



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**THE DIOCESE OF BACOLOD,
 REPRESENTED BY THE MOST
 REV. BISHOP VICENTE M.
 NAVARRA AND THE BISHOP
 HIMSELF IN HIS PERSONAL
 CAPACITY,**

Petitioners,

-versus-

**COMMISSION ON ELECTIONS
 AND THE ELECTION OFFICER
 OF BACOLOD CITY, ATTY.
 MAVIL V. MAJARUCON,**

Respondents.

G.R. No. 205728

Present:

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

Promulgated:

July 5, 2016

[Signature]

RESOLUTION

* On official leave.

** Designated Acting Chief Justice effective July 4, 2016, per Special Order No. 2357 dated June 28, 2016.

*** On official leave.

**** No part.

[Handwritten mark]

LEONEN, J.:

This Motion for Reconsideration¹ filed by respondents prays that this Court reconsider its January 21, 2015 Decision and dismiss the Petition for lack of merit.² The dispositive portion of the Decision reads:

WHEREFORE, the instant petition is **GRANTED**. The temporary restraining order previously issued is hereby made permanent. The act of the COMELEC in issuing the assailed notice dated February 22, 2013 letter dated February 27, 2013 is declared unconstitutional.

SO ORDERED.³ (Emphasis in the original)

First, respondents reiterate that the assailed notice and letter are not final orders by the Commission on Elections En Banc in the exercise of its quasi-judicial functions, thus, not subject to this Court's review.⁴ Respondents contend that they merely implemented the law when they issued the assailed notice and letter. These are reviewable not by this Court but by the Commission on Elections pursuant to Article IX-C, Section 2(3) of the Constitution on its power to decide "all questions affecting elections."⁵ There are also remedies under Rule 34 of the Commission on Elections Rules of Procedure on preliminary investigation for election offenses. Respondents, thus, submit that petitioners violated the rule on exhaustion of administrative remedies.⁶

Second, respondents submit that the tarpaulin is election propaganda that the Commission on Elections may regulate.⁷ The tarpaulin falls under the definition of election propaganda under Section 1.4 of Commission on Elections Resolution No. 9615 for three reasons. First, it "contains the names of the candidates and party-list groups who voted for or against the RH Law."⁸ Second, "the check mark on 'Team Buhay' and the cross mark on 'Team Patay' clearly suggests that those belonging to 'Team Buhay' should be voted while those under 'Team Patay' should be rejected during the May 13, 2013 elections."⁹ Lastly, petitioners posted the tarpaulin on the cathedral's facade to draw attention.¹⁰

Respondents argue that the "IBASURA RH Law" tarpaulin would have sufficed if opposition to the law was petitioners' only objective. They

¹ *Rollo*, pp. 284-307.

² *Id.* at 306.

³ *Id.* at 246.

⁴ *Id.* at 286-287.

⁵ *Id.* at 288.

⁶ *Id.* at 289.

⁷ *Id.* at 290.

⁸ *Id.*

⁹ *Id.* at 291.

¹⁰ *Id.*

submit that petitioners “infused their political speech with election propaganda which may be regulated by the COMELEC.”¹¹ They further submit that it is immaterial that the posting was not “in return for consideration” by any candidate or political party since the definition of election propaganda does not specify by whom it is posted.¹² Respondents then discuss the history of the size limitation by mentioning all previous laws providing for a 2’ by 3’ size limit for posters.¹³ According to respondents, petitioners raised violation of freedom of expression and did not question the soundness of this size limitation.¹⁴ Petitioners even cut the tarpaulin in half, thus confirming that the tarpaulin is election propaganda.¹⁵

Third, respondents argue that size limitation applies to all persons and entities without distinction,¹⁶ thus:

Notwithstanding that petitioners are not political candidates, the subject tarpaulin is subject to the COMELEC’s regulation because petitioners’ objective in posting the same is clearly to persuade the public to vote for or against the candidates and party-list groups named therein, depending on their stand on the RH Law, which essentially makes the subject tarpaulin a form of election propaganda.¹⁷

Respondents argue the general applicability of the Fair Elections Act. Election propaganda should not be interchanged with campaign materials as the latter is only one form of the former.¹⁸ Respondents submit that “[w]hen an election propaganda is posted by a candidate or political party, it becomes a campaign material subject to the COMELEC’s regulation under Section 9 of the Fair Elections Act.”¹⁹ They argue that “the Fair Elections Act regulates a variety of election-related activities that are not only engaged in by candidates and political parties but also by other individuals and entities” in that Section 4 regulates publications, printing, and broadcast, while Section 5 regulates election surveys.²⁰ Assuming the Fair Elections Act does not apply to private individuals, Section 82 of the Omnibus Election Code still applies to all.²¹ Respondents also quote portions of the 1971 Election Code deliberations, in that the prohibition covers a candidate’s follower who writes “Vote for X” on his or her own shirt even if this is not mass-produced since allowing this opens a wide loophole for possible abuse, and the

¹¹ Id.

¹² Id.

¹³ Id. at 291–294. Respondents cite the following: Rep. Act No. 6388 (1971), Election Code of 1971, sec. 48; Pres. Decree No. 1296 (1978), 1978 Election Code, sec. 37; ELECTION CODE, sec. 82; Rep. Act No. 6646 (1987), Electoral Reforms Law of 1987, sec. 11; and Rep. Act No. 9006 (2000), Fair Elections Act, sec. 3, reiterated in COMELEC Res. No. 9615, sec. 6(c).

¹⁴ Id. at 294.

¹⁵ Id. at 295.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 297.

¹⁹ Id.

²⁰ Id. at 297–298.

²¹ Id. at 299.

limitation ensures equality of access to all.²²

Lastly, respondents argue that the size limitation is a valid content-neutral regulation on election propaganda. As such, only a substantial governmental interest is required under the intermediate test.²³ Respondents cite *National Press Club v. Commission on Elections*²⁴ in that “the supervisory and regulatory functions of the COMELEC under the 1987 Constitution set to some extent a limit on the right to free speech during the election period.”²⁵ The order to remove the tarpaulin for failure to comply with the size limitation had nothing to do with the tarpaulin’s message, and “petitioners could still say what they wanted to say by utilizing other forms of media without necessarily infringing the mandates of the law.”²⁶ Respondents cite constitutional provisions as basis for regulating the use of election propaganda such as political equality and election spending minimization.²⁷

We deny the Motion for Reconsideration.

On respondents’ argument on the prematurity of filing the case before this Court, we discussed in our Decision that Rule 64 is not the exclusive remedy for all Commission on Elections’ acts as Rule 65 applies for grave abuse of discretion resulting to ouster of jurisdiction.²⁸ The five (5) cases²⁹ again cited by respondents are not precedents since these involve election protests or are disqualification cases filed by losing candidates against winning candidates.³⁰

Petitioners are not candidates. They are asserting their right to freedom of expression.³¹ We acknowledged the “chilling effect” of the assailed notice and letter on this constitutional right in our Decision, thus:

Nothing less than the electorate’s political speech will be affected by the restrictions imposed by COMELEC. Political speech is motivated by the desire to be heard and understood, to move people to action. It is concerned with the sovereign right to change the contours of power whether through the election of representatives in a republican

²² Id. at 299–300.

²³ Id. at 303.

²⁴ 283 Phil. 795 (1992) [Per J. Feliciano, En Banc].

²⁵ *Rollo*, p. 303.

²⁶ Id. at 304.

²⁷ Id. Respondents cite CONST., art. IX-C, secs. 2(1), 2(7), 4, and 10; art. II, sec. 26; and art. XIII, sec. 1.

²⁸ Id. at 182–183.

²⁹ Id. at 286–287. Respondents cite *Ambil v. Commission on Elections*, 398 Phil. 257 (2000) [Per J. Pardo, En Banc]; *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321 [Per J. Carpio, En Banc]; *Soriano, Jr. v. Commission on Elections*, 548 Phil. 639 (2007) [Per J. Carpio, En Banc]; *Blanco v. Commission on Elections*, 577 Phil. 622 (2008) [Per Azcuna, En Banc]; and *Cayetano v. Commission on Elections*, 663 Phil. 694 (2011) [Per J. Nachura, En Banc].

³⁰ Id. at 185.

³¹ Id.

government or the revision of the basic text of the Constitution. The zeal with which we protect this kind of speech does not depend on our evaluation of the cogency of the message. Neither do we assess whether we should protect speech based on the motives of COMELEC. We evaluate restrictions on freedom of expression from their effects. We protect both speech and medium because the quality of this freedom in practice will define the quality of deliberation in our democratic society.

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

Direct resort to this court is allowed to avoid such proscribed conditions. Rule 65 is also the procedural platform for raising grave abuse of discretion.³²

The urgency posed by the circumstances during respondents' issuance of the assailed notice and letter—the then issue on the RH Law as well as the then upcoming elections—also rendered compliance with the doctrine on exhaustion of administrative remedies as unreasonable.³³

All these circumstances surrounding this case led to this Court's pro hac vice ruling to allow due course to the Petition.

The other arguments have also been considered and thoroughly addressed in our Decision.

This Court's Decision discussed that the tarpaulin consists of satire of political parties that "primarily advocates a stand on a social issue; only secondarily—even almost incidentally—will cause the election or non-election of a candidate."³⁴ It is not election propaganda as its messages are different from the usual declarative messages of candidates. The tarpaulin is an expression with political consequences, and "[t]his court's construction of the guarantee of freedom of expression has always been wary of censorship or subsequent punishment that entails evaluation of the speaker's viewpoint or the content of one's speech."³⁵

We recognize that there can be a type of speech by private citizens amounting to election paraphernalia that can be validly regulated.³⁶ However, this is not the situation in this case. The twin tarpaulins consist of

³² Id. at 186–187.

³³ Id. at 201.

³⁴ Id. at 230.

³⁵ Id. at 231.

³⁶ Id. at 239.



a social advocacy, and the regulation, if applied in this case, fails the reasonability test.³⁷

Lastly, the regulation is content-based. The Decision discussed that “[t]he form of expression is just as important as the information conveyed that it forms part of the expression[,]”³⁸ and size does matter.³⁹

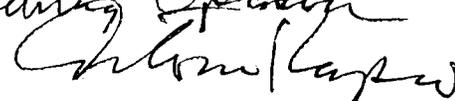
WHEREFORE, the Motion for Reconsideration is **DENIED** with **FINALITY**.

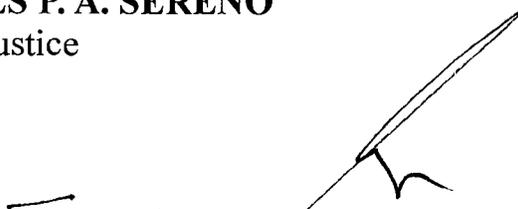
SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

(On official leave)
MARIA LOURDES P. A. SERENO
Chief Justice

I reiterate my Separate Concurring Opinion

ANTONIO T. CARPIO
Associate Justice

I join the dissent of J. Brion

PRESBITERO J. VELASCO, JR.
Associate Justice

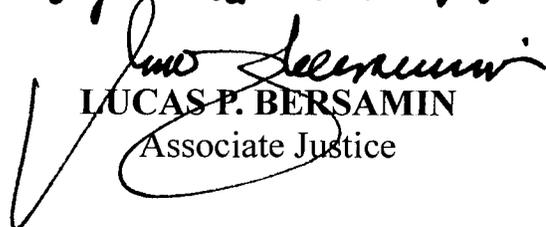
Serita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

See; Dissenting Opinion

ARTURO D. BRION
Associate Justice

I join the opinion of J. Carpio

DIOSDADO M. PERALTA
Associate Justice

I join the dissent of J. Brion

LUCAS P. BERSAMIN
Associate Justice

³⁷ Id.
³⁸ Id. at 211.
³⁹ Id.

Mariano C. del Castillo
MARIANO C. DEL CASTILLO
 Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
 Associate Justice

(On official leave)
JOSE CATRAL MENDOZA
 Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
 Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
 Associate Justice

(No part)
FRANCIS H. JARDELEZA
 Associate Justice

*I join/concur with J. Bernabe's
 or find separate concurring opinion.*
ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.

Antonio T. Carpio
ANTONIO T. CARPIO
 Acting Chief Justice

CERTIFIED XEROX COPY:
Felipa B. Anama
FELIPA B. ANAMA
 CLERK OF COURT, EN BANC
 SUPREME COURT