Republic of the Philippines
Supreme Court
Manila

EN BANC

GMA NETWORK, INC., **G.R. No. 205357**
Petitioner,

- versus –

COMMISSION ON ELECTIONS,
Respondent.

SENATOR ALAN PETER "*COMPAÑERO*" S. CAYETANO,
Petitioner-Intervenor.

x - x

ABC DEVELOPMENT CORPORATION, **G.R. No. 205374**
Petitioner,

- versus –

COMMISSION ON ELECTIONS,
Respondent.

x - x

MANILA BROADCASTING COMPANY, INC. and NEWSOUNDS BROADCASTING NETWORK, INC., **G.R. No. 205592**
Petitioner,

- versus –

COMMISSION ON ELECTIONS,
Respondent.

x - x

KAPISANAN NG MGA BRODKASTER NG PILIPINAS (KBP) and ABS-CBN CORPORATION,
Petitioners,

- *versus* –

COMMISSION ON ELECTIONS,
Respondent.

x - x

RADIO MINDANAO NETWORK, INC.,
Petitioner,

- *versus* –

COMMISSION ON ELECTIONS,
Respondent.

G.R. No. 205852

G.R. No. 206360

Present:

SERENO, *C.J.*,[*]
CARPIO,[**]
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,[***]
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,[****]
REYES,
BERNABE,
LEONEN, and
JARDELEZA,[*****] *JJ.*

Promulgated:

SEPTEMBER 02, 2014

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[*] On official leave.
[**] Designated Acting Justice per Special Order No. 1770 dated August 28, 2014.
[***] On official leave.
[****] On official leave.
[*****] On leave.

D E C I S I O N

PERALTA, *J.*:

> "The clash of rights demands a delicate balancing of interests approach which is a 'fundamental postulate of constitutional law.'"[1]

Once again the Court is asked to draw a carefully drawn balance in the incessant conflicts between rights and regulations, liberties and limitations, and competing demands of the different segments of society. Here, we are confronted with the need to strike a workable and viable equilibrium between a constitutional mandate to maintain free, orderly, honest, peaceful and credible elections, together with the aim of ensuring equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates,[2] on one hand, and the imperatives of a republican and democratic state,[3] together with its guaranteed rights of suffrage,[4] freedom of speech and of the press,[5] and the people's right to information,[6] on the other.

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1 *Secretary of Justice v. Lantion*, 397 Phil 423, 437 (2000). (Citation omitted)

2 Art. IX (C), Sec. 4 of the CONSTITUTION, provides:

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

3 The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them. (Art. II, Sec. 1, CONSTITUTION)

4 Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. (Art. V, Sec. 1, CONSTITUTION)

5 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. (Art. III, Sec. 4, CONSTITUTION)

6 The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. (Art. III, Sec. 7, CONSTITUTION)

In a nutshell, the present petitions may be seen as in search of the answer to the question – **how does the Charter of a republican and democratic State achieve a viable and acceptable balance between liberty, without which, government becomes an unbearable tyrant, and authority, without which, society becomes an intolerable and dangerous arrangement?**

Assailed in these petitions are certain regulations promulgated by the Commission on Elections (*COMELEC*) relative to the conduct of the 2013 national and local elections dealing with political advertisements. Specifically, the petitions question the constitutionality of the limitations placed on aggregate airtime allowed to candidates and political parties, as well as the requirements incident thereto, such as the need to report the same, and the sanctions imposed for violations.

The five (5) petitions before the Court put in issue the alleged unconstitutionality of Section 9 (a) of COMELEC Resolution No. 9615 (*Resolution*) limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively. They contend that such restrictive regulation on allowable broadcast time violates freedom of the press, impairs the people's right to suffrage as well as their right to information relative to the exercise of their right to choose who to elect during the forthcoming elections.

The heart of the controversy revolves upon the proper interpretation of the limitation on the number of minutes that candidates may use for television and radio advertisements, as provided in Section 6 of Republic Act No. 9006 *(R.A. No. 9006*), otherwise known as the *Fair Election Act.* Pertinent portions of said provision state, thus:

> Sec. 6. *Equal Access to Media Time and Space*. - All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:
>
> x x x x
>
> 6.2 (a) Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than one hundred twenty (120) minutes of television advertisement and one hundred eighty (180) minutes of radio advertisement whether by purchase or donation.

> b. Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (90) minutes of radio advertisement whether by purchase or donation.
>
> For this purpose, the COMELEC shall require any broadcast station or entity to submit to the COMELEC a copy of its broadcast logs and certificates of performance for the review and verification of the frequency, date, time and duration of advertisements broadcast for any candidate or political party.

During the previous elections of May 14, 2007 and May 10, 2010, COMELEC issued Resolutions implementing and interpreting Section 6 of R.A. No. 9006, regarding airtime limitations, to mean that a candidate is entitled to the aforestated number of minutes "per station."[7] For the May 2013 elections, however, respondent COMELEC promulgated Resolution No. 9615 dated January 15, 2013, changing the interpretation of said candidates' and political parties' airtime limitation for political campaigns or advertisements from a "per station" basis, to a "total aggregate" basis.

Petitioners ABS-CBN Corporation (*ABS-CBN*), ABC Development Corporation (*ABC*), GMA Network, Incorporated (*GMA*), Manila Broadcasting Company, Inc. (*MBC*), Newsounds Broadcasting Network, Inc. (*NBN*), and Radio Mindanao Network, Inc. *(RMN)* are owners/operators of radio and television networks in the Philippines, while petitioner Kapisanan ng mga Brodkaster ng Pilipinas (*KBP*) is the national organization of broadcasting companies in the Philippines representing operators of radio and television stations and said stations themselves. They sent their respective letters to the COMELEC questioning the provisions of the aforementioned Resolution, thus, the COMELEC held public hearings. Thereafter, on February 1, 2013, respondent issued Resolution No. 9631 amending provisions of Resolution No. 9615. Nevertheless, petitioners still found the provisions objectionable and oppressive, hence, the present petitions.

All of the petitioners assail the following provisions of the Resolution:

a) Section 7 (d),[8] which provides for a penalty of suspension or revocation of an offender's franchise or permit, imposes criminal liability

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[7] Resolution No. 7767 (promulgated on November 30, 2006) and Resolution No. 8758 (promulgated on February 4, 2010), respectively.

[8] SECTION 7. *Prohibited Forms of Election Propaganda*.

against broadcasting entities and their officers in the event they sell airtime in excess of the size, duration, or frequency authorized in the new rules;

b) Section 9 (a),[9] which provides for an "aggregate total" airtime instead of the previous "per station" airtime for political campaigns or

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x x x x

(d) For any newspaper or publication, radio, television or cable television station, or other mass media, or any person making use of the mass media to sell or give free of charge print space or airtime for campaign or election propaganda purposes to any candidate or party in excess of the size, duration or frequency authorized by law or these rules.

x x x x

The printing press, printer, or publisher who prints, reproduces or publishes said campaign materials, and the broadcaster, station manager, owner of the radio or television station, or owner or administrator of any website who airs or shows the political advertisements, without the required data or in violation of these rules shall be criminally liable with the candidate and, if applicable, further suffer the penalties of suspension or revocation of franchise or permit in accordance with law.

[9] SECTION 9. *Requirements and/or Limitations on the Use of Election Propaganda through Mass Media.* – All parties and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

a. Broadcast Election Propaganda

the duration of air time that a candidate, or party may use for their broadcast advertisements or election propaganda shall be, as follows:

For Candidates/
Registered Political
parties for a
National Elective
Position

Not more than a aggregate total of one hundred (120) minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and one hundred eighty (180) minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation.

For Candidates/
Registered Political
parties for a Local
Elective Position

Not more than an aggregate total of sixty (60) minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and ninety (90) minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation.

In cases where two or more candidates or parties whose names, initials, images, brands, logos, insignias, color motifs, symbols, or forms of graphical representations are displayed, exhibited, used, or mentioned together in the broadcast election propaganda or advertisements, the length of time during which they appear or are being mentioned or promoted will be counted against the airtime limits allotted for the said candidates or parties and the cost of the said advertisement will likewise be considered as their expenditures, regardless of whoever paid for the advertisements or to whom the said advertisements were donated.

Appearance or guesting by a candidate on any bona fide newscast, bona fide news interview, bona fide news documentary, if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary, or on-the-spot coverage of bona fide news events, including but not limited to events sanctioned by the Commission on Elections, political conventions, and similar activities, shall not be deemed to be broadcast election propaganda within the meaning of this provision. To determine whether the appearance or guesting in a program is bona fide, the broadcast stations or entities must show that: (1) prior approval of the Commission was secured; and (2) candidates and parties were afforded equal opportunities to promote their candidacy. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under Sections 10 and 14 of these Rules.

Provided, further, that a copy of the broadcast advertisement contract be furnish to the Commission, thru the Education and Information Department, within five (5) days from contract signing.

x x x x

advertisements, and also required prior COMELEC approval for candidates' television and radio guestings and appearances; and

c) Section 14,[10] which provides for a candidate's "right to reply."

In addition, petitioner ABC also questions Section 1 (4)[11] thereof, which defines the term "political advertisement" or "election propaganda," while petitioner GMA further assails Section 35,[12] which states that any violation of said Rules shall constitute an election offense.

On March 15, 2013, Senator Alan Peter S. Cayetano (*Petitioner-Intervenor*) filed a Motion for Leave to Intervene and to File and Admit the Petition-in-Intervention, which was granted by the Court *per* its Resolution

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[10] SECTION 14**.** *Right to Reply.* – All registered political parties, party-list groups or coalitions and *bona fide* candidates shall have the right to reply to charges published, or aired against them. The reply shall be given publicity, or aired against them. The reply shall be given publicity by the newspaper, television, and/or radio station which first printed or aired the charges with the same prominence or in the same page or section or in the same time slot as the first statement.

Registered political parties, party-list groups or coalitions and bona fide candidates may invoke the right to reply by submitting within a non-extendible period of forty-eight hours from first broadcast or publications, a formal verified claim against the media outlet to the COMELEC through the appropriate RED. The claim shall include a detailed enumeration of the circumstances and include a detailed enumeration of the circumstances and occurrences which warrant the invocation of the right to reply and must be accompanied by supporting evidence, such as copy of the publication or recording of the television or radio broadcast, as the case may be. If the supporting evidence is not yet available due to circumstances beyond the power of the claimant, the latter shall supplement his claim as soon as the supporting evidence becomes available, without delay on the part of the claimant. The claimant must likewise furnish a copy of the verified claim and its attachments to the media out let concerned prior to the filing of the claim with the COMELEC.

The COMELEC, through the RED, shall review the verified claim within forty-eight (48) hours from receipt thereof, including supporting evidence, and if circumstances warrant, give notice to the media outlet involved for appropriate action, which shall, within forty-eight (48) hours, submit its comment, answer or response to the RED, explaining the action it has taken to address the claim. The media outlets must likewise furnish a copy invoking the right to reply.

Should the claimant insist that his/her reply was not addressed, he/she may file the appropriate petition and/or complaint before the commission on Elections or its field offices, which shall be endorsed to the Clerk of the Commission.

[11] SECTION 1. *Definitions.* – As used in this Resolution:

x x x x

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

Political advertising includes matters, not falling within the scope of personal opinion, that appear on any Internet website, including, but not limited to, social networks, blogging sites, and micro-blogging sites, in return for consideration, or otherwise capable of pecuniary estimation.

[12] SECTION 35. *Election Offense.* – Any violation of RA 9006 and these Rules shall constitute an election offense punishable under the first and second paragraph of Section 264 of the Omnibus Election Code in addition to administrative liability, whenever applicable. Any aggrieved party may file a verified complaint for violation of these Rules with the Law Department of the Commission.

dated March 19, 2013. Petitioner-Intervenor also assails Section 9 (a) of the Resolution changing the interpretation of candidates' and political parties' airtime limitation for political campaigns or advertisements from a “per station” basis, to a “total aggregate” basis.

Petitioners allege that Resolutions No. 9615 and 9631, amending the earlier Resolution, are unconstitutional and issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, for the reasons set forth hereunder.

Petitioners posit that Section 9 (a) of the assailed Resolution provides for a very restrictive aggregate airtime limit and a vague meaning for a proper computation of “aggregate total” airtime, and violates the equal protection guarantee, thereby defeating the intent and purpose of R.A. No. 9006.

Petitioners contend that Section 9 (a), which imposes a notice requirement, is vague and infringes on the constitutionally protected freedom of speech, of the press and of expression, and on the right of people to be informed on matters of public concern

Also, Section 9 (a) is a cruel and oppressive regulation as it imposes an unreasonable and almost impossible burden on broadcast mass media of monitoring a candidate's or political party's aggregate airtime, otherwise, it may incur administrative and criminal liability.

Further, petitioners claim that Section 7 (d) is null and void for unlawfully criminalizing acts not prohibited and penalized as criminal offenses by R.A. No. 9006.

Section 14 of Resolution No. 9615, providing for a candidate's or political party's “right to reply,” is likewise assailed to be unconstitutional for being an improper exercise of the COMELEC's regulatory powers; for constituting prior restraint and infringing petitioners' freedom of expression, speech and the press; and for being violative of the equal protection guarantee.

In addition to the foregoing, petitioner GMA further argues that the Resolution was promulgated without public consultations, in violation of petitioners' right to due process. Petitioner ABC also avers that the Resolution's definition of the terms “political advertisement” and “election

propaganda" suffers from overbreadth, thereby producing a "chilling effect," constituting prior restraint.

On the other hand, respondent posits in its Comment and Opposition[13] dated March 8, 2013, that the petition should be denied based on the following reasons:

Respondent contends that the remedies of *certiorari* and prohibition are not available to petitioners, because the writ of *certiorari* is only available against the COMELEC's adjudicatory or quasi-judicial powers, while the writ of prohibition only lies against the exercise of judicial, quasi-judicial or ministerial functions. Said writs do not lie against the COMELEC's administrative or rule-making powers.

Respondent likewise alleges that petitioners do not have *locus standi*, as the constitutional rights and freedoms they enumerate are not personal to them, rather, they belong to candidates, political parties and the Filipino electorate in general, as the limitations are imposed on candidates, not on media outlets. It argues that petitioners' alleged risk of exposure to criminal liability is insufficient to give them legal standing as said "fear of injury" is highly speculative and contingent on a future act.

Respondent then parries petitioners' attack on the alleged infirmities of the Resolution's provisions.

Respondent maintains that the *per* candidate rule or total aggregate airtime limit is in accordance with R.A. No. 9006 as this would truly give life to the constitutional objective to equalize access to media during elections. It sees this as a more effective way of levelling the playing field between candidates/political parties with enormous resources and those without much. Moreover, the COMELEC's issuance of the assailed Resolution is pursuant to Section 4, Article IX (C) of the Constitution which vests on the COMELEC the power to supervise and regulate, during election periods, transportation and other public utilities, as well as mass media, to wit:

> Sec. 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled

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13 *Rollo* (G.R. No. 205357), pp. 382-426.

> corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

This being the case, then the Resolutions cannot be said to have been issued with grave abuse of discretion amounting to lack of jurisdiction.

Next, respondent claims that the provisions are not vague because the assailed Resolutions have given clear and adequate mechanisms to protect broadcast stations from potential liability arising from a candidate's or party's violation of airtime limits by putting in the *proviso* that the station "may require buyer to warrant under oath that such purchase [of airtime] is not in excess of size, duration or frequency authorized by law or these rules." Furthermore, words should be understood in the sense that they have in common usage, and should be given their ordinary meaning. Thus, in the provision for the right to reply, "charges" against candidates or parties must be understood in the ordinary sense, referring to accusations or criticisms.

Respondent also sees no prior restraint in the provisions requiring notice to the COMELEC for appearances or guestings of candidates in *bona fide* news broadcasts. It points out that the fact that notice may be given 24 hours after first broadcast only proves that the mechanism is for monitoring purposes only, not for censorship. Further, respondent argues, that for there to be prior restraint, official governmental restrictions on the press or other forms of expression must be done in advance of actual publication or dissemination. Moreover, petitioners are only required to inform the COMELEC of candidates'/parties' guestings, but there is no regulation as to the content of the news or the expressions in news interviews or news documentaries. Respondent then emphasized that the Supreme Court has held that freedom of speech and the press may be limited in light of the duty of the COMELEC to ensure equal access to opportunities for public service.

With regard to the right to reply provision, respondent also does not consider it as restrictive of the airing of *bona fide* news broadcasts. More importantly, it stressed, the right to reply is enshrined in the Constitution, and the assailed Resolutions provide that said right can only be had after going through administrative due process. The provision was also merely lifted from Section 10 of R.A. No. 9006, hence, petitioner ABC is actually attacking the constitutionality of R.A. No. 9006, which cannot be done through a collateral attack.

Next, respondent counters that there is no merit to ABC's claim that the Resolutions' definition of "political advertisement" or "election

propaganda" suffers from overbreadth, as the extent or scope of what falls under said terms is clearly stated in Section 1 (4) of Resolution No. 9615.

It is also respondent's view that the nationwide aggregate total airtime does not violate the equal protection clause, because it does not make any substantial distinctions between national and regional and/or local broadcast stations, and even without the aggregate total airtime rule, candidates and parties are likely to be more inclined to advertise in national broadcast stations.

Respondent likewise sees no merit in petitioners' claim that the Resolutions amount to taking of private property without just compensation. Respondent emphasizes that radio and television broadcasting companies do not own the airwaves and frequencies through which they transmit broadcast signals; they are merely given the temporary privilege to use the same. Since they are merely enjoying a privilege, the same may be reasonably burdened with some form of public service, in this case, to provide candidates with the opportunity to reply to charges aired against them.

Lastly, respondent contends that the public consultation requirement does not apply to constitutional commissions such as the COMELEC, pursuant to Section 1, Chapter I, Book VII of the Administrative Code of 1987. Indeed, Section 9, Chapter II, Book VII of said Code provides, thus:

> Section 9. *Public Participation*. - (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

However, Section 1, Chapter 1, Book VII of said Code clearly provides:

> Section 1. *Scope*. - This Book shall be applicable to all agencies as defined in the next succeeding section, except the Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges.

Nevertheless, even if public participation is not required, respondent still conducted a meeting with representatives of the KBP and various media outfits on December 26, 2012, almost a month before the issuance of Resolution No. 9615.

On April 2, 2013, petitioner GMA filed its Reply,[14] where it advanced the following counter-arguments:

According to GMA, a petition for *certiorari* is the proper remedy to question the herein assailed Resolutions, which should be considered as a "decision, order or ruling of the Commission" as mentioned in Section 1, Rule 37 of the COMELEC Rules of Procedure which provides:

> Section 1. *Petition for Certiorari; and Time to File*. - Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from its promulgation.

GMA further stressed that this case involves national interest, and the urgency of the matter justifies its resort to the remedy of a petition for *certiorari*.

Therefore, GMA disagrees with the COMELEC's position that the proper remedy is a petition for declaratory relief because such action only asks the court to make a proper interpretation of the rights of parties under a statute or regulation. Such a petition does not nullify the assailed statute or regulation, or grant injunctive relief, which petitioners are praying for in their petition. Thus, GMA maintains that a petition for *certiorari* is the proper remedy.

GMA further denies that it is making a collateral attack on the *Fair Election Act*, as it is not attacking said law. GMA points out that it has stated in its petition that the law in fact allows the sale or donation of airtime for political advertisements and does not impose criminal liability against radio and television stations. What it is assailing is the COMELEC's erroneous interpretation of the law's provisions by declaring such sale and/or donation of airtime unlawful, which is contrary to the purpose of the *Fair Election Act*.

GMA then claims that it has legal standing to bring the present suit because:

> x x x *First*, it has personally suffered a threatened injury in the form of risk of criminal liability because of the alleged unconstitutional and unlawful conduct of respondent COMELEC in expanding what was

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[14] *Id*. at 667-710.

> provided for in R.A. No. 9006. *Second*, the injury is traceable to the challenged action of respondent COMELEC, that is, the issuance of the assailed Resolutions. *Third*, the injury is likely to be redressed by the remedy sought in petitioner GMA's Petition, among others, for the Honorable Court to nullify the challenged pertinent provisions of the assailed Resolutions.[15]

On substantive issues, GMA first argues that the questioned Resolutions are contrary to the objective and purpose of the Fair Election Act. It points out that the Fair Election Act even repealed the political ad ban found in the earlier law, R.A. No. 6646. The Fair Election Act also speaks of "equal opportunity" and "equal access," but said law never mentioned equalizing the economic station of the rich and the poor, as a declared policy. Furthermore, in its opinion, the supposed correlation between candidates' expenditures for TV ads and actually winning the elections, is a mere illusion, as there are other various factors responsible for a candidate's winning the election. GMA then cites portions of the deliberations of the Bicameral Conference Committee on the bills that led to the enactment of the Fair Election Act, and alleges that this shows the legislative intent that airtime allocation should be on a "per station" basis. Thus, GMA claims it was arbitrary and a grave abuse of discretion for the COMELEC to issue the present Resolutions imposing airtime limitations on an "aggregate total" basis.

It is likewise insisted by GMA that the assailed Resolutions impose an unconstitutional burden on them, because their failure to strictly monitor the duration of total airtime that each candidate has purchased even from other stations would expose their officials to criminal liability and risk losing the station's good reputation and goodwill, as well as its franchise. It argues that the wordings of the Resolutions belie the COMELEC's claim that petitioners would only incur liability if they "knowingly" sell airtime beyond the limits imposed by the Resolutions, because the element of knowledge is clearly absent from the provisions thereof. This makes the provisions have the nature of *malum prohibitum*.

Next, GMA also says that the application of the aggregate airtime limit constitutes prior restraint and is unconstitutional, opining that "[t]he reviewing power of respondent COMELEC and its sole judgment of a news event as a political advertisement are so pervasive under the assailed Resolutions, and provoke the distastes or chilling effect of prior restraint"[16] as even a legitimate exercise of a constitutional right might expose it to legal sanction. Thus, the governmental interest of leveling the playing field

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15 *Id*. at 676.
16 *Id*. at 699.

between rich and poor candidates cannot justify the restriction on the freedoms of expression, speech and of the press.

On the issue of lack of prior public participation, GMA cites Section 82 of the Omnibus Election Code, pertinent portions of which provide, thus:

> Section 82. *Lawful election propaganda*. - Lawful election propaganda shall include:
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> x x x x
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> All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission's authorization shall be published in two newspapers of general circulation throughout the nation for at least twice within one week after the authorization has been granted.

There having been no prior public consultation held, GMA contends that the COMELEC is guilty of depriving petitioners of its right to due process of law.

GMA then concludes that it is also entitled to a temporary restraining order, because the implementation of the Resolutions in question will cause grave and irreparable damage to it by disrupting and emasculating its mandate to provide television and radio services to the public, and by exposing it to the risk of incurring criminal and administrative liability by requiring it to perform the impossible task of surveillance and monitoring, or the broadcasts of other radio and television stations.

Thereafter, on April 4, 2013, the COMELEC, through the Office of the Solicitor General (OSG), filed a Supplemental Comment and Opposition[17] where it further expounded on the legislative intent behind the *Fair Election Act*, also quoting portions of the deliberations of the Bicameral Conference Committee, allegedly adopting the Senate Bill version setting the computation of airtime limits on a per candidate, not per station, basis. Thus, as enacted into law, the wordings of Section 6 of the *Fair Election Act* shows that the airtime limit is imposed on a per candidate basis, rather than on a per station basis. Furthermore, the COMELEC states that petitioner-intervenor Senator Cayetano is wrong in arguing that there should be empirical data to support the need to change the computation of airtime

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[17] *Id*. at 917-937.

limits from a per station basis to a per candidate basis, because nothing in law obligates the COMELEC to support its Resolutions with empirical data, as said airtime limit was a policy decision dictated by the legislature itself, which had the necessary empirical and other data upon which to base said policy decision.

The COMELEC then points out that Section 2 (7),[18] Article IX (C) of the Constitution empowers it to recommend to Congress effective measures to minimize election spending and in furtherance of such constitutional power, the COMELEC issued the questioned Resolutions, in faithful implementation of the legislative intent and objectives of the *Fair Election Act*.

The COMELEC also dismisses Senator Cayetano's fears that unauthorized or inadvertent inclusion of his name, initial, image, brand, logo, insignia and/or symbol in tandem advertisements will be charged against his airtime limits by pointing out that what will be counted against a candidate's airtime and expenditures are those advertisements that have been paid for or donated to them to which the candidate has given consent.

With regard to the attack that the total aggregate airtime limit constitutes prior restraint or undue abridgement of the freedom of speech and expression, the COMELEC counters that "the Resolutions enjoy constitutional and congressional imprimatur. It is the Constitution itself that imposes the restriction on the freedoms of speech and expression, during election period, to promote an important and significant governmental interest, which is to equalize, as far as practicable, the situation of rich and poor candidates by preventing the former from enjoying the undue advantage offered by huge campaign 'war chests.'"[19]

Lastly, the COMELEC also emphasizes that there is no impairment of the people's right to information on matters of public concern, because in this case, the COMELEC is not withholding access to any public record.

On April 16, 2013, this Court issued a Temporary Restraining Order[20] (TRO) in view of the urgency involved and to prevent irreparable injury that

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[18] C. *THE COMMISSION ON ELECTIONS*
x x x x
Sec. 2. The Commission on Elections shall exercise the following powers and functions:
x x x x
(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.

[19] Supplemental Comment and Opposition, p. 17.

[20] *Rollo* (G.R. No. 205357), p. 996

may be caused to the petitioners if respondent COMELEC is not enjoined from implementing Resolution No. 9615.

On April 19, 2013 respondent filed an Urgent Motion to Lift Temporary Restraining Order and Motion for Early Resolution of the Consolidated Petitions.[21]

On May 8, 2013, petitioners ABS-CBN and the KBP filed its Opposition/Comment[22] to the said Motion. Not long after, ABC followed suit and filed its own Opposition to the Motion[23] filed by the respondent.

In the interim, respondent filed a Second Supplemental Comment and Opposition[24] dated April 8, 2013.

In the Second Supplemental Comment and Opposition, respondent delved on points which were not previously discussed in its earlier Comment and Supplemental Comment, particularly those raised in the petition filed by petitioner ABS-CBN and KBP.

Respondent maintains that *certiorari* in not the proper remedy to question the Constitutionality of the assailed Resolutions and that petitioners ABS-CBN and KBP have no *locus standi* to file the present petition.

Respondent posits that contrary to the contention of petitioners, the legislative history of R.A. No. 9006 conclusively shows that congress intended the airtime limits to be computed on a "per candidate" and not on a "per station" basis. In addition, the legal duty of monitoring lies with the COMELEC. Broadcast stations are merely required to submit certain documents to aid the COMELEC in ensuring that candidates are not sold airtime in excess of the allowed limits.

Also, as discussed in the earlier Comment, the prior notice requirement is a mechanism designed to inform the COMELEC of the appearances or guesting of candidates in *bona fide* news broadcasts. It is for monitoring purposes only, not censorship. It does not control the subject matter of news broadcasts in anyway. Neither does it prevent media outlets from covering candidates in news interviews, news events, and news documentaries, nor prevent the candidates from appearing thereon.

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21 *Rollo* (G.R. No. 205374), pp. 378-385.
22 *Id*. at 386-395
23 *Id*. at 352-361.
24 *Id*. at 362-377.

As for the right to reply, respondent insists that the right to reply provision cannot be considered a prior restraint on the freedoms of expression, speech and the press, as it does not in any way restrict the airing of *bona fide* new broadcasts. Media entities are free to report any news event, even if it should turn out to be unfavourable to a candidate or party. The assailed Resolutions merely give the candidate or party the right to reply to such charges published or aired against them in news broadcasts.

Moreover, respondent contends that the imposition of the penalty of suspension and revocation of franchise or permit for the sale or donation of airtime beyond the allowable limits is sanctioned by the Omnibus Election Code.

Meanwhile, RMN filed its Petition on April 8, 2013. On June 4, 2013, the Court issued a Resolution[25] consolidating the case with the rest of the petitions and requiring respondent to comment thereon.

On October 10, 2013, respondent filed its Third Supplemental Comment and Opposition.[26] Therein, respondent stated that the petition filed by RMN repeats the issues that were raised in the previous petitions. Respondent, likewise, reiterated its arguments that *certiorari* in not the proper remedy to question the assailed resolutions and that RMN has no *locus standi* to file the present petition. Respondent maintains that the arguments raised by RMN, like those raised by the other petitioners are without merit and that RMN is not entitled to the injunctive relief sought.

The petition is partly meritorious.

At the outset, although the subject of the present petitions are Resolutions promulgated by the COMELEC relative to the conduct of the 2013 national and local elections, nevertheless the issues raised by the petitioners have not been rendered moot and academic by the conclusion of the 2013 elections. Considering that the matters elevated to the Court for resolution are susceptible to repetition in the conduct of future electoral exercises, these issues will be resolved in the present action.

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25 *Rollo* (G.R. No. 206360), p. 86.
26 *Rollo* (G.R. No. 205374), pp. 402-413.

PROCEDURAL ASPECTS

Matters of procedure and technicalities normally take a backseat when issues of substantial and transcendental importance are presented before the Court. So the Court does again in this particular case.

Proper Remedy

Respondent claims that *certiorari* and prohibition are not the proper remedies that petitioners have taken to question the assailed Resolutions of the COMELEC. Technically, respondent may have a point. However, considering the very important and pivotal issues raised, and the limited time, such technicality should not deter the Court from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance. "[T]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.[27]

It has been in the past, we do so again.

Locus Standi

Every time a constitutional issue is brought before the Court, the issue of *locus standi* is raised to question the personality of the parties invoking the Court's jurisdiction. The Court has routinely made reference to a liberalized stance when it comes to petitions raising issues of transcendental importance to the country. Invariably, after some discussions, the Court would eventually grant standing.[28]

In this particular case, respondent also questions the standing of the petitioners. We rule for the petitioners. For petitioner-intervenor Senator Cayetano, he undoubtedly has standing since he is a candidate whose ability to reach out to the electorate is impacted by the assailed Resolutions.

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[27] *Dela Llana v. Chairperson, Commission on Audit*, G.R. No. 180989, February 7, 2012, 665 SCRA 176, 184.

[28] *De Castro v. Judicial and Bar Council (JBC)*, G.R. No. 191032, G.R. No. 191057, A.M. No. 10-2-5-SC, G.R. No. 191149, March 17, 2010, 615 SCRA 666; *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*, 256 Phil. 777 (1989); *Albano v. Reyes*, 256 Phil. 718 (1989); *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan*, 246 Phil. 380 (1988); *Legaspi v. Civil Service Commission*, 234 Phil. 521 (1987); *Tañada v. Tuvera*, 220 Phil. 422 (1985).

For the broadcast companies, they similarly have the standing in view of the direct injury they may suffer relative to their ability to carry out their tasks of disseminating information because of the burdens imposed on them. Nevertheless, even in regard to the broadcast companies invoking the injury that may be caused to their customers or the public – those who buy advertisements and the people who rely on their broadcasts – what the Court said in *White Light Corporation v. City of Manila*[29] may dispose of the question. In that case, there was an issue as to whether owners of establishments offering "wash-up" rates may have the requisite standing on behalf of their patrons' equal protection claims relative to an ordinance of the City of Manila which prohibited "short-time" or "wash-up" accommodation in motels and similar establishments. The Court essentially condensed the issue in this manner: "[T]he crux of the matter is whether or not these establishments have the requisite standing to plead for protection of their patrons' equal protection rights."[30] The Court then went on to hold:

> Standing or *locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government.
>
> The requirement of standing is a core component of the judicial system derived directly from the Constitution. The constitutional component of standing doctrine incorporates concepts which concededly are not susceptible of precise definition. In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing. In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in *Allen v. Wright*.
>
> Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.
>
> For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. x x x
>
> x x x x
>
> American jurisprudence is replete with examples where parties-in-interest were allowed standing to advocate or invoke the fundamental due

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29 G.R. No. 122846, January 20, 2009, 576 SCRA 416.

30 *Id.* at 429.

> process or equal protection claims of other persons or classes of persons injured by state action. x x x
>
> x x x x
>
> Assuming *arguendo* that petitioners do not have a relationship with their patrons for the former to assert the rights of the latter, the overbreadth doctrine comes into play. In overbreadth analysis, challengers to government action *are* in effect permitted to raise the rights of third parties. Generally applied to statutes infringing on the freedom of speech, the overbreadth doctrine applies when a statute needlessly restrains even constitutionally guaranteed rights. In this case, the petitioners claim that the Ordinance makes a sweeping intrusion into the right to liberty of their clients. We can see that based on the allegations in the petition, the Ordinance suffers from overbreadth.
>
> We thus recognize that the petitioners have a right to assert the constitutional rights of their clients to patronize their establishments for a "wash-rate" time frame.[31]

If in regard to commercial undertakings, the owners may have the right to assert a constitutional right of their clients, with more reason should establishments which publish and broadcast have the standing to assert the constitutional freedom of speech of candidates and of the right to information of the public, not to speak of their own freedom of the press. So, we uphold the standing of petitioners on that basis.

SUBSTANTIVE ASPECTS

Aggregate Time Limits

COMELEC Resolution No. 9615 introduced a radical departure from the previous COMELEC resolutions relative to the airtime limitations on political advertisements. This essentially consists in computing the airtime on an ***aggregate*** basis involving all the media of broadcast communications compared to the past where it was done on a ***per station*** basis. Thus, it becomes immediately obvious that there was effected a drastic reduction of the allowable minutes within which candidates and political parties would be able to campaign through the air. The question is accordingly whether this is within the power of the COMELEC to do or not. The Court holds that it is not within the power of the COMELEC to do so.

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31 *Id*. at 430-432.

a. Past elections and airtime limits

The authority of the COMELEC to impose airtime limits directly flows from the *Fair Election Act* (R.A. No. 9006 [2001])[32] – one hundred (120) minutes of television advertisement and one-hundred eighty (180) minutes for radio advertisement. For the 2004 elections, the respondent COMELEC promulgated Resolution No. 6520[33] implementing the airtime limits by applying said limitation on a ***per station*** basis.[34] Such manner of determining airtime limits was likewise adopted for the 2007 elections, through Resolution No. 7767.[35] In the 2010 elections, under Resolution No. 8758,[36] the same was again adopted. But for the 2013 elections, the COMELEC, through Resolution No. 9615, as amended by Resolution No. 9631, chose to ***aggregate*** the total broadcast time among the different broadcast media, thus:

> Section 9. *Requirements and/or Limitations on the Use of Election Propaganda through Mass Media.* – All parties and bona fide candidates shall have equal access to media time and space for their election

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[32] The pertinent portions of the *Fair Election Act* (R.A. No. 9006) provide:

SECTION 6. *Equal Access to Media Time and Space*. — All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:

x x x x

6.2. (a) Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than one hundred twenty (120) minutes of television advertisement and one hundred eighty (180) minutes of radio advertisement whether by purchase or donation.

(b) Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (90) minutes of radio advertisement whether by purchase or donation; or

For this purpose, the COMELEC shall require any broadcast station or entity to submit to the COMELEC a copy of its broadcast logs and certificates of performance for the review and verification of the frequency, date, time and duration of advertisements broadcast for any candidate or political party.

6.3. All mass media entities shall furnish the COMELEC with a copy of all contracts for advertising, promoting or opposing any political party or the candidacy of any person for public office within five (5) days after its signing. In every case, it shall be signed by the donor, the candidate concerned or by the duly authorized representative of the political party.

6.4. No franchise or permit to operate a radio or television stations shall be granted or issued, suspended or cancelled during the election period.

In all instances, the COMELEC shall supervise the use and employment of press, radio and television facilities insofar as the placement of political advertisements is concerned to ensure that candidates are given equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in the Omnibus Election Code and Republic Act No. 7166 on election spending.

x x x x

[33] RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9006, OTHERWISE KNOWN AS THE "FAIR ELECTION ACT", IN RELATION TO THE MAY 10, 2004 ELECTIONS AND SUBSEQUENT ELECTIONS.

[34] *See* Section 13, 1, Resolution No. 6250.

[35] RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9006, OTHERWISE KNOWN AS THE FAIR ELECTION ACT, IN RELATION TO THE MAY 14, 2007 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS; *See* Section 13, 1.

[36] RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9006, OTHERWISE KNOWN AS THE FAIR ELECTION PRACTICES ACT, IN RELATION TO THE MAY 10, 2010 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS, AND SUBSEQUENT ELECTIONS; *See* Section 11 (a).

propaganda during the campaign period subject to the following requirements and/or limitations:

a. Broadcast Election Propaganda

The duration of an air time that a candidate, or party may use for their broadcast advertisements or election propaganda shall be, as follows:

For Candidates/Registered Political parties for a National Elective Position	Not more than an ***aggregate*** total of one hundred (120) minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and one hundred eighty (180) minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation
For Candidates/Registered Political parties for a Local Elective Position	Not more than an ***aggregate*** total of sixty (60) minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and ninety (90) minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation.

In cases where two or more candidates or parties whose names, initials, images, brands, logos, insignias, color motifs, symbols, or forms of graphical representations are displayed, exhibited, used, or mentioned together in the broadcast election propaganda or advertisements, the length of time during which they appear or are being mentioned or promoted will be counted against the airtime limits allotted for the said candidates or parties and the cost of the said advertisement will likewise be considered as their expenditures, regardless of whoever paid for the advertisements or to whom the said advertisements were donated.

x x x x[37]

Corollarily, petitioner-intervenor, Senator Cayetano, alleges:

6.15**.** The change in the implementation of Section 6 of R.A. 9006 was undertaken by respondent Comelec without consultation with the candidates for the 2013 elections, affected parties such as media organizations, as well as the general public. Worse, said change was put into effect without explaining the basis therefor and without showing any data in support of such change. Respondent Comelec merely maintained that such action "*is meant to level the playing field between the moneyed candidates and those who don't have enough resources*," without particularizing the empirical data upon which such a sweeping statement was based. This was evident in the public hearing held on 31 January 2013 where petitioner GMA, thru counsel, explained that no empirical data on

[37] Emphasis supplied.

the excesses or abuses of broadcast media were brought to the attention of the public by respondent Comelec, or even stated in the Comelec Resolution No. 9615. Thus –

x x x x

Chairman Brillantes

So if we can regulate and amplify, we may amplify meaning we can expand if we want to. But the authority of the Commission is if we do not want to amplify and we think that the 120 or 180 is okay we cannot be compelled to amplify. We think that 120 or 180 is okay, is enough.

Atty. Lucila

But with due respect Your Honor, I think the basis of the resolution is found in the law and the law has been enterpreted (sic) before in 2010 to be 120 per station, so why the change, your Honor?

Chairman Brillantes

No, the change is not there, the right to amplify is with the Commission on Elections. Nobody can encroach in our right to amplify. Now, if in 2010 the Commission felt that per station or per network is the rule then that is the prerogative of the Commission then they could amplify it to expand it. If the current Commission feels that 120 is enough for the particular medium like TV and 180 for radio, that is our prerogative. How can you encroach and what is unconstitutional about it?

Atty. Lucila

We are not questioning the authority of the Honorable Commission to regulate Your Honor, we are just raising our concern on the manner of regulation because as it is right now, there is a changing mode or sentiments of the Commission and the public has the right to know, was there rampant overspending on political ads in 2010, we were not informed Your Honor. Was there abuse of the media in 2010, we were not informed Your Honor. So we would like to know what is the basis of the sudden change in this limitation, **Your Honor. . And law must have a consistent interpretation that [is]our position, Your Honor**.

Chairman Brillantes

But my initial interpretation, this is personal to this representation counsel, is that if the Constitution allows us to regulate and then it gives us the prerogative to amplify then the prerogative to amplify you should leave this to the discretion of the Commission. Which means if previous Commissions felt that expanding it should be part of our authority that was a valid exercise if we reduce it to what is provided for by law which is 120-180 per medium, TV, radio, that is also within the law and that is still within our

prerogative as provided for by the Constitution. If you say we have to expose the candidates to the public then I think the reaction should come, the negative reaction should come from the candidates not from the media, unless you have some interest to protect directly. Is there any interest on the part of the media to expand it?

Atty. Lucila

Well, our interest Your Honor is to participate in this election Your Honor and we have been constantly (sic) as the resolution says and even in the part involved because you will be getting some affirmative action time coming from the media itself and Comelec time coming from the media itself. So we could like to be both involved in the whole process of the exercise of the freedom of suffrage Your Honor.

Chairman Brillantes

Yes, but the very essence of the Constitutional provision as well as the provision of 9006 is actually to level the playing field. That should be the paramount consideration. If we allow everybody to make use of all their time and all radio time and TV time then there will be practically unlimited use of the mass media....

Atty. Lucila

Was there in 2010 Your Honor, was there any data to support that there was an unlimited and abuse of a (sic) political ads in the mass media that became the basis of this change in interpretation Your Honor? We would like to know about it Your Honor.

Chairman Brillantes

What do you think there was no abuse in 2010?

Atty. Lucila

As far as the network is concern, there was none Your Honor.

Chairman Brillantes

There was none.....

Atty. Lucila

I'm sorry, Your Honor...

Chairman Brillantes

Yes, there was no abuse, okay, but there **was** some advantage given to those who took... who had the more moneyed candidates took advantage of it.

Atty. Lucila

But that is the fact in life, Your Honor there are poor candidates, there are rich candidates. No amount of law or regulation can even level the playing filed (sic) as far as the

> economic station in life of the candidates are concern (sic) our Honor.[38]

Given the foregoing observations about what happened during the hearing, Petitioner-Intervenor went on to allege that:

> 6.16. Without any empirical data upon which to base the regulatory measures in Section 9 (a), respondent Comelec **arbitrarily changed the rule from per station basis to aggregate airtime basis**. Indeed, no credence should be given to the cliched explanation of respondent Comelec (i.e. leveling the playing field) in its published statements which in itself is a mere reiteration of the rationale for the enactment of the political ad ban of Republic Act No. 6646, and which has likewise been foisted when said political ad ban was lifted by R.A. 9006.[39]

From the foregoing, it does appear that the COMELEC did not have any other basis for coming up with a new manner of determining allowable time limits except its own idea as to what should be the maximum number of minutes based on its exercise of discretion as to how to level the playing field. The same could be encapsulized in the remark of the COMELEC Chairman that "if the Constitution allows us to regulate and then it gives us **the prerogative to amplify then the prerogative to amplify** you should leave this to the discretion of the Commission."[40]

The Court could not agree with what appears as a nonchalant exercise of discretion, as expounded anon.

b. COMELEC is duty bound to come up with reasonable basis for changing the interpretation and implementation of the airtime limits

There is no question that the COMELEC is the office constitutionally and statutorily authorized to enforce election laws but it cannot exercise its powers without limitations – or reasonable basis. It could not simply adopt measures or regulations just because it feels that it is the right thing to do, in so far as it might be concerned. It does have discretion, but such discretion is something that must be exercised within the bounds and intent of the law. The COMELEC is not free to simply change the rules especially if it has consistently interpreted a legal provision in a particular manner in the past. If

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[38] Motion for Leave to Intervene and to File and Admit the Herein Attached Petition-in-Intervention, pp. 15-20; *rollo* (G.R. No. 205357), pp. 347-352, citing TSN of the Comelec hearing on January 31, 2013, pp. 6-12. (Emphasis supplied)

[39] *Id*. at 20. (Emphasis and underscoring in the original)

[40] TSN, E.M. No.13-001 to 02, January 31, 2013, p. 8. (Emphasis supplied)

ever it has to change the rules, the same must be properly explained with sufficient basis.

Based on the transcripts of the hearing conducted by the COMELEC after it had already promulgated the Resolution, the respondent did not fully explain or justify the change in computing the airtime allowed candidates and political parties, except to make reference to the need to "level the playing field." If the "per station" basis was deemed enough to comply with that objective in the past, why should it now be suddenly inadequate? And, the short answer to that from the respondent, in a manner which smacks of overbearing exercise of discretion, is that it is within the discretion of the COMELEC. As quoted in the transcript, "the right to amplify is with the COMELEC. Nobody can encroach in our right to amplify. Now, if in 2010 the Commission felt that per station or per network is the rule then that is the prerogative of the Commission then they could amplify it to expand it. If the current Commission feels that 120 is enough for the particular medium like TV and 180 for radio, that is our prerogative. How can you encroach and what is unconstitutional about it?"[41]

There is something basically wrong with that manner of explaining changes in administrative rules. For one, it does not really provide a good basis for change. For another, those affected by such rules must be given a better explanation why the previous rules are no longer good enough. As the Court has said in one case:

> While stability in the law, particularly in the business field, is desirable, there is no demand that the NTC slavishly follow precedent. *However, we think it essential, for the sake of clarity and intellectual honesty, that if an administrative agency decides inconsistently with previous action, that it explain thoroughly why a different result is warranted, or if need be, why the previous standards should no longer apply or should be overturned. Such explanation is warranted in order to sufficiently establish a decision as having rational basis. Any inconsistent decision lacking thorough, ratiocination in support may be struck down as being arbitrary. And any decision with absolutely nothing to support it is a nullity.*[42]

What the COMELEC came up with does not measure up to that level of requirement and accountability which elevates administrative rules to the level of respectability and acceptability. Those governed by administrative regulations are entitled to a reasonable and rational basis for any changes in

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41 Motion for Leave to Intervene and to File and Admit the Herein Attached Petition-in-Intervention, p. 18; *rollo* (G.R. No. 205357), p. 350.

42 *Globe Telecom, Inc. v. National Telecommunications Commission*, 479 Phil. 1, 33-34 (2004).

those rules by which they are supposed to live by, especially if there is a radical departure from the previous ones.

c. The COMELEC went beyond the authority granted it by the law in adopting "aggregate" basis in the determination of allowable airtime

The law, which is the basis of the regulation subject of these petitions, pertinently provides:

> 6.2. (a) Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than one hundred twenty (120) minutes of television advertisement and one hundred eighty (180) minutes of radio advertisement whether by purchase or donation.
>
> (b) Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (90) minutes of radio advertisement whether by purchase or donation; x x x

The law, on its face, does not justify a conclusion that the maximum allowable airtime should be based on the totality of possible broadcast in all television or radio stations. Senator Cayetano has called our attention to the legislative intent relative to the airtime allowed – that it should be on a "per station" basis.[43]

This is further buttressed by the fact that the *Fair Election Act* (R.A. No. 9006) actually repealed the previous provision, Section 11(b) of Republic Act No. 6646,[44] which prohibited direct political advertisements – the so-called "political ad ban." If under the previous law, no candidate was allowed to directly buy or procure on his own his broadcast or print campaign advertisements, and that he must get it through the *COMELEC Time* or *COMELEC Space*, R.A. No. 9006 relieved him or her from that restriction and allowed him or her to broadcast time or print space subject to the limitations set out in the law. Congress, in enacting R.A. No. 9006, felt

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[43] Motion for Leave to Intervene and to File and Admit the Herein Attached Petition-in-Intervention, pp. 21-24.; *rollo* (G..R. No. 205357), pp. 353-356.

[44] Sec. 11. Prohibited Forms of Election Propaganda. - In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

> x x x x
>
> b. for any newspaper, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

that the previous law was not an effective and efficient way of giving voice to the people. Noting the debilitating effects of the previous law on the right of suffrage and Philippine democracy, Congress decided to repeal such rule by enacting the Fair Election Act.

In regard to the enactment of the new law, taken in the context of the restrictive nature of the previous law, the sponsorship speech of Senator Raul Roco is enlightening:

> The bill seeks to repeal Section 85 of the Omnibus Election Code and Sections 10 and 11 of RA 6646. In view of the importance of their appeal in connection with the thrusts of the bill, I hereby quote these sections in full:
>
> "SEC. 85. *Prohibited forms of election propaganda.* – It shall be unlawful:
>
> "(a) To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging voters to vote for or against any candidate unless they hear the names and addresses of the printed and payor as required in Section 84 hereof;
>
> "(b) To erect, put up, make use of, attach, float or display any billboard, tinplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party;
>
> "(c) To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandannas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate;
>
> "(d) To show or display publicly any advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts which may be allowed as hereinafter provided; and
>
> "(e) For any radio broadcasting or television station to sell or give free of charge airtime for campaign and other political purposes except as authorized in this Code under the rules and regulations promulgated by the Commission pursuant thereto;
>
> "Any prohibited election propaganda gadget or advertisement shall be stopped, confiscated or torn down by the representative of the Commission upon specific authority of the Commission."
>
> "SEC. 10. *Common Poster Areas.* – The Commission shall designate common poster areas in strategic public places such as markets, barangay centers and the like wherein candidates can post, display or exhibit election propaganda to announce or further their candidacy.

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

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

"SEC. 11. *Prohibited Forms of Election Propaganda.* – In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful: (a) to draw, paint, inscribe, write, post, display or publicly exhibit any election propaganda in any place, whether private or public, except in common poster areas and/or billboards provided in the immediately preceding section, at the candidate's own residence, or at the campaign headquarters of the candidate or political party: *Provided,* That such posters or election propaganda shall in no case exceed two (2) feet by three (3) feet in area; *Provided, further,* That at the site of and on the occasion of a public meeting or rally, streamers, not more than two (2) feet and not exceeding three (3) feet by eight (8) each may be displayed five (5) days before the date of the meeting or rally, and shall be removed within twenty-four (24) hours after said meeting or rally; and

"(b) For any newspapers, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or give for free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign."

The repeal of the provision on the Common Poster Area implements the strong recommendations of the Commission on Elections during the hearings. It also seeks to apply the doctrine enunciated by the Supreme Court in the case of *Blo Umpar Adiong vs. Commission on Elections,* 207 SCRA 712, 31 March 1992. Here a unanimous Supreme Court ruled: The COMELEC's prohibition on the posting of decals and stickers on "mobile" places whether public or private except [in] designated areas provided for by the COMELEC itself is null and void on constitutional grounds.

For the foregoing reasons, we commend to our colleagues the early passage of Senate Bill No. 1742. In so doing, we move one step towards further ensuring "free, orderly, honest, peaceful and credible elections" as mandated by the Constitution.[45]

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[45] Journal of Senate, Session No. 92, 22-23 May 2000, *rollo,* (G.R. No. 205357), pp. 126-127.

Given the foregoing background, it is therefore ineluctable to conclude that Congress intended to provide a more expansive and liberal means by which the candidates, political parties, citizens and other stake holders in the periodic electoral exercise may be given a chance to fully explain and expound on their candidacies and platforms of governance, and for the electorate to be given a chance to know better the personalities behind the candidates. In this regard, the media is also given a very important part in that undertaking of providing the means by which the political exercise becomes an interactive process. All of these would be undermined and frustrated with the kind of regulation that the respondent came up with.

The respondent gave its own understanding of the import of the legislative deliberations on the adoption of R.A. No. 9006 as follows:

> The legislative history of R.A. 9006 clearly shows that Congress intended to impose the per candidate or political party aggregate total airtime limits on political advertisements and election propaganda. This is evidenced by the dropping of the "per day per station" language embodied in both versions of the House of Representatives and Senate bills in favour of the "each candidate" and "not more than" limitations now found in Section 6 of R.A. 9006.
>
> The pertinent portions of House Bill No. 9000 and Senate Bill No. 1742 read as follows:
>
> *House Bill No. 9000*:
>
> SEC. 4. Section 86 of the same Batas is hereby amended to read as follows:
>
> Sec. 86. *Regulation of Election Propaganda Through Mass Media*.
>
> x x x x x x x x x
>
> A) **The total airtime available to the candidate and political party**, whether by purchase or by donation, shall be limited to five (5) minutes per day in **each television, cable television and radio stations** during the applicable campaign period.
>
> *Senate Bill No. 1742*:
>
> SEC. 5. *Equal Access to Media Space and Time*. – All registered parties and bona fide candidates shall have equal access to media space and time. The following guidelines may be amplified by the COMELEC.

x x x x x x x x x

> 2. **The total airtime available for <u>each</u> registered party and bona fide candidate** whether by purchase or donation shall not exceed a total of one (1) minute **per day per television or radio station**. (Emphasis supplied.)
>
> As Section 6 of R.A. 9006 is presently worded, it can be clearly seen that the legislature intended the aggregate airtime limits to be computed on per candidate or party basis. Otherwise, if the legislature intended the computation to be on per station basis, it could have left the original "per day per station" formulation.[46]

The Court does not agree. It cannot bring itself to read the changes in the bill as disclosing an intent that the COMELEC wants this Court to put on the final language of the law. If anything, the change in language meant that the computation must not be based on a "per day" basis for each television or radio station. The same could not therefore lend itself to an understanding that the total allowable time is to be done on an aggregate basis for all television or radio stations.

Clearly, the respondent in this instance went beyond its legal mandate when it provided for rules beyond what was contemplated by the law it is supposed to implement. As we held in *Lokin, Jr. v. Commission on Elections*:[47]

> The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election, has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby. The IRRs the COMELEC issued for that purpose should always be in accord with the law to be implemented, and should not override, supplant, or modify the law. It is basic that the IRRs should remain consistent with the law they intend to carry out.
>
> Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.[48]

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46 Respondent's Comment and Opposition, pp. 11-12; *rollo* (G.R. No. 205357), pp. 392-393. (Emphasis in the original).

47 G.R. Nos. 179431-32 and 180445, June 22, 2010, 621 SCRA 385.

48 *Id.* at 411. (Citations omitted)

In the case of *Lokin, Jr.*, the COMELEC's explanation that the Resolution then in question did not add anything but merely reworded and rephrased the statutory provision did not persuade the Court. With more reason here since the COMELEC not only reworded or rephrased the statutory provision – it practically replaced it with its own idea of *what the law should be*, a matter that certainly is not within its authority. As the Court said in *Villegas v. Subido*:[49]

> One last word. Nothing is better settled in the law than that a public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity. That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: "It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute." Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid.[50]

So it was then. So does the rule still remains the same.

d. Section 9 (a) of COMELEC Resolution No. 9615 on airtime limits also goes against the constitutional guaranty of freedom of expression, of speech and of the press

The guaranty of freedom to speak is useless without the ability to communicate and disseminate what is said. And where there is a need to reach a large audience, the need to access the means and media for such dissemination becomes critical. This is where the press and broadcast media come along. At the same time, the right to speak and to reach out would not be meaningful if it is just a token ability to be heard by a few. It must be coupled with substantially reasonable means by which the communicator and the audience could effectively interact. Section 9 (a) of COMELEC Resolution No. 9615, with its adoption of the "aggregate-based" airtime limits unreasonably restricts the guaranteed freedom of speech and of the press.

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49 G.R. No. L-26534, November 28, 1969, 30 SCRA 498.

50 *Villegas v. Subido, supra*, at 510-511.

Political speech is one of the most important expressions protected by the Fundamental Law. "[F]reedom of speech, of expression, and of the press are at the core of civil liberties and have to be protected at all costs for the sake of democracy."[51] Accordingly, the same must remain unfettered unless otherwise justified by a compelling state interest.

In regard to limitations on political speech relative to other state interests, an American case observed:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.
>
> The expenditure limitations contained in the Act represent substantial, rather than merely theoretical restraints on the quantity and diversity of political speech. The $1,000 ceiling on spending "relative to a clearly identified candidate," 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV), would appear to exclude all citizens and groups except candidates, political parties, and the institutional press from any significant use of the most effective modes of communication. Although the Act's limitations on expenditures by campaign organizations and political parties provide substantially greater room for discussion and debate, they would have required restrictions in the scope of a number of past congressional and Presidential campaigns and would operate to constrain campaigning by candidates who raise sums in excess of the spending ceiling.[52]

Section 9 (a) of COMELEC Resolution No. 9615 comes up with what is challenged as being an unreasonable basis for determining the allowable air time that candidates and political parties may avail of. Petitioner GMA came up with its analysis of the practical effects of such a regulation:

> 5.8. Given the reduction of a candidate's airtime minutes in the New Rules, petitioner GMA estimates that a national candidate will only have 120 minutes to utilize for his political advertisements in television

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[51] *In the Matter of the Allegations Contained in the Columns of Mr. Amado P. Macasaet Published in Malaya Dated September 18, 19, 20 and 21, 2007*, A.M. No. 07-09-13-SC, August 8, 2008, 561 SCRA 395, 437.

[52] *Buckley v. Valeo*, 424 U.S. 1, 19-20 (1976).

> during the whole campaign period of 88 days, or will only have **81.81 seconds per day** TV exposure allotment. If he chooses to place his political advertisements in the 3 major TV networks in equal allocation, he will only have **27.27 seconds of airtime per network per day**. This barely translates to 1 advertisement spot on a 30-second spot basis in television.
>
> 5.9. With a 20-hour programming per day and considering the limits of a station's coverage, it will be difficult for 1 advertising spot to make a sensible and feasible communication to the public, or in political propaganda, to "make known [a candidate's] qualifications and stand on public issues".
>
> 5.10 If a candidate loads all of his 81.81 seconds per day in one network, this will translate to barely three 30-second advertising spots in television on a daily basis using the same assumptions above.
>
> 5.11 Based on the data from the 2012 Nielsen TV audience measurement in Mega Manila, the commercial advertisements in television are viewed by only **39.2%** of the average total day household audience if such advertisements are placed with petitioner GMA, the leading television network nationwide and in Mega Manila. In effect, under the restrictive aggregate airtime limits in the New Rules, the three 30-second political advertisements of a candidate in petitioner GMA will only be communicated to barely 40% of the viewing audience, not even the voting population, but only in Mega Manila, which is defined by AGB Nielsen Philippines to cover Metro Manila and certain urban areas in the provinces of Bulacan, Cavite, Laguna, Rizal, Batangas and Pampanga. Consequently, given the voting population distribution and the drastically reduced supply of airtime as a result of the New Rules' aggregate airtime limits, a national candidate will be forced to use all of his airtime for political advertisements in television only in urban areas such as Mega Manila as a political campaign tool to achieve maximum exposure.
>
> 5.12 To be sure, the people outside of Mega Manila or other urban areas deserve to be informed of the candidates in the national elections, and the said candidates also enjoy the right to be voted upon by these informed populace.[53]

The Court agrees. The assailed rule on "aggregate-based" airtime limits is unreasonable and arbitrary as it unduly restricts and constrains the ability of candidates and political parties to reach out and communicate with the people. Here, the adverted reason for imposing the "aggregate-based" airtime limits – leveling the playing field – does not constitute a compelling state interest which would justify such a substantial restriction on the freedom of candidates and political parties to communicate their ideas, philosophies, platforms and programs of government. And, this is specially so in the absence of a clear-cut basis for the imposition of such a prohibitive

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53 *Rollo* (G.R. No. 205357), pp. 25-26. (Emphasis in the original)

measure. In this particular instance, what the COMELEC has done is analogous to letting a bird fly after one has clipped its wings.

It is also particularly unreasonable and whimsical to adopt the aggregate-based time limits on broadcast time when we consider that the Philippines is not only composed of so many islands. There are also a lot of languages and dialects spoken among the citizens across the country. Accordingly, for a national candidate to really reach out to as many of the electorates as possible, then it might also be necessary that he conveys his message through his advertisements in languages and dialects that the people may more readily understand and relate to. To add all of these airtimes in different dialects would greatly hamper the ability of such candidate to express himself – a form of suppression of his political speech.

Respondent itself states that "[t]elevision is arguably the most cost-effective medium of dissemination. Even a slight increase in television exposure can significantly boost a candidate's popularity, name recall and electability."[54] If that be so, then drastically curtailing the ability of a candidate to effectively reach out to the electorate would unjustifiably curtail his freedom to speak as a means of connecting with the people.

Finally on this matter, it is pertinent to quote what Justice Black wrote in his concurring opinion in the landmark *Pentagon Papers* case: "In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government."[55]

In the ultimate analysis, when the press is silenced, or otherwise muffled in its undertaking of acting as a sounding board, the people ultimately would be the victims.

e. Section 9 (a) of Resolution 9615 is violative of the people's right to suffrage

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54 Comment and Opposition, p. 15; *id*. at 396.

55 *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971).

Fundamental to the idea of a democratic and republican state is the right of the people to determine their own destiny through the choice of leaders they may have in government. Thus, the primordial importance of suffrage and the concomitant right of the people to be adequately informed for the intelligent exercise of such birthright. It was said that:

> x x x As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality. x x x[56]

It has also been said that "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms."[57] Candidates and political parties need adequate breathing space – including the means to disseminate their ideas. This could not be reasonably addressed by the very restrictive manner by which the respondent implemented the time limits in regard to political advertisements in the broadcast media.

f. Resolution No. 9615 needs prior hearing before adoption

The COMELEC promulgated Resolution No. 9615 on January 15, 2013 then came up with a public hearing on January 31, 2013 to explain what it had done, particularly on the aggregate-based air time limits. This circumstance also renders the new regulation, particularly on the adoption of the **aggregate-based** airtime limit, questionable. It must not be overlooked that the new Resolution introduced a radical change in the manner in which the rules on airtime for political advertisements are to be reckoned. As such there is a need for adequate and effective means by which they may be adopted, disseminated and implemented. In this regard, it is not enough that they be published – or explained – after they have been adopted.

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56 *Moya v. Del Fierro*, 69 Phil. 199, 204 (1939).

57 *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

While it is true that the COMELEC is an independent office and not a mere administrative agency under the Executive Department, rules which apply to the latter must also be deemed to similarly apply to the former, not as a matter of administrative convenience but as a dictate of due process. And this assumes greater significance considering the important and pivotal role that the COMELEC plays in the life of the nation. Thus, whatever might have been said in *Commissioner of Internal Revenue v. Court of Appeals*,[58] should also apply *mutatis mutandis* to the COMELEC when it comes to promulgating rules and regulations which adversely affect, or impose a heavy and substantial burden on, the citizenry in a matter that implicates the very nature of government we have adopted:

> It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. *When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but* ***substantially adds to or increases the burden of those governed****, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law*.
>
> A reading of RMC 37–93, particularly considering the circumstances under which it has been issued, convinces us that the circular cannot be viewed simply as a corrective measure (revoking in the process the previous holdings of past Commissioners) or merely as construing Section 142(c)(1) of the NIRC, as amended, but has, in fact and most importantly, been made in order to place "Hope Luxury," "Premium More" and "Champion" within the classification of locally manufactured cigarettes bearing foreign brands and to thereby have them covered by RA 7654. Specifically, the new law would have its amendatory provisions applied to locally manufactured cigarettes which *at the time of its effectivity* were not so classified as bearing foreign brands. x x x In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due observance of the requirements of notice, of hearing, and of publication should not have been then ignored.[59]

For failing to conduct prior hearing before coming up with Resolution No. 9615, said Resolution, specifically in regard to the new rule on aggregate airtime is declared defective and ineffectual.

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[58] 329 Phil. 987 (1996).

[59] *Commissioner of Internal Revenue v. Court of Appeals*, *supra*, at 1007-1008. (Italics and boldface supplied)

g. Resolution No. 9615 does not impose an unreasonable burden on the broadcast industry

It is a basic postulate of due process, specifically in relation to its substantive component, that any governmental rule or regulation must be reasonable in its operations and its impositions. Any restrictions, as well as sanctions, must be reasonably related to the purpose or objective of the government in a manner that would not work unnecessary and unjustifiable burdens on the citizenry. Petitioner GMA assails certain requirements imposed on broadcast stations as unreasonable. It explained:

> 5.40 Petitioner GMA currently operates and monitors 21 FM and AM radio stations nationwide and 8 originating television stations (including its main transmitter in Quezon City) which are authorized to dechain national programs for airing and insertion of local content and advertisements.
>
> 5.41 In light of the New Rules wherein a candidate's airtime minutes are applied on an aggregate basis and considering that said Rules declare it unlawful in Section 7(d) thereof for a radio, television station or other mass media to sell or give for free airtime to a candidate in excess of that allowed by law or by said New Rules:
>
> "Section 7. *Prohibited Forms of Election Propaganda* – During the campaign period, it is unlawful:
>
> xxx xxx xxx
>
> (d) for any newspaper or publication, **radio, television or cable television station, or other mass media, or any person making use of the mass media to sell** or **to give free of charge** print space or **air time** for campaign or election propaganda purposes **to any candidate or party in excess of the size, duration or frequency authorized by law or these rules;**
>
> xxx xxx xxx"
>
> (Emphasis supplied)
>
> petitioner GMA submits that compliance with the New Rules in order to avoid administrative or criminal liability would be unfair, cruel and oppressive.
>
> x x x x.
>
> 5.43 In the present situation wherein airtime minutes shall be shared by all television and radio stations, broadcast mass media

> organizations would surely encounter insurmountable difficulties in monitoring the airtime minutes spent by the numerous candidates for various elective positions, in real time.
>
> 5.44 An inquiry with the National Telecommunications Commission (NTC) bears out that there are 372 television stations and 398 AM and 800 FM radio stations nationwide as of June 2012. In addition, there are 1,113 cable TV providers authorized by the NTC to operate within the country as of the said date.
>
> 5.45 Given such numbers of broadcast entities and the necessity to monitor political advertisements pursuant to the New Rules, petitioner GMA estimates that monitoring television broadcasts of all authorized television station would involve **7,440** manhours per day. To aggravate matters, since a candidate may also spend his/her broadcasting minutes on cable TV, additional **281,040** manhours per day would have to be spent in monitoring the various channels carried by cable TV throughout the Philippines. As far as radio broadcasts (both AM and FM stations) are concerned, around **23,960** manhours per day would have to be devoted by petitioner GMA to obtain an accurate and timely determination of a political candidate's remaining airtime minutes. During the campaign period, petitioner GMA would have to spend an estimated **27,494,720** manhours in monitoring the election campaign commercials of the different candidates in the country.
>
> 5.46 In order to carry-out the obligations imposed by the New Rules, petitioner GMA further estimates that it would need to engage and train **39,055** additional persons on an eight-hour shift, and assign them all over the country to perform the required monitoring of radio, television and cable TV broadcasts. In addition, it would likewise need to allot radio, television, recording equipment and computers, as well as telecommunications equipment, for this surveillance and monitoring exercise, thus imputing additional costs to the company. Attached herewith are the computations explaining how the afore-said figures were derived and the conservative assumptions made by petitioner GMA in reaching said figures, as **Annex "H"**.
>
> 5.47 Needless to say, such time, manpower requirements, expense and effort would have to be replicated by each and every radio station to ensure that they have properly monitored around 33 national and more than 40,000 local candidates' airtime minutes and thus, prevent any risk of administrative and criminal liability.[60]

The Court cannot agree with the contentions of GMA. The apprehensions of the petitioner appear more to be the result of a misappreciation of the real import of the regulation rather than a real and present threat to its broadcast activities. The Court is more in agreement with the respondent when it explained that:

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[60] *Rollo* (G.R. No. 205537), pp. 44-46. (Emphasis in the original)

> The legal duty of monitoring lies with the Comelec. Broadcast stations are merely required to submit certain documents to aid the Comelec in ensuring that candidates are not sold airtime in excess of the allowed limits. These documents include: (1) certified true copies of broadcast logs, certificates of performance, and certificates of acceptance, or other analogous record on specified dates (Section 9[d][3], Resolution No. 9615, in relation to Section 6.2, R.A. 9006; and (2) copies of all contract for advertising, promoting or opposing any political party or the candidacy of any person for public office within five (5) days after its signing (Section 6.3, R.A. 9006).
>
> * * * * *
>
> [T]here is absolutely no duty on the broadcast stations to do monitoring, much less monitoring in real time. GMA grossly exaggerates when it claims that the non-existent duty would require them to hire and train an astounding additional 39,055 personnel working on eight-hour shifts all over the country.[61]

The Court holds, accordingly, that, contrary to petitioners' contention, the Reporting Requirement for the COMELEC's monitoring is reasonable.

Further, it is apropos to note that, pursuant to Resolution No. 9631,[62] the respondent revised the third paragraph of Section 9 (a). As revised, the provision now reads:

> Appearance or guesting by a candidate on any *bona fide* newscast, *bona fide* news interview, *bona fide* news documentary, if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary, or on-the-spot coverage of bona fide news events, including but not limited to events sanctioned by the Commission on Elections, political conventions, and similar activities, shall not be deemed to be broadcast election propaganda within the meaning of this provision. **For purposes of monitoring by the COMELEC and ensuring that parties and candidates were afforded equal opportunities to promote their candidacy, the media entity shall give prior notice to the COMELEC, through the appropriate Regional Election Director (RED), or in the case of the National Capital Region (NCR), the Education and Information Department (EID). If such prior notice is not feasible or practicable, the notice shall be sent within twenty-four (24) hours from the first broadcast or publication.** Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under Sections 10 and 14 of these Rules. [63]

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61 Comment and Opposition, *id.* at 20.

62 Promulgated on February 1, 2013.

63 Emphasis supplied.

Further, the petitioner in G.R. No. 205374 assails the constitutionality of such monitoring requirement, contending, among others, that it constitutes prior restraint. The Court finds otherwise. Such a requirement is a reasonable means adopted by the COMELEC to ensure that parties and candidates are afforded equal opportunities to promote their respective candidacies. Unlike the restrictive aggregate-based airtime limits, the directive to give prior notice is not unduly burdensome and unreasonable, much less could it be characterized as prior restraint since there is no restriction on dissemination of information before broadcast.

Additionally, it is relevant to point out that in the original Resolution No. 9615, the paragraph in issue was worded in this wise:

> Appearance or guesting by a candidate on any bona fide newscast, bona fide news interview, bona fide news documentary, if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary, or on-the-spot coverage of bona fide news events, including but not limited to events sanctioned by the Commission on Elections, political conventions, and similar activities, shall not be deemed to be broadcast election propaganda within the meaning of this provision. ***To determine whether the appearance or guesting in a program is bona fide, the broadcast stations or entities must show that (1) prior approval of the Commission was secured; and (2) candidates and parties were afforded equal opportunities to promote their candidacy***. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under Sections 10 and 14 of these Rules. [64]

Comparing the original with the revised paragraph, one could readily appreciate what the COMELEC had done – to modify the requirement from "prior approval" to "prior notice." While the former may be suggestive of a censorial tone, thus inviting a charge of prior restraint, the latter is more in the nature of a content-neutral regulation designed to assist the poll body to undertake its job of ensuring fair elections without having to undertake any chore of approving or disapproving certain expressions.

Also, the right to reply provision is reasonable

In the same way that the Court finds the "prior notice" requirement as not constitutionally infirm, it similarly concludes that the "right to reply" provision is reasonable and consistent with the constitutional mandate.

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64 Emphasis and italics supplied.

Section 14 of Resolution No. 9615, as revised by Resolution No. 9631, provides:

> SECTION 14. ***Right to Reply***. – All registered political parties, party-list groups or coalitions and *bona fide* candidates shall have the right to reply to charges published or aired against them. The reply shall be given publicity by the newspaper, television, and/or radio station which first printed or aired the charges with the same prominence or in the same page or section or in the same time slot as the first statement.
>
> Registered political parties, party-list groups or coalitions and *bona fide* candidates may invoke the right to reply by submitting within a non-extendible period of forty-eight hours from first broadcast or publication, a formal verified claim against the media outlet to the COMELEC, through the appropriate RED. The claim shall include a detailed enumeration of the circumstances and occurrences which warrant the invocation of the right to reply and must be accompanied by supporting evidence, such a copy of the publication or recording of the television or radio broadcast, as the case may be. If the supporting evidence is not yet available due to circumstances beyond the power of the claimant, the latter shall supplement his claim as soon as the supporting evidence becomes available, without delay on the part of the claimant. The claimant must likewise furnish a copy of the verified claim and its attachments to the media outlet concerned prior to the filing of the claim with the COMELEC.
>
> The COMELEC, through the RED, shall view the verified claim within forty-eight (48) hours from receipt thereof, including supporting evidence, and if circumstances warrant, give notice to the media outlet involved for appropriate action, which shall, within forty-eight (48) hours, submit its comment, answer or response to the RED, explaining the action it has taken to address the claim. The media outlet must likewise furnish a copy of the said comment, answer or response to the claimant invoking the right to reply.
>
> Should the claimant insist that his/her right to reply was not addressed, he/she may file the appropriate petition and/or complaint before the Commission on Elections or its field offices, which shall be endorsed to the Clerk of Court.

The attack on the validity of the "right to reply" provision is primarily anchored on the alleged ground of prior restraint, specifically in so far as such a requirement may have a chilling effect on speech or of the freedom of the press.

Petitioner ABC states, *inter alia*:

> 5.145. A "conscious and detailed consideration" of the interplay of the relevant interests – the constitutional mandate granting candidates the

> right to reply and the inviolability of the constitutional freedom of expression, speech, and the press – will show that the Right to Reply, as provided for in the Assailed Resolution, is an impermissible restraint on these fundamental freedoms.
>
> 5.146. An evaluation of the factors set forth in *Soriano* (for the balancing of interests test) with respect to the present controversy will show that the Constitution does not tilt the balance in favor of the Right to Reply provision in the Assailed Resolution and the supposed governmental interest it attempts to further.[65]

The Constitution itself provides as part of the means to ensure free, orderly, honest, fair and credible elections, a task addressed to the COMELEC to provide for a right to reply.[66] Given that express constitutional mandate, it could be seen that the Fundamental Law itself has weighed in on the balance to be struck between the freedom of the press and the right to reply. Accordingly, one is not merely to see the equation as purely between the press and the right to reply. Instead, the constitutionally-mandated desiderata of free, orderly, honest, peaceful, and credible elections would necessarily have to be factored in trying to see where the balance lies between press and the demands of a right-to-reply.

Moreover, as already discussed by the Court in *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections.*[67]

> In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service. x x x[68]

Relevant to this aspect are these passages from an American Supreme Court decision with regard to broadcasting, right to reply requirements, and the limitations on speech:

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65 *Rollo* (G.R. No. 205374), pp. 67-68.

66 Art. IX (C), Sec. 4 of the CONSTITUTION, provides in part:

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

67 G.R. No. 132922, April 21, 1998, 289 SCRA 337.

68 *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, *supra*, at 349.

> We have long recognized that ***each medium of expression presents special First Amendment problems***. *Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502-503, 96 L Ed 1098, 72 S Ct 777*. ***And of all forms of communication, it is broadcasting that has received the most limited First Amendment protection***. Thus, although other speakers cannot be licensed except under laws that carefully define and narrow official discretion, a broadcaster may be deprived of his license and his forum if the Commission decides that such an action would serve "the public interest, convenience, and necessity." ***Similarly, although the First Amendment protects newspaper publishers from being required to print the replies of those whom they criticize***, *Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 41 L Ed 2d 730, 94 S Ct 2831*, ***it affords no such protection to broadcasters; on the contrary, they must give free time to the victims of their criticism***. *Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 23 L Ed 2d 371, 89 S Ct 1794*.
>
> The reasons for these distinctions are complex, but two have relevance to the present case. First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder. *Rowan v. Post Office Dept., 397 U.S. 728, 25 L Ed 2d 736, 90 S Ct 1484*. Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer from unexpected program content. To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow. One may hang up on an indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place.
>
> Second, broadcasting is uniquely accessible to children, even those too young to read. Although Cohen's written message might have been incomprehensible to a first grader, Pacifica's broadcast could have enlarged a child's vocabulary in an instant. Other forms of offensive expression may be withheld from the young without restricting the expression at its source. Bookstores and motion picture theaters, for example, may be prohibited from making indecent material available to children. We held in *Ginsberg v. New York, 390 U.S. 629*, that the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their own household" justified the regulation of otherwise protected expression. The ease with which children may obtain access to broadcast material, coupled with the concerns recognized in *Ginsberg*, amply justify special treatment of indecent broadcasting.[69]

Given the foregoing considerations, the traditional notions of preferring speech and the press over so many other values of society do not

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[69] *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 748-750 (1978). (Emphases supplied)

readily lend itself to this particular matter. Instead, additional weight should be accorded on the constitutional directive to afford a right to reply. If there was no such mandate, then the submissions of petitioners may more easily commend themselves for this Court's acceptance. But as noted above, this is not the case. Their arguments simplistically provide minimal importance to that constitutional command to the point of marginalizing its importance in the equation.

In fine, when it comes to election and the exercise of freedom of speech, of expression and of the press, the latter must be properly viewed in context as being necessarily made to accommodate the imperatives of fairness by giving teeth and substance to the right to reply requirement.

WHEREFORE, premises considered, the petitions are **PARTIALLY GRANTED**, Section 9 (a) of Resolution No. 9615, as amended by Resolution No. 9631, is declared **UNCONSTITUTIONAL** and, therefore, **NULL** and **VOID**. The constitutionality of the remaining provisions of Resolution No. 9615, as amended by Resolution No. 9631, is upheld and remain in full force and effect.

In view of this Decision, the Temporary Restraining Order issued by the Court on April 16, 2013 is hereby made **PERMANENT**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice
Acting Chief Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

I certify that V. Brion left his vote concurring in the result.
ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

I certify that J. Mendoza left his vote concurring with the Ponencia.
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

see separate concurring opinion
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

On leave
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice