

EN BANC

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

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

DECISION

REYES, J. JR., J.:

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

Relevant Antecedents

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

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

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

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

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

x x x x

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

x x x x

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

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

Sec. 74. Election offenses/prohibited acts. -

x x x x

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

x x x x

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

x x x x

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

x x x x

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

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

Hence, this petition.

Considering the urgency of the matter as the May 2016 presidential and vice-presidential elections were forthcoming when the petition was filed, the Court, in its April 19, 2016 Resolution^[6] partially granted the application for temporary restraining order (TRO), enjoining the COMELEC, its deputies and other related instrumentalities from implementing the questioned provisions, except within Philippine Embassies, Consulates, and other Posts where overseas voters may

exercise their right to vote pursuant to the Overseas Voting System, where partisan political activities shall still be prohibited until further orders from the Court.

Issues

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

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

The Court's Ruling

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

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

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

Contrary to the OSG's position, the instant petition involves an actual case or justiciable controversy, warranting the Court's exercise of the power of judicial review.

Indeed, whether under the traditional or the expanded setting, the power of judicial

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

x x x [A]n actual case or controversy is one which ["]involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.["] In other words, "**there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.**" According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "**by merely requiring a prima facie showing of grave abuse of discretion in the assailed governmental act.**"

Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action.**

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

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

Thus, "[w]here an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right, but in fact the duty of the judiciary to settle the dispute. The question, thus, posed is judicial rather than political. The duty to adjudicate remains to assure that the supremacy of the Constitution is upheld."^[10]

Guided by the foregoing principles, the Court finds that there exists an actual justiciable controversy in this case given the "evident clash of the parties' legal

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

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

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

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

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

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

Section 79. Definitions. - x x x

x x x x

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

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

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