EN BANC

G.R. No. 205357 - GMA NETWORK, INC., *petitioner*, *v.* **COMMISSION ON ELECTIONS,** *respondent*; **SENATOR ALAN PETER "*COMPAÑERO*" S. CAYETANO,** *petitioner-intervenor;* **G.R. No. 205374 - ABC DEVELOPMENT CORPORATION,** *petitioner*, *v.* **COMMISSION ON ELECTIONS,** *respondent*; **G.R. No. 205592 - MANILA BROADCASTING COMPANY, INC. and NEWSOUNDS BROADCASTING NETWORK, INC.,** *petitioners*, *v.* **COMMISSION ON ELECTIONS,** *respondent*; **G.R. No. 205852 - KAPISANAN NG MGA BRODKASTER NG PILIPINAS (KBP) and ABS-CBN CORPORATION,** *petitioners*, *v.* **COMMISSION ON ELECTIONS,** *respondent*; **G.R. No. 206360 - RADIO MINDANAO NETWORK, INC.,** *petitioner*, *v.* **COMMISSION ON ELECTIONS,** *respondent.*

Promulgated:

SEPTEMBER 02, 2014

x----------x

CONCURRING OPINION

LEONEN, *J.*:

I concur and vote to grant the petitions.

At issue in this case is the Commission on Elections' (COMELEC) more restrictive interpretation of Section 6.2 of Republic Act No. 9006 or the Fair Election Act resulting in further diminution of the duration of television and radio advertising that candidates may have during the 2013 elections. This section provides:

> 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:
>
> . . . .
>
> 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.

Prior restraint is defined as the "official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination."[1] Prior restraints of speech are generally presumptively unconstitutional. The only instances when this is not the case are in pornography,[2] false and misleading advertisement,[3] advocacy of imminent lawless action,[4] and danger to national security.[5]

Section 6 of the Fair Election Act is a form of prior restraint. While it does not totally prohibit speech, it has the effect of limitations in terms of the candidates' and political parties' desired time duration and frequency.

When an act of government is in prior restraint of speech, government carries a heavy burden of unconstitutionality.[6] In *Iglesia ni Cristo v. Court of Appeals,*[7] this court said that "any act that restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows."[8] This is the only situation where we veer away from our presumption of constitutionality.[9]

---

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

2 *Soriano v. Laguardia*, 605 Phil. 43 (2009) [Per J. Velasco, Jr., En Banc]; *Pita v. Court of Appeals,* 258-A Phil. 134 (1989) [Per J. Sarmiento, En Banc]; *Gonzalez v. Katigbak*, 222 Phil. 225 (1985) [Per C.J. Fernando, En Banc].

3 *Chavez v. Gonzales,* 569 Phil. 155 (2008) [Per C.J. Puno, En Banc]; *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Francisco T. Duque III*, 561 Phil. 386 (2007) [Per Austria-Martinez, En Banc].

4 *Eastern Broadcasting Corporation v. Dans, Jr.,* 222 Phil. 151 (1985) [Per J. Gutierrez, Jr., En Banc].

5 Id.

6 *Iglesia ni Cristo v. CA*, 328 Phil. 893, 928 (1996) [Per J. Puno, En Banc], *citing Near v. Minnesota*, 283 US 697 (1931); *Bantam Books Inc. v. Sullivan*, 372 US 58 (1963); *New York Times v. United States*, 403 US 713 (1971); *See also Social Weather Station v. COMELEC,* 409 Phil. 571, 584–585 (2001) [Per J. Mendoza, En Banc], *citing New York Times v. United States*, 403 U.S. 713, 714, 29 L.Ed. 2d 822, 824 (1971).

7 328 Phil. 893 (1996) [Per J. Puno, En Banc].

8 Id. at 928.

9 *See Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 387 [Per J. Mendoza, En Banc], *citing Drilon v. Lim,* G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140 [Per J. Cruz, En Banc]; *See also Osmeña v. COMELEC,* 351 Phil. 692 (1998) [Per J. Mendoza, En Banc]; *National Press Club v. COMELEC,* G.R.

In the context of elections, this court declared as unconstitutional the acts of the Commission on Elections in prohibiting the playing of taped jingles,[10] disallowing newspaper columnists to express their opinion on a plebiscite,[11] and limiting the publication of election surveys.[12]

However, this presumption, though heavy, is not insurmountable.

Generally, there are very clear constitutionally defined and compelling interests to limit the speech of candidates and political parties. Article IX-C, Section 4 of the Constitution provides:

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

In addition, the Commission on Elections has been given the competence to minimize election spending in Section 2(7) of Article IX-C of the Constitution:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> . . . .
>
> (7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.

In *National Press Club v. COMELEC,*[13] this court considered the prohibition on the sale and donation of space and time for political

---

No. 102653, March 5, 1992, 207 SCRA 1 [Per J. Feliciano, En Banc]; *Angara v. Electoral Commission,* 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

10 *Mutuc v. COMELEC*, 146 Phil. 798 (1970) [Per J. Fernando, En Banc], *cited* as prior restraint in *Osmeña v. COMELEC,* 351 Phil. 692, 707 (1998) [Per J. Mendoza, En Banc].

11 *Sanidad v. COMELEC*, 260 Phil. 565 (1990) [Per J. Medialdea, En Banc], *cited* as prior restraint in *Osmeña v. COMELEC,* 351 Phil. 692, 718 (1998) [Per J. Mendoza, En Banc].

12 *Social Weather Station v. COMELEC,* 409 Phil. 571 (2001) [Per J. Mendoza, En Banc].

13 G.R. No. 102653, March 5, 1992, 207 SCRA 1 [Per J. Feliciano, En Banc].

advertisement provided in Section 11(b) of Republic Act No. 6646.[14] This court recognized that though freedom of speech is a preferred right in our constitutional hierarchy, it is not unlimited.[15] There are other constitutional values that should also be considered including the equalization of opportunities for candidates.[16] This idea was echoed in *Osmeña v. COMELEC*.[17] This court found that the "restriction on speech is only incidental, and it is no more than is necessary to achieve its purpose of promoting equality of opportunity in the use of mass media for political advertising."[18] In *Osmeña*, this court noted the silence of the legislature in amending Section 11(b) of Republic Act No. 6646.[19]

---

[14] Rep. Act 6646, sec. 11 provides:

> 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:
>
> . . . .
>
> 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.

[15] "It seems a modest proposition that the provision of the Bill of Rights which enshrines freedom of speech, freedom of expression and freedom of the press (Article III [4], Constitution) has to be taken in conjunction with Article IX (C) (4) which may be seen to be a special provision applicable during a specific limited period — i.e., "during the election period." It is difficult to overemphasize the special importance of the rights of freedom of speech and freedom of the press in a democratic polity, in particular when they relate to the purity and integrity of the electoral process itself, the process by which the people identify those who shall have governance over them. Thus, it is frequently said that these rights are accorded a preferred status in our constitutional hierarchy. Withal, the rights of free speech and free press are not unlimited rights for they are not the only important and relevant values even in the most democratic of polities. In our own society, equality of opportunity to proffer oneself for public office, without regard to the level of financial resources that one may have at one's disposal, is clearly an important value. One of the basic state policies given constitutional rank by Article II, Section 26 of the Constitution is the egalitarian demand that 'the State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.'" *National Press Club v. COMELEC*, G.R. No. 102653, March 5, 1992, 207 SCRA 1, 9 [Per J. Feliciano, En Banc], with a voting of 11-3.

[16] CONST., art. IX-C, sec. 4 provides:

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

[17] 351 Phil. 692 (1998) [Per J. Mendoza, En Banc].

[18] Id. at 711, with a voting of 11-4.

[19] "The fact is that efforts have been made to secure the amendment or even repeal of §11(b) of R.A. No. 6646. No less than five bills were filed in the Senate in the last session of Congress for this purpose, but they all failed of passage. Petitioners claim it was because Congress adjourned without acting on them. But that is just the point. Congress obviously did not see it fit to act on the bills before it adjourned.

> We thus have a situation in which an act of Congress was found by this Court to be valid so that those opposed to the statute resorted to the legislative department. The latter reconsidered the question but after doing so apparently found no reason for amending the statute and therefore did not pass any of the bills filed to amend or repeal the statute. Must this Court now grant what Congress denied to them? The legislative silence here certainly bespeak of more than inaction." *Osmeña v. COMELEC*, 351 Phil. 692, 716–717 (1998) [Per J. Mendoza, En Banc].

Thus, in 2001, the Fair Election Act[20] was promulgated, repealing the challenged provisions in *National Press Club* and *Osmeña*. Congress determined that the old law was not effective in giving voice to the people.[21] It shifted state policy by liberalizing the granting of time and space to candidates and political parties while maintaining equality in terms of duration of exposure.[22]

Section 6 of the Fair Election Act is a form of prior restraint

It is recognized that Section 6 of the Fair Election Act does not completely prohibit speech. However, the provision effectively limits speech in terms of time duration and frequency.

Admittedly, the present wording of Section 6 of the Fair Election Act does not clearly imply whether the one hundred twenty (120) minutes of television advertisement and the one hundred eighty (180) minutes of radio advertisement allotted to each candidate or registered political party is for each network or is an aggregate time for all such advertisements, whether paid or donated, during the entire election period. However, during the 2007[23] and the 2010[24] elections, the Commission on Elections allowed candidates and registered political parties to advertise as much as 120 minutes of television advertisement and 180 minutes of radio advertisement per station.

---

20 Rep. Act No. 9006 (2001).

21 Rep. Act No. 9006 (2001), sec. 14 provides:

> Section 14. Repealing Clause. - Section 67 and 85 of the Omnibus Election Code (Batas Pambansa Bldg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. As a consequence, the first proviso in the third paragraph of Section 11 of Republic Act No. 8436 is rendered ineffective. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly.

22 *See* Rep. Act No. 9006 (2001), sec. 6.2(b), which provides:

> 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:
>
> . . . .
>
> 6.2 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.

23 COMELEC Resolution No. 7767 (2006), sec. 13(1), as amended by COMELEC Resolution No. 7836 (2007).

24 COMELEC Resolution No. 8758 (2010), sec. 11(a), provides that for candidates and registered political parties for a national elective position, the limitations were "One hundred twenty (120) minutes in television or cable television and one hundred eighty (180) minutes in radio, for all television or cable television networks, or all radio stations whether by purchase or donation, wherever located, **per station**." The phrase "aggregate total" was introduced in COMELEC Resolution No. 9615 (2013) questioned here, with the phrases "for all television and cable television networks, or all radio stations" and "per station" not appearing.

For the 2013 elections, however, respondent Commission on Elections, without hearing, issued Resolution No. 9615, Section 9(a) which now interprets the 120/180 minute airtime to be on a "total aggregate basis." This section provides:

> **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 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.

> 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 furnished to the Commission, thru the Education and Information Department, within five (5) days from contract signing.

The issuance caused petitioners to send their respective letters to respondent to clarify and/or protest against the new regulations. It was only then that respondent Commission on Elections held a public hearing.[25] Respondent then issued Resolution No. 9631 amending certain provisions of Resolution No. 9615, Section 9(a), without touching on the "total aggregate" interpretation of Section 6 of the Fair Election Act.[26]

---

[25] Respondent COMELEC held a public hearing on January 31, 2013.

[26] COMELEC Resolution No. 9631, par. 5, amended COMELEC Resolution No. 9615, sec. 9(a), *to wit*:

> 5. The third (3rd) paragraph of Section 9 (a) on the "***Requirements and/or Limitations on the Use of Election Propaganda through Mass Media"*** is revised and amended to read:
>
> "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,

In addition to the television and radio networks represented in the various petitions, a candidate for the senatorial elections, Alan Peter Cayetano, also filed an intervention.[27]

Whether the airtime in television and radio spots of candidates and registered political parties may be regulated is not an issue in this case. Indeed, the Constitution clearly allows this for purposes of providing equal opportunity to all candidates.[28] The issue is also not whether Congress, in promulgating Section 6 of the Fair Election Act, committed grave abuse of discretion in determining a cap of 120 minutes advertising for television and 180 minutes for radio. It is within the legislature's domain to determine the amount of advertising sufficient to balance the need to provide information to voters and educate the public on the one hand, and to cause the setting of an affordable price to most candidates that would reduce their expenditures on the other. We are not asked to decide in these cases whether these actual time limitations hurdle the heavy burden of unconstitutionality that attends to any prior limitations on speech.

Rather, petitioners and the intervenor raise constitutional objections to a second order of restriction: **that the interpretation earlier allowed by the Commission on Elections was suddenly, arbitrarily, and capriciously reduced by adopting the "total aggregate" method.**

While the Commission on Elections does have the competence to interpret Section 6, it must do so without running afoul of the fundamental rights enshrined in our Constitution, especially of the guarantee of freedom of expression and the right to suffrage. Not only must the Commission on Elections have the competence, it must also be cognizant of our doctrines in relation to any kind of prior restraint.

It has failed to discharge this burden.

---

from the obligation imposed upon them under Sections 10 and 14 of these Rules." (Emphasis in the original)

[27] In G.R. No. 205357, intervenor assails Section 9(a) of Resolution No. 9615, which changed the interpretation of the 120/180-minute rule from "per station" to "total aggregate" basis.

[28] CONST., art. IX-C, sec. 4 provides:

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

A more restrictive interpretation of Section 6 will not necessarily meet the Commission on Elections' expected economic benefits

The Commission on Elections hinges the shift in the interpretation of Section 6 of the Fair Election Act on its constitutional power to recommend to Congress *effective* measures to minimize election spending.[29] During the January 31, 2013 public hearing, COMELEC Chairman Brillantes said:

> 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. . . .[30]

On a cursory look, it will seem as if a reduction in the length of airtime allowable per candidate will translate to a reduction in a candidate's election spending. For example, under the old regulation of giving 120 minutes "per network," it would mean that if the candidate wanted to broadcast on two (2) television networks, the candidate could purchase a total of 240 minutes. The total campaign expenditure for television advertisements would be 240 minutes multiplied by the rate for television advertisements per minute, say, □500,000.00. The candidate would have to spend a total of □120 million for 240 minutes of television advertisements. Under the new regulation of giving 120 minutes to the candidate in an "aggregate total," the candidate would have to distribute the 120 minutes between the two (2) networks. The 120 minutes multiplied by □500,000.00 is only □60 million. The reduction in expenditure is obvious under this example.

However, the previous example is a simplistic view starkly different from our economic realities. This assumes that the regulation would not affect the prices charged by the networks. A more realistic economic possibility is that the restriction in airtime allotment of candidates will increase the prices of television and radio spots. This can happen because the limitation in the airtime placed on each candidate will increase his or her willingness to pay for television spots at any price. This will be the perfect opportunity for television networks to hike up their prices. For instance, these networks can increase their usual rates of □500,000.00/minute to □1,000,000.00/minute. The candidate will take the airtime at this rate because of the inevitable need for the campaign to be visible to the public eye. At this rate, it will cost a candidate □120 million to air 120 minutes.

---

29 CONST., art. IX-C, sec. 2(7).
30 Main opinion, p. 24.

This is the same price to be paid had it been under the old regulation; hence, the candidate's election spending will not be minimized. In fact, it will even increase the cost per unit of airtime.

Ideally, television and radio stations should bid and compete for a candidate's or a political party's airtime allocation, so that instead of networks dictating artificially high prices for airtime (which price will be high as television and radio stations are profit-driven), the market will determine for itself the price. The market for airtime allocation expands, and a buyer's market emerges with low prices for airtime allocation. This situation assumes that in the market for airtime allocation, television and radio networks are the same in terms of audience coverage and facilities.

What Resolution No. 9615 does not take into consideration is that television and radio networks are not similarly situated. The industry structure consists of network giants[31] with tremendous bargaining powers that dwarf local community networks. Thus, a candidate with only a total aggregate of 120/180 minutes of airtime allocation will choose a national network with greater audience coverage to reach more members of the electorate. Consequently, the big networks can dictate the price, which it can logically set at a higher price to translate to more profits. This is true in any setting especially in industries with high barriers to entry and where there are few participants with a high degree of market dominance. Reducing the airtime simply results in a reduction of speech and not a reduction of expenses.

Resolution No. 9615 may result in local community television and radio networks not being chosen by candidates running for national offices. Hence, advertisement by those running for national office will generally be tailored for the national audience. This new aggregate time may, therefore, mean that local issues which national candidates should also address may not be the subject of wide-ranging discussions.

Candidates' expenses are still limited by existing regulations that peg total allowable expenditures based on the number of votes. Even with aggregate airtime limits being allowed on a per station basis, the limits on expenditures remain the same. In other words, the limits in candidate expenses are already set and are independent of whether aggregate time is total airtime or per station.

---

[31] "The Philippines probably presents the most diverse media picture in the region, with a wide variety of broadcasters, both radio and television, operating both nationally and locally. At the same time, the leading media houses are very commercialised, with ownership concentrated mainly in the hands of large companies or family businesses. There is also burgeoning and essentially unregulated radio market where "block timers" purchase time to espouse their views, which has been blamed for the growing lack of public trust in the media." *See* T. Mendel, *Audiovisual media policy, regulation and independence in Southeast Asia* <http://www.opensocietyfoundations.org/sites/default/files/audiovisual-policy-20100212.pdf> (visited September 1, 2014).

Each candidate decides what media they will avail to allow for efficiency, i.e., the most impact with the broadest audience and with the least cost. All candidate's limits will be the same. Limiting airtime to only a total of 120/180 minutes per candidate or political party will most likely only succeed in caricaturing debate, enriching only the more powerful companies in the media sector and making it more prohibitive for less powerful candidates to get their messages across.

There is no showing from respondent Commission on Elections of any study that the "total aggregate basis" interpretation will indeed minimize election spending. It did not show that this would better serve the objective of assisting the poorer candidates. The relationship between the regulation and constitutional objective must be more than mere speculation. Here, the explanation respondent Commission on Elections gave is that it has the power to regulate. As COMELEC Chairman Brillantes said during the January 31, 2013 public hearing:

> 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?[32] (Emphasis supplied)

We emphasize that where a governmental act has the effect of preventing speech before it is uttered, it is the burden of government and not of the speaker to justify the restriction in terms which are clear to this court. Article III, Section 4 of the Constitution which provides for freedom of expression occupies such high levels of protection that its further restriction cannot be left to mere speculation.

Contrary to COMELEC Chairman Brillantes' statement, this court will step in and review the Commission on Elections' right to amplify if it infringes on people's fundamental rights. What the Commission "feels," even if it has the prerogative, will never be enough to discharge its burden of proving the constitutionality of its regulations limiting the freedom of speech.

Election regulations are not always content-neutral regulations, and even if they were, they do not necessarily carry a mantle of immunity from free speech scrutiny. The question always is whether the regulations are narrowly tailored so as to meet a significant governmental interest and so

---

[32] Main opinion, p. 23.

that there is a lesser risk of excluding ideas for a public dialogue.[33] The scrutiny for regulations which restrict speech during elections should be greater considering that these exercises substantiate the important right to suffrage. Reducing airtime to extremely low levels reduces information to slogans and sound bites which may impoverish public dialogue. We know that lacking the enlightenment that comes with information and analysis makes the electorate's role to exact accountability from elected public officers a sham. More information requires more space and airtime equally available to all candidates. The problem in this case is that the Commission on Elections does not seem to have the necessary basis to justify the balance it wanted to strike with the imposition of the aggregate time limits.

Just because it is called electoral reform does not necessarily make it so.

The standard of analysis for prior restraints on speech is well-known to all legal practitioners especially to those that may have crafted the new regulations. Good intentions are welcome but may not be enough if the effect would be to compromise our fundamental freedoms. It is this court's duty to perform the roles delegated to it by the sovereign people. In a proper case invoking this court's powers of judicial review, it should sometimes result in more mature reflection by those who do not benefit from its decisions. The Commission on Elections does not have a monopoly of the desire for genuine electoral reform without compromising fundamental rights. Our people cannot be cast as their epigones.

Fundamental rights are very serious matters. The core of their existence is not always threatened through the crude brazen acts of tyrants. Rather, it can also be threatened by policies that are well-intentioned but may not have the desired effect in reality.

We cannot do justice to hard-won fundamental rights simply on the basis of a regulator's intuition. When speech and prior restraints are involved, it must always be supplemented by rigorous analysis and reasoned evidence already available for judicial review.

Thus, I vote to **PARTIALLY GRANT** the petitions. Section 9(a) of Resolution No. 9615 is unconstitutional and is, therefore, **NULL** and **VOID**. This has the effect of reinstating the interpretation of the Commission on Elections with respect to the airtime limits in Section 6 of the Fair Elections

---

[33] *Chavez v. Gonzales*, 569 Phil. 155, 205 (2008) [Per C.J. Puno, En Banc]; *See Ward v. Rock Against Racism*, 491 U.S. 781 (1989), *quoting Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *See also Turner Broad. System, Inc. v. Federal Communications Commission*, 512 U.S. 622, 642 (1994); *City of Ladue v. Gilleo*, 512 U.S. 43, 54–59 (1994).

Act. I vote to **DENY** the constitutional challenge to Sections 7(d) and 14 of COMELEC Resolution 9615, as amended by Resolution 9631.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice