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EN BANC

[G.R. No. 205728, July 05, 2016]

THE DIOCESE OF BACOLOD, REPRESENTED BY THE MOST REV. BISHOP VICENTE M. NAVARRA AND THE BISHOP HIMSELF IN HIS PERSONAL CAPACITY, PETITIONERS, VS. COMMISSION ON ELECTIONS AND THE ELECTION OFFICER OF BACOLOD CITY, ATTY. MAVIL V. MAJARUCON, RESPONDENTS.

RESOLUTION

LEONEN, J.:

This Motion for Reconsideration[1] 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 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 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) cases[29] 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 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 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.

Sereno, C. J., on official leave.
Leonardo-De Castro, Del Castillo, Perez, Reyes, and *Perlas-Bernabe, JJ.*, concur.
*Carpio,*** *J.*, I reiterate my Separate Concurring Opinion.
Velasco, Jr., J., I join the dissent of J. Brion.
Brion, J., see Dissenting Opinion.
Peralta, J., I join the opinion of J. Carpio.
Bersamin, J., I join the dissent of J. Brion.
Mendoza, J., on official leave.
Jardeleza, J., no part.
Caguioa, J., I join/concur with J. Bernabe's original separate concurring opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on July 5, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 28, 2016 at 8:35 a.m.

Very truly yours,
(SGD)FELIPA G. BORLONGAN-ANAMA
Clerk of Court

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

[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.

[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.