a win, and prolonged political campaigns frequently result in "violence and even death . . . because of the heat engendered by such political activities."[103]

Overseas, the sweeping prohibition on the partisan political activities during the 30-day voting period has no added value in "safeguarding the conduct of an honest, peaceful, and orderly elections" abroad.[104] There is no discernable reason behind the blanket prohibition. Through the lens of strict scrutiny, the assailed law and resolution fail because there are no dangers and evils present abroad that are "substantive, 'extremely serious[,] and the degree of imminence extremely high.'"[105]

Being forms of prior restraint and content-based regulation, the assailed provisions bear the heavy presumption of unconstitutionality. The government then, has to prove that the regulations are valid. Here, respondent failed in discharging its burden of proof.

In maintaining their constitutionality, respondent insists that the assailed provisions are content-neutral.[106] As such, respondent contends that they are permissible for satisfying the intermediate test laid down by jurisprudence, *i.e.*, provided by law, reasonable, narrowly tailored to meet their objective, and the least restrictive means to achieve that objective.[107]

Respondent heavily capitalizes on this Court's ruling in *In Re: Gonzales*[108] to justify the assailed law. Quoting *In Re: Gonzales*, respondent postulates that while freedom of expression is at the core of a partisan political activity, Congress has the power to regulate and limit this freedom "for the sake of general welfare and, ironically enough, safeguarding the right of suffrage."[109] It quotes a relevant portion of the Decision:

> This is not to deny that Congress was indeed called upon to seek remedial measures for the far-from-satisfactory condition arising from the too-early nomination of candidates and the necessarily prolonged political campaigns. The direful consequences and the harmful effects on the public interest with the vital affairs of the country sacrificed many a time to purely partisan pursuits were known to all. Moreover, it is no exaggeration to state that violence and even death did frequently occur because of the heat engendered by such political activities. Then, too, the opportunity for dishonesty and corruption, with the right to suffrage being bartered, was further magnified.

Under the police power then, with its concern for the general welfare and with the commendable aim of safeguarding the right of suffrage, the legislative body must have felt impelled to impose the foregoing restrictions. It is understandable for Congress to believe that without the limitations thus set forth in the challenged legislation, the laudable purpose of Republic Act No. 4880 would be frustrated and nullified.[110]

Thus, respondent argues that the measure is reasonable because there is a need to counteract the prevailing abuses and violence that mar the election process. It adds:

> [T]he realities of Philippine politics in 1969 and four decades after remain the same - the unbridled passions of supporters and candidates alike have, in the recent years, even resulted, in some of the most horrendous and unforgivable atrocities. . . .
>
> . . . With that, the regulation, through the prohibition of partisan political activity during the day or days that votes are cast, is not only reasonable, but warranted as well.[111]

Moreover, respondent asserts that the provisions are narrowly tailored to meet their objective of enhancing the opportunity of all candidates to be heard. Respondent construes the provisions in conjunction with Section 261 of the Omnibus Election Code, which provides:

> SECTION 261. Prohibited Acts. - The following shall be guilty of an election offense:
>
> . . . .
>
> (k) Unlawful electioneering. - It is unlawful to solicit votes or undertake any propaganda on the day of registration before the board of election inspectors and on the day of election, for or against any candidate or any political party within the polling place and *with a radius of thirty meters thereof*.
>
> . . . .
>
> (cc) On candidacy and campaign:
>
> . . . .
>
> (6) Any person who solicits votes or undertakes any propaganda, on the day of election, for or against any candidate or any political party within the polling place or *within a radius of thirty meters thereof*.

Accordingly, respondent notes that partisan political activities are only prohibited on the days of casting of votes and within a 30-meter radius of the polling place. The prohibition, respondent further contends, is only addressed to election candidates.[112]

Lastly, respondent adds that the prohibition is the least restrictive means in safeguarding the conduct of the elections because it is narrowly limited to "solicitation

of votes done at the designated polling precincts and only during the time when casting of votes has begun."[113]

These arguments fail to address the constitutional test required to uphold the assailed provisions' validity.

To recapitulate, Section 36.8 of the Overseas Absentee Voting Act and Section 74(II)(8) of Commission on Elections Resolution No. 10035 are content-based regulations because they strike at the core of the communicative effect of political expression and speech. Thus, the presumption of invalidity is put against them. Respondent's reliance on their presumption of constitutionality cannot hold water.

Respondent's argument that there is substantial governmental interest in the regulations must likewise fail. On the contrary, this case calls for the application of the strictest scrutiny test. Respondent must show that the evils sought to be subdued by the assailed provisions are "substantive, 'extremely serious[,] and the degree of imminence extremely high.'"[114]

Here, respondent takes refuge in this Court's ruling in *In Re: Gonzales*. Arguing that the regulations are needed to curb the practices that taint the electoral process, respondent is firm that the assailed provisions must be upheld as valid because they are similar to the regulation involved in *In Re: Gonzales*. Respondent is mistaken.

In a sharply divided vote in *In Re: Gonzales*, this Court upheld the constitutionality of Section 50-B of Republic Act No. 4880, or the Revised Election Code. The provision, which is a verbatim copy of Section 76(b) of the Omnibus Election Code, defines the term "partisan political activity":

> Sec. 50-B. Limitation upon the period of Election Campaign or Partisan Political Activity. - It is unlawful for any person whether or not a voter or candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of one hundred twenty days immediately preceding an election involving a public office voted for at large and ninety days immediately preceding an election for any other elective public office.
>
> The term 'Candidate' refers to any person aspiring for or seeking an elective public office, regardless of whether or not said person has already filed his certificate of candidacy or has been nominated by any political party as its candidate.
>
> The term 'Election Campaign' or 'Partisan Political Activity' refers to acts designed to have a candidate elected or not or promote the candidacy of a person or persons to a public office which shall include:
>
> (a) Forming Organizations, Associations, Clubs, Committees or other groups of persons for the purpose of soliciting votes and/or undertaking any

campaign or propaganda for or against a party or candidate;

(b) Holding political conventions, caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a any candidate or party;

(c) Making speeches, announcements or commentaries or holding interviews for or against the election of any party or candidate for public office;

(d) Publishing or distributing campaign literature or materials;

(e) Directly or indirectly soliciting votes and/or undertaking any campaign or propaganda for or against any candidate or party;

(f) Giving, soliciting, or receiving contributions for election campaign purposes, either directly or indirectly. Provided, That simple expressions or opinion and thoughts concerning the election shall not be considered as part of an election campaign: Provided, further, That nothing herein stated shall be understood to prevent any person from expressing his views on current political problems or issues, or from mentioning the names of the candidates for public office whom he supports.

In *In Re: Gonzales*, this Court determined that Section 50-B of Republic Act No. 4880 is a content-based regulation because it is a limitation that cuts deep into the substance of the speech and expression. Proceeding to apply the clear and present danger test, the majority reasoned that the limits on freedom of speech is justified by the serious substantive evil that affects the electoral process. It held that the evils that the law sought to prevent are "not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied."[115] It ruled:

> For under circumstances that manifest abuses of the gravest character, remedies much more drastic than what ordinarily would suffice would indeed be called for. The justification alleged by the proponents of the measures weighs heavily with the members of the Court, though in varying degrees, in the appraisal of the aforesaid restrictions to which such precious freedoms are subjected. They are not unaware of the clear and present danger that calls for measures that may bear heavily on the exercise of the cherished rights of expression, of assembly, and of association.
>
> This is not to say that once such a situation is found to exist, there is no limit to the allowable limitations on such constitutional rights. The clear and present danger doctrine rightly viewed requires that not only should there be an occasion for the imposition of such restrictions but also that they be limited in scope.[116]

This case, however, bears a different factual milieu. It would be a judicial error to carelessly apply the ruling in *In Re: Gonzales* here.

Respondent overlooked that the prohibition on partisan political activities in *In Re: Gonzales* specifically pertains to elections conducted in the Philippines. Likewise, this Court's justification in *In Re: Gonzales* operates within the premise and context of an election period within the Philippines. Respondent cannot simply rely on that justification in arguing for the validity of the assailed provisions in this case. The application of the prohibition is different for overseas elections.

Respondent cannot use the perceived electoral violence in the Philippines as a justification for a prohibition applied abroad. Thus, I cannot agree with respondent's insistence that "the prohibition on partisan political activities during the 30-day overseas voting period . . . is no different from the election-day prohibition on partisan political activities"[117] within the Philippines.

It is clear that respondent failed to discharge its burden of proof. It has not shown why prohibiting partisan political activities abroad is necessary to maintain public order during the election period. It is uncertain what clear and present dangers the prohibition aims to dispel within the different countries abroad. Hence, the presumption of the regulations' invalidity stands.

Absent any clear and present danger, the people's exercise of free speech cannot be restrained by the government. Without any discernable reason to broadly impose the prohibition on political activities abroad, this Court is impelled to favor and uphold the exercise of free expression.

The Overseas Absentee Voting Act's noble intent to encourage Filipinos abroad to exercise their right of suffrage[118] will fail to materialize if we leave our people voiceless and powerless. A meaningful democratic participation through the exercise of the right of suffrage demands that citizens have the right to know what they ought to know, and to express what they know to make informed choices and influence others to do the same.

ACCORDINGLY, I vote that the Petition be **GRANTED**. Section 36.8 of the Overseas Absentee Voting Act of 2013 and Section 74(II)(8) of Commission on Elections Resolution No. 10035 are declared **UNCONSTITUTIONAL**.

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[1] Republic Act No. 9189 (2003), as amended by Republic Act No. 10590 (2013), sec. 36.8 provides:

SECTION 36. *Prohibited Acts*. - In addition to the prohibited acts provided by law, it shall be unlawful:

. . . .

36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[2] General Instructions for the Special Board of Election Inspectors and Special Ballot

Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes Under Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" as amended by Republic Act No. 10590 for Purposes of the May 9, 2016 National and Local Elections.

[3] *Reyes v. Bagatsing*, 210 Phil. 457-465-467 (1983) [Per C.J. Fernando, En Banc].

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

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

[6] George A. Malcolm, *The Malolos Constitution*, 36 POLITICAL SCIENCE QUARTERLY 91 (1921), available at <https://archive.org/details/jstor-2142663> (last visited on August 12, 2019).

[7] *U.S. v. Bustos*, 37 Phil. 731, 739 (1918) [Per J. Malcolm, First Division] *citing* Jose Rizal, Filipinas Despues de Cien Anos (The Philippines A Century Hence) (1912).

[8] WILLIAM COHEN, THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE 1 (2003).

[9] Id. at 2.

[10] Id.

[11] Id.

[12] Id. at 3.

[13] David S. Bogen, *Freedom of Speech and Origins*, 42 MD. L. REV. 429, 430-431 (1983), available at <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2503&context=mlr> (last visited on August 12, 2019) and JOSEPH J. HEMMER, COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT 4 (2000).

[14] WILLIAM COHEN, THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE 8-9 (2003). *See also Masses Publishing Co v. Patten*, 244 F. 535 (S.D.N.Y. 1917).

[15] *U.S. v. Bustos*, 37 Phil. 731,740 (1918) [Per J. Malcolm, First Division].

[16] Id.

[17] 43 Phil. 58 (1922) [Per J. Johnson, En Banc].

[18] Id. at 62.

[19] *Reyes v. Bagatsing*, 210 Phil. 457, 475 (1983) [Per C.J. Fernando, En Banc].

[20] 151-A Phil. 656 (1973) [Per J. Makasiar, First Division].

[21] Id. at 676.

[22] *See Primicias v. Fugoso*, 80 Phil. 71 (1948) [Per J. Feria, En Banc]. *See also* EDWIN BAKER, HUMAN LIBERTY AND FREEDOM OF SPEECH 30-31 (1989).

[23] DAVID A.J. RICHARDS, FREE SPEECH AND THE POLITICS OF IDENTITY 18 (1999).

[24] Id. at 21.

[25] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[26] 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].

[27] Id. at 197.

[28] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

[29] Id. at 332.

[30] ERIC BARENDT, FREEDOM OF SPEECH 20 (1987).

[31] JOSEPH J. HEMMER, JR., COMMUNICATION LAW: THE SUPREME COURT AND THE FIRST AMENDMENT 3 (2000).

[32] Id.

[33] Id.

[34] ERIC BARENDT, FREEDOM OF SPEECH 146 (1987).

[35] DAVID A.J. RICHARDS, FREE SPEECH AND THE POLITICS OF IDENTITY 18 (1999).

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

[37] *Chavez v. Gonzales*, 569 Phil. 155, 199 (2008) [Per J. Puno, En Banc].

[38] *The Diocese of Bacolod v. Commission of Elections*, 751 Phil. 301, 343 (2015) [Per J. Leonen, En Banc].

[39] Id. *citing* J. Carpio, *Separate Concurring Opinion in Chavez v. Gonzales*, 569 Phil. 155, 245 (2008) [Per J. Puno, En Banc].

[40] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 933 (1996) [Per J. Puno, En Banc].

[41] 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[42] Id. at 110.

[43] *See* J. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[44] Id. at 420.

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

[46] ERIC BARENDT, FREEDOM OF SPEECH 147 (1987).

[47] WILLIAM COHEN, THE FIRST AMENDMENT: CONSTITUTIONAL PROTECTION OF EXPRESSION AND CONSCIENCE 41 (2003).

[48] 328 Phil. 893 (1996) [Per J. Puno, En Banc].

[49] Id. at 953-954.

[50] *United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 84 (2015) [Per J. Reyes, En Banc].

[51] *Chavez v. Gonzales*, 569 Phil. 155, 203-204 (2008) [Per J. Puno, En Banc].

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

[53] *See Chavez v. Gonzales*, 569 Phil. I 55 (2008) [Per J. Puno, En Banc] and *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) [Per J. Puno, En Banc].

[54] J. Sandoval-Gutierrez, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 240-241 (2008) [Per J. Puno, En Banc].

[55] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 928 (1996) [Per J. Puno, En Banc].

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

[57] 102 Phil. 152 (1957) [Per J. Bautista Angelo, First Division].

[58] Id. at 161-163.

[59] 137 Phil. 471 (1969) [Per J. Fernando, En Banc].

[60] Id. at 496.

[61] 249 U.S. 47 (1919).

[62] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 932 (1996) [Per J. Puno, En Banc].

[63] 341 U.S. 494 (1951).

[64] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 932 (1996) [Per J. Puno, En Banc].

[65] 95 U.S. 444 (1969).

[66] *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 933 (1996) [Per J. Puno, En Banc].

[67] *See* footnote 33 of J. Carpio, Separate Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 242 (2008) [Per C.J. Puno, En Banc].

[68] *Reyes v. Bagatsing*, 210 Phil. 457 (1983) [Per J. J.B.L. Reyes, En Banc].

[69] Id. at 475.

[70] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per C.J. Puno, En Banc].

[71] 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[72] Id. at 795.

[73] Id. at 795-796 *citing Mutuc v. Commission on Elections*, 146 Phil. 798 (1970) [Per J. Fernando, First Division].

[74] Id. at 796.

[75] *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

[76] Id.

[77] *Chavez v. Gonzales*, 569 Phil. 155,206 (2008) [Per J. Puno, En Banc].

[78] Id. *See also Ayer Productions Pty. Ltd. v. Capulong*, 243 Phil. 1007 (1988) [Per J. Feliciano, En Banc].

[79] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per J. Puno, En Banc].

[80] *Cabansag v. Fernandez*, 102 Phil. 152, 163 (1957) [Per J. Bautista Angelo, First Division].

[81] *See Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625 (2009) [Per J. Tinga, Second Division].

[82] 605 Phil. 43 (2009) [Per J. Velasco, Jr., En Banc].

[83] Id. at 163.

[84] 602 Phil. 255 (2009) [Per J. Tinga, Second Division].

[85] Id. at 274.

[86] Id. at 271 *citing* GUNTHER, ET AL., CONSTITUTIONAL LAW 964 (14th ed., 2001).

[87] Id.

[88] *Osmeña v. Commission on Elections*, 351 Phil. 692, 718 (1998) [Per J. Mendoza, En Banc].

[89] Id. at 718-719.

[90] *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per J. Puno, En Banc].

[91] *Social Weather Stations, Inc. v. Commission on Elections*, 409 Phil. 571, 588 (2001) [Per J. Leonen, En Banc].

[92] *Chavez v. Gonzales*, 569 Phil. 155, 207 (2008) [Per J. Puno, En Banc].

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

[94] Id. at 372.

[95] 757 Phil. 483 (2015) [Per J. Leonen, En Banc].

[96] Id. at 516.

[97] Id. at 516-517.

[98] *Rollo*, p. 4.

[99] Id. at 124.

[100] Id. at 125.

[101] Id.

[102] Commission on Elections Resolution No. 9843 (2014), art. 89, in relation to Republic Act No. 10590 (2013), sec. 2(1).

[103] *In re: Gonzales v. Commission on Elections*, 137 Phil. 471, 506 (1969) [Per J. Fernando, En Banc].

[104] *Rollo*, p. 125.

[105] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per J. Puno, En Banc].

[106] *Rollo*, p. 124.

[107] Id.

[108] 137 Phil. 471 (1969) [Per J.Fernando, En Banc].

[109] *Rollo*, p. 116.

[110] Id. at 124-125.

[111] Id. at 125.

[112] *Rollo*, p. 122.

[113] Id. at 125.

[114] *Chavez v. Gonzales*, 569 Phil. 155, 200 (2008) [Per J. Puno, En Banc].

[115] *In re: Gonzales v. Commission on Elections*, 137 Phil. 471, 500 (1969) [Per J. Fernando, En Banc].

[116] Id. at 503.

[117] *Rollo*, p. 117.

[118] Id. at 121.

SEPARATE AND CONCURRING OPINION

JARDELEZA, J.:

I vote to grant the petition on the ground that Section 36.8[1] of Republic Act No. (RA) 9189,[2] as amended by RA 10590,[3] and Section 74(II)(8)[4] of Commission on Elections (Comelec) Resolution No. 10035[5] are impermissible content-based regulations. These provisions both provide that it shall be unlawful for any person to engage in partisan political activity abroad during the 30-day overseas voting period. Partisan political activity or election campaign is, in tum, defined under Section 79(b) of *Batas Pambansa Bilang* (BP) 881[6] as an act designed to promote the election or defeat of a particular candidate or candidates to a public office. These acts shall include:

1. Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;

2. Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;

3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;

4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or

5. Directly or indirectly soliciting votes, pledges or support for or against a candidate.

Section 79(b) provides, at the same time, when the foregoing acts shall not be considered as election campaign or partisan political activity and these are:

> [1.] x x x [I]f performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties x x x[; and]
>
> [2.] Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable

> candidates proposed to be nominated in a forthcoming political party convention x x x.

Petitioner alleges that on the basis of the above regulations, she, together with thousands of similarly situated Filipinos all over the world, was prohibited by the different Philippine Consulates from conducting information campaigns, rallies, and outreach programs in support of their respective candidates for the May 2016 national elections. Petitioner contends that these regulations violate one's freedom of speech, expression, and assembly, and are content-based prior restraints on speech which curtail the expression of political inclinations, views, and opinions of Filipinos abroad. I agree.

It bears emphasis at the outset that the Court should take cognizance of this case because of the presence of a justiciable controversy involving free speech, a textually identified fundamental right under the Constitution,[7] and not because of the alleged transcendental importance of the issue petitioner invokes. There exists an actual justiciable controversy when there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[8] Here, there is an evident clash of the parties' legal claims, particularly on whether Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 impair the free speech rights of petitioner and of all Filipinos abroad.[9] Section 36.8 of RA 9189, as amended by RA 10590 is an existing law that was fully implemented, as evidenced by the issuance of Section 74(II)(8) of Comelec Resolution No. 10035 during the 2016 national elections. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.[10]

Equally important, the Court in *Gios-Samar, Inc. v. Department of Transportation and Communications*[11] already clarified the proposition that the purported transcendental importance of an issue does not operate as a talismanic license to justify direct recourse to the Court. Thus:

> To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case *in the first instance*, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution. The case before us does not fall under this exception.
>
> x x x x
>
> **Accordingly, for the guidance of the bench and the bar, we reiterate that 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. Such question must first be**

> **brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.**[12] (Citations omitted; emphasis in the original.)

The justiciable controversy pres1ent here involves a pure question of law. We are not being called to rule on questions of fact. This direct recourse to Us via this petition is, therefore, being allowed on this basis as well, and not on petitioner's misplaced invocation of the transcendental importance doctrine.

Going now to the substance of the. petition, I reiterate that my vote here is grounded on the nature of Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 which, as impermissible content-based restrictions, do not survive strict scrutiny analysis.

Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[13] Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 fit this definition because these regulations restrain speech and expression before they are made. While governmental imposition of varying forms of prior restraints of speech and expression may present a constitutional issue, it does not follow, by design, that the regulations herein questioned *ipso facto* violate the Constitution.[14] The State may, indeed, curtail speech when necessary to advance a significant and legitimate interest.[15] Any prior restraint, however, which does so comes to this Court bearing a heavy presumption against its constitutional validity, which the Government has the burden to justify.[16]

Consequently, Our inquiry here does not end with the determination as to whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is content-neutral or content-based.[17] A content-neutral restraint is merely concerned with the incidents of the speech, or one hat merely controls the time, place or manner, and under well-defined standards.[18] A content-based restraint, on the other hand, is based on the subject ma,er of the utterance or speech.[19]

In my view, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 fall under the content-based classification. Following *Ward v. Rock Against Racism*,[20] the restrictions here describe speech, expression, and assembly in terms of time and manner and were not adopted because of the Government's disagreement with the message the subject speech or expression relays. There is no evidence, or suggestion, that the Government made any distinction based on the speaker's views or perspectives. Viewpoint, however, is just one aspect of free speech or expression. The Constitution's hostility to content-based regulation extends not only to a restriction on a particular **viewpoint**, but also to a prohibition of public discussion of an **entire topic**.[21] Hence, while Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec

Resolution No. 10035 do not discriminate between viewpoints, they do discriminate

against a whole class of speech, which is political speech. Whether individuals may exercise their free speech rights during the 30-day voting period overseas depends entirely on whether their speech is related to a political campaign.[22] The regulations do not reach other categories of speech, such as commercial solicitation, distribution, and display.[23] Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 thus "[**slip**] from the neutrality of time, place, and circumstance into a concern about content."[24]

Again, following *Ward*, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(1I)(8) of Comelec Resolution No. 10035 may not have been adopted by the Government because of disagreement with the message the speech conveys. Nevertheless, following *Reed v. Town of Gilbert, Arizona*,[25] these regulations cannot be justified without reference to their content as regulated speech. Regulations that appear content-neutral will be treated as content-based because they are, in essence, related to the suppression of expression.

Moreover, the United States (US) Supreme Court in *Reed* cautioned that *Ward* involved a facially content-neutral restriction on the use, in a city owned music venue, of sound amplification systems not provided by the city. It was in that context that the US Supreme Court then looked to governmental motive, including whether the Government had regulated speech because of its disagreement with its message, and whether the regulation was justified without reference to the content of the speech. The US Supreme Court stressed that Ward's framework applies only if a statute is content-neutral.

Thus, *Reed* declared that the crucial first step in the content-neutrality analysis is to determine whether the law is content-neutral on its face. The mere assertion of a content-neutral purpose is not enough to save a law which, on its face, discriminates based on content.[26] A law that is content-based on its face will be treated as such regardless of the Government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.[27] Citing the dissent of Associate Justice Antonin Scalia in *Hill v. Colorado*,[28] Reed acknowledged that innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future Government officials may one day wield such statutes to suppress disfavored speech:

> x x x That is why the First Amendment expressly targets the operation of the laws-*i.e.*, the "abridg[ement] of speech"-rather than merely I the motives of those who enacted them. U.S. Const., Amdt. 1. "'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.'" x x x[29]

Furthermore, the cast of the restriction, whether content-neutral or content-based, determines the test by which the challenged act is assayed with.[30] Content-based laws, which are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression,[31] are subject to

strict scrutiny. Content-neutral regulations of speech or of expressive conduct are subject to a lesser, but still heightened scrutiny[32] which is commonly referred to as an intermediate approach.[33]

Being content-based regulations, Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.[34] In my view, the Government in this case has failed to discharge its burden in this respect.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the State for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern.[35]

In this case, respondent advances the wisdom behind Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035, which is to maintain the integrity of the election process and curb the violence and atrocities that have, in recent years, marred the electoral exercise.[36] These are the same objectives behind Sections 50-A and 50-B of the Revised Election Code, which limit the period of election campaign or the conduct of partisan political activity to 150 days immediately preceding the national elections or 90 days immediately preceding the local elections. The Court in *Gonzales v. Comelec*[37] had found the restrictions reasonable and warranted in light of a "serious substantive evil affecting the electoral process, not merely in danger of happening, but actually in existence, and likely to continue unless curbed or remedied."[38]

It is beyond question that the State has an important and substantial interest in seeing to it that the conduct of elections be honest, orderly, and peaceful, and that the right to suffrage of its citizens be protected at all times. This interest, I agree, is compelling in Philippine setting, where history would readily show how the partisan political activities of candidates and their supporters have not only fostered "huge expenditure of funds on the part of candidates," but have also resulted to the "corruption of the electorate," and worse, have "precipitated violence and even deaths."[39] But what is true in one location is not necessarily true elsewhere. The prevailing substantive evils recognized in *Gonzales* may be endemic to the Philippines alone. Respondent has failed to demonstrate that these same evils persist in the foreign locations where overseas voting is allowed.

At the same time, the prohibition under Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is not narrowly tailored to achieve the Government's objective of preserving the integrity and order of the electoral process. The regulations completely prohibit partisan political activities with neither any limitation as to place or location nor as to the speaker or actor.

Respondent, in an effort to save the regulation, proffers a resort to statutory

construction. Respondent proposes that the regulations must be harmonized with Section 261(k) of BP 881, which reads:

> Sec. 261. *Prohibited Acts*. - The following shall be guilty of an election offense:
>
> x x x x
>
> (k) *Unlawful electioneering*. - It is unlawful to solicit votes or undertake any propaganda on the day of registration before the board of election inspectors and on the day of election, for or against any candidate or any political party within the polling place and with a radius of thirty meters thereof.

Accordingly, respondent insists that the prohibition under Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 shall be taken to mean that it is confined to the polling places and to a radius of 30 meters.

Respondent also proposes that We look into the intent of Congress to limit the prohibition on campaigning abroad during the 30-day voting period to candidates. Respondent cites the sponsorship speech of Senator Aquilino Pimentel III for Senate Bill No. 3312, where he said that one of the changes agreed upon was to introduce a proviso making it an election offense for candidates to campaign in the country they are visiting within the 30-day voting period for overseas voting.[40]

Respondent's arguments are flawed.

Indeed, the touchstone of statutory interpretation is the probable intent of the legislature. When interpreting a statute, We must ascertain legislative intent so as to effectuate the purpose of a particular law. But the first step in determining that intent is to scrutinize the actual words of the statute, giving them a plain and common-sense meaning. When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history. [41]

The language of Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is clear and unambiguous. If Congress "truly intended the interpretations suggested by respondent, it could have easily identified the exact place where the prohibition applies and to whom the prohibition is addressed. As the regulations plainly read, however, they prohibit **any person** (and not just the candidates) from engaging in partisan political activities **without** any qualification as to the location where these activities are conducted.

Courts must presume that a legislature says in a statute what it means and means in a statute what it says there.[42] When the words of a statute are unambiguous, then judicial inquiry is complete.[43] I cannot subscribe to the proposition of respondent that the legislative history of RA 9189, as amended by RA 10590, points to a different result. Judicial inquiry into the reach of Section 36.8 begins and ends with what Section 36.8 does say and with what it does not.[44]

Thus, the prior restraint imposed in Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Comelec Resolution No. 10035 is not narrowly drawn to protect the avowed interest of the government.[45] This second requirement of the strict scrutiny test stems from the fundamental premise that citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights. While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest. When it is possible for governmental regulations to be more narrowly drawn to avoid conflicts with constitutional rights, then they must be so narrowly drawn.[46]

All told, the application of a strict or exacting scrutiny to a content-based prior restraint becomes all the more Imperative when political speech is involved. The fundamental right to freedom of speech and expression has its fullest and most urgent application to speech and expression uttered during a campaign for political office.[47] For one, discussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of Government established by our Constitution.[48] Also, under our system of laws, everyone has the right to promote his or her agenda and attempt to persuade society of the validity of his or her position through normal democratic means. It is in the public square that deeply held convictions and differing opinions should be distilled and deliberated upon.[49]

Thus, the Constitution affords the broadest protection to political speech and expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.[50] In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.[51]

I hasten to add at this point that nothing We say here, however, should be construed to mean that the institution of a campaign-free zone in polling places abroad during the voting period is altogether foreclosed.

In fact, the Court has already observed in *Osmeña v. Comelec*[52] that Our previous decisions in *Gonzales* and *Valmonte v. Comelec*[53] have demonstrated that the State can prohibit campaigning **outside** a certain period as well as campaigning **within** a certain place. The Court went on to say that in *Valmonte*, the validity of a Comelec resolution prohibiting members of citizen groups or associations from entering any polling place except to vote was upheld. The Court then concluded that "[i]ndeed, §261(k) of the Omnibus Election Code makes it unlawful for anyone to solicit votes in the polling place and within a radius of 30 meters thereof."[54]

Statutorily mandated campaign-free zones have also been validated in the US. In *Burson*, the US Supreme Court upheld the validity of a provision of the Tennessee Code which prohibits the solicitation of votes and the display or distribution of campaign materials within 100 feet of the entrance to a polling place. The US Supreme Court found the provision to be a content-based restriction, but nonetheless found it valid

through the lens of strict scrutiny. The US Supreme Court acknowledged that it was one of the rare cases in which it has held that a law survives strict scrutiny. It arrived at its decision on account of "[a] long history, a substantial consensus, and simple common sense"[55] showing that some restricted zone around polling places is necessary to protect the fundamental right of citizens to cast a ballot in an election free from the taint of intimidation and fraud.

Given *Burson* and Our own pronouncements in Osmeña, the establishment of a campaign-free zone in polling places overseas remains an open and viable possibility.

WHEREFORE, I vote to **GRANT** the petition and **DECLARE** Section 36.8 of RA 9189, as amended by RA 10590, and Section 74(II)(8) of Cmnelec Resolution No. 10035 as **UNCONSTITUTIONAL** for violating Section 4, Article III of the 1987 Constitution.

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[1] Sec. 36.8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period[.]

[2] The Overseas Absentee Voting Act of 2003.

[3] The Overseas Absentee Voting Act of 2013.

[4] Sec. 74. Election offenses/prohibited acts. -

x x x x

II. Under R.A. 9189 "Overseas Absentee Voting Act of 2003," as amended

x x x x

8. For any person to engage in partisan political activity abroad during the thirty (30)-day overseas voting period.

[5] General Instructions for the Special Board of Election Inspectors and Special Ballot Reception and Custody Group in the Conduct of Manual Voting and Counting of Votes under Republic Act No. 9189, otherwise known as "The Overseas Absentee Voting Act of 2003" as amended by Republic Act No. 10590 for Purposes of the May 09, 2016 National and Local Elections.

[6] Omnibus Election Code of the Philippines.

[7] Art. III, Sec. 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.

[8] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017, 835 SCRA 350, 385.

[9] See *SPARK v. Quezon City, id.*

[10] *SPARK v. Quezon City, supra* at 386.

[11] G.R. No. 217158, March 12, 2019.

[12] *Id.*

[13] *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008, 545 SCRA 441, 491. Citation omitted.

[14] *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 803-804 (1984), citing *C.J.* Burger's dissent in *Metromedia, Inc. v. San Diego*, 453 U.S. 490, 561 (1981).

[15] *Id.* at 804, citing *Schenck v. United States*, 249 U.S. 47, 52 (1919).

[16] See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

[17] *Chavez v. Gonzales, supra* note 13 at 493.

[18] *Newsounds Broadcasting Network, inc. v. Dy*, G.R. Nos. 170270 & 179411, April 2, 2009, 583 SCRA 333, 352.

[19] *Id.*

[20] 491 u.s. 781 (1989).

[21] *Burson v. Freeman*, 504 U.S. 191, 197 (1992). Emphasis supplied.

[22] *Id.*

[23] *Id.*

[24] *Police Department of Chicago v. Mosley*, 408 U.S. 92, 99 (1972). Emphasis supplied.

[25] 135 S. Ct. 2218 (2015).

[26] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642-643 (1994).

[27] *Reed v. Town of Gilbert, Arizona, supra* at 2227.

[28] 530 U.S. 703 (2000).

[29] *Reed v. Town of Gilbert, Arizona, supra* at 2229.

[30] *Chavez v. Gonzales, supra* note 13 at 493.

[31] *Newsounds Broadcasting Network, Inc. v. Dy, supra* note 18.

[32] *Id.*

[33] *Chavez v. Gonzales, supra* note 13 at 493-494.

[34] *Citizens United v. Federal Election Commission*, 558 U.S. 310, 882 (2010).

[35] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254, 296. Citations omitted.

[36] *Rollo*, p. 376.

[37] G.R. No. L-27833, April 18, 1969, 27 SCRA 835.

[38] *Id.* at 864.

[39] See *Gonzales v. Comelec, supra*.

[40] *Rollo* , p. 373.

[41] *Quarterman v. Kefauver*, 55 Cal.App.4th 1366, 1371 (1997).

[42] *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

[43] *Id.* at 254.

[44] *Id.*

[45] See *Burson v. Freeman, supra* note 21 at 119-200, where the US Supreme Court said that to survive strict scrutiny, the State must do more than assert a compelling State interest, but must also demonstrate that its law is **necessary** to serve the asserted interest. It bears emphasis that the US Supreme Court did not categorically say that the State must adopt the least restrictive means. The measure of the restriction, however, whether it should be the least or whether it being less/necessary would suffice---is a discussion best left in another appropriate case.

[46] *SPARK v. Quezon City, supra* note 8 at 419-420. Citation and emphasis omitted.

[47] *Buckley v. Valeo*, 424 U.S. 1, 15, 256 (1976).

[48] *Id.* at 14.

[49] *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No 190582, April 8, 2010, 618 SCRA 32, 65.

[50] *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).

[51] *Id.* at 346-347.

[52] G.R. No. 132231, March 31, 1998, 288 SCRA 447.

[53] Resolution, G.R. No. 73551, February 11, 1988.

[54] *Osmeña v. Comelec, supra* at 470.

[55] *Burson v. Freeman, supra* note 21 at 211.

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