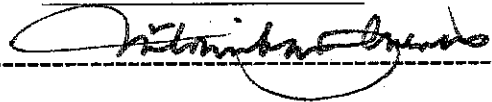


EN BANC

G.R. No. 258805 – ST. ANTHONY COLLEGE OF ROXAS CITY, INC., represented by SISTER GERALDINE J. DENOGA, D.C., DR. PILITA DE JESUS LICERALDE, and DR. ANTON MARI HAO LIM, Petitioners, v. COMMISSION ON ELECTIONS [COMELEC], represented by the Acting Chairperson COMMISSIONER SOCORRO B. INTING, and COMELEC DIRECTOR JAMES ARTHUR B. JIMENEZ in his official capacity as Spokesperson of the COMELEC and as Director IV of the COMELEC DEPARTMENT FOR EDUCATION AND INFORMATION [EID], Respondents.

Promulgated:

October 10, 2023



SEPARATE OPINION

GESMUNDO, C.J.:

This case assails the constitutionality of respondent Commission on Elections' (COMELEC) removal of "oversized" campaign materials as posted or installed within private properties.

Records show that petitioners St. Anthony College of Roxas City, Inc., Dr. Pilita De Jesus Liceralde, and Dr. Anton Mari Hao Lim (St. Anthony College et al.), displayed on their private properties some tarpaulins, murals, and other materials expressing support and soliciting votes for a presidential candidate in the 2022 Elections. However, the COMELEC's field officers, implementing *Oplan Baklas*, forcibly removed said "oversized" materials pursuant to COMELEC Resolution No. 10730.¹

St. Anthony College et al. argued that the COMELEC's act violated their constitutional rights to free speech and expression. COMELEC, on the other hand, contended that the size limitation for campaign materials under Section 82 of the Omnibus Election Code does not distinguish between candidates and private individuals, and thus, is applicable to St. Anthony College et al. COMELEC averred that the size limitation is a content-neutral regulation.

¹ Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the "Fair Election Act," in Connection with the May 9, 2022 National and Local Elections, November 17, 2021.



The *ponencia* grants the petition. It declares the COMELEC's acts of seizing and destroying privately-owned tarpaulins and other election materials installed or posted on private properties as "unconstitutional."² The *ponencia* holds that the COMELEC's power to regulate election paraphernalia of private citizens is not provided by law, considering that the scope of the COMELEC's regulatory powers under the Fair Election Act³ covers only to candidates and political parties. It explains, thus:

While the posters and tarpaulins subject of the dispute seek and promote the election of a candidate, they were not produced or displayed "by or on behalf of and in coordination with candidates and political parties." On the contrary, it is undisputed that they were the result of privately-funded and privately-run initiatives and were displayed willingly by their owners on their own private property. Thus, they are beyond the scope of Sections 3 and 9 [of the Fair Elections Act]. To apply the size restrictions under [the Fair Elections Act] to the political speech of private persons would be to unduly expand the COMELEC's mandate and ignore the law's repeated and express references to candidates and political parties only.⁴

The *ponencia* later mentions that the reasoning in *Diocese of Bacolod v. COMELEC*⁵ applies squarely to the facts of this case.⁶ Nevertheless, it acknowledges that the ruling in *Diocese* is *pro hac vice*⁷ and that such case involved a social advocacy and not election paraphernalia, unlike the present case. The *ponencia* finds that the implementation of *Oplan Baklas* lacks statutory basis,⁸ and concludes that such implementation is "unconstitutional as it exceeded the bounds of permissible regulation" under the Fair Election Act and COMELEC Resolution No. 10730.⁹

I concur in the *ponencia*'s result granting the petition, but I write to respectfully share my own perspective on the proper resolution of the case.

First, it is my view that the implementation of *Oplan Baklas* as against election paraphernalia posted by private citizens on their private properties must be declared *ultra vires* or invalid for lack of statutory basis, although not necessarily unconstitutional. Presently, the COMELEC has no authority under the prevailing statutes to impose the size limitations.

² *Ponencia*, p. 15.

³ Republic Act No. 9006, February 12, 2001.

⁴ *Ponencia*, p. 17.

⁵ 751 Phil. 301 (2015) [Per J. Leonen, *En Banc*].

⁶ *Ponencia*, p. 23.

⁷ *Id.* at 11, citing *The Diocese of Bacolod v. Commission on Elections*, 789 Phil. 197, 208 (2016) [Per J. Leonen, *En Banc*].

⁸ *Id.* at 23.

⁹ *Id.* at 24.

Congress has not yet enacted a law which allows the COMELEC to impose size limitations on election paraphernalia posted by private citizens. Accordingly, the implementation of *Oplan Baklas* is *ultra vires* because it went beyond the statutory authority granted to the COMELEC by Congress.

To elaborate, the COMELEC's constitutional powers relevant to this case are: (a) to "enforce" laws in the conduct of elections,¹⁰ and (b) to "recommend to Congress effective measures" such as "limitation of places where propaganda materials shall be posted."¹¹ Under current legislation, the Fair Election Act regulates the acts of "candidates" and "registered parties," and not private citizens, in relation to election paraphernalia. This is mirrored in COMELEC Resolution No. 10730¹² which implements the statute in connection with the 2022 National and Local Elections. Hence, the *ponencia* accurately holds that the statute and the implementing resolution do not grant authority to the COMELEC to regulate election paraphernalia posted by private individuals within their own private properties.

This does not mean, however, that Congress cannot enact a statute in the future authorizing the COMELEC to impose such size limitations on private citizens' election paraphernalia. Nevertheless, the issue of whether said future statute will pass a constitutional scrutiny cannot be decisively concluded unless an actual case or controversy arises involving that legislation.

To stress, it is my view that, if a law is enacted, Congress may authorize the COMELEC to regulate private citizens' act of displaying election paraphernalia during the campaign period.¹³ Hence, in this case, the implementation of *Oplan Baklas* against private owners was only *ultra vires* for lack of statutory authority. Indeed, a government act may be declared invalid or *ultra vires* when it "goes beyond the limits of its delegated legislative authority,"¹⁴ as in the present case. The COMELEC's act, however, is not unconstitutional in the sense that the COMELEC can still be granted such authority by Congress in case a future statute is enacted. Notably, some of the functions exercised by the COMELEC are based on Article IX-C, Section 2 of the Constitution, while some other functions are

¹⁰ CONST., art. IX, part C, sec. 2(1).

¹¹ CONST., art. IX, part C, sec. 2(7).

¹² Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the "Fair Election Act" in Connection with the May 9, 2022 National and Local Elections, November 17, 2021.

¹³ *The Diocese of Bacolod v. Commission on Elections*, *supra* note 5, at 395, where the Court recognized that a "[r]egulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates . . . , only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only."

¹⁴ *Province of Pampanga v. Executive Secretary*, G.R. No. 195987, January 12, 2021 [Per J. Leonen, *En Banc*].

granted *via* statute. Pursuant to its plenary power, Congress can confer the COMELEC with additional statutory powers subject only to limitations under the Constitution. The fact that COMELEC is not yet given a statutory authority to perform an act does not mean that such act is unconstitutional, *per se*, for violating the limitations provided under the Constitution.

On the other hand, when a government act exceeds constitutionally-imposed limitations, a subsequent legislation that authorizes such act would not cure the unconstitutionality. For this reason, a later-granted statutory authority would still be struck down for being unconstitutional. Thus, it would have been better to state precisely that the implementation of *Oplan Baklas* was an *ultra vires* act rather than to declare such implementation unconstitutional.

Here, the *ponencia* has only sufficiently explained that neither the Fair Election Act “nor the Omnibus Election Code provides statutory basis for COMELEC’s implementation of *Oplan Baklas* against private persons with respect to privately-owned election materials” that are displayed on their private properties.¹⁵ Contrary to the *ponencia*’s conclusion, it does not follow from the lack of statutory authority that the COMELEC’s assailed act would constitute as an “impermissible encroachment” on free speech and expression.¹⁶ For this reason, it would have been more optimal if the *ponencia* concluded in this manner:¹⁷

In fine, the COMELEC’s implementation of “*Oplan Baklas*,” as against St. Anthony [College] et al.[’s election paraphernalia], is ~~unconstitutional~~ *ultra vires* or *invalid for lack of statutory authority*, as it exceeded the bounds of permissible regulation under [Republic Act No.] 9006 and COMELEC Resolution No. 10730. (Emphasis supplied)

Second, I have reservations as regards the *ponencia*’s statement that “the Court’s reasoning in [*Diocese*] applies squarely to the facts at hand[.]”¹⁸ The *ponencia* repeatedly cites *Diocese*, seemingly as a precedent in deciding the present case, which squarely involves private citizens’ expression through election paraphernalia. This, despite the *ponencia*’s acknowledgement that *Diocese* does not involve election paraphernalia¹⁹ as to be binding here. The *ponencia* adds that the COMELEC’s assailed act is

¹⁵ *Ponencia*, p. 23.

¹⁶ *Id.*

¹⁷ See *ponencia*, p. 24.

¹⁸ *Id.* at 23.

¹⁹ *Id.* at 12.

not only an “impermissible encroachment” on St. Anthony College et al.’s right to free speech and expression but also violates their property rights.²⁰

To my mind, while there are certain discussions²¹ in *Diocese* that may be useful in resolving this case, caution must be exercised in anchoring a ruling in the present case on *Diocese* especially in view of the key differences in factual circumstances. Notably, *Diocese* involved a social advocacy, for which reason the Court held that the size limitation there amounts to a content-based regulation. This is due in large part to the effect on free expression that is involved in social advocacy. This must be distinguished from the expression in election paraphernalia.

In *Adiong v. COMELEC*,²² the Court has acknowledged that the line between freedom of expression and permissible regulation is ascertained on a *case-to-case basis, viz.:*

The variety of opinions expressed by the members of this Court in the recent case of *National Press Club v. Commission on Elections*[] and its companion cases underscores how difficult it is to draw a dividing line between permissible regulation of election campaign activities and indefensible repression committed in the name of free and honest elections. In the *National Press Club* case, the Court had occasion to reiterate the preferred status of freedom of expression even as it validated COMELEC regulation of campaigns through political advertisements. *The gray area is rather wide and we have to go on a case to case basis.*²³ (Emphasis supplied)

In *Diocese*,²⁴ the Court carefully differentiated between private individuals’ tarpaulins expressing a *social advocacy* (i.e., Team Patay, Team Buhay) from *election paraphernalia* that exhort the public to vote for a candidate, both of which may be displayed on privately-owned properties.

²⁰ *Id.* at 23.

²¹ See *The Diocese of Bacolod v. Commission on Elections*, *supra* note 5, at 395. The Court held, thus:

Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.

This is not the situation, however, in this case[.]

²² G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., *En Banc*].

²³ *Id.*

²⁴ *Supra* note 5.

The Court recognized the *possibility of abuse* in a case that *clearly involves election paraphernalia*, to wit:

Of course, candidates and political parties do solicit the help of private individuals for the endorsement of their electoral campaigns.

On the one extreme, this can take illicit forms such as when endorsement materials in the form of tarpaulins, posters, or media advertisements are made ostensibly by “friends” but in reality are really paid for by the candidate or political party. This *skirts the constitutional value that provides for equal opportunities for all candidates*.

However, as agreed by the parties during the oral arguments in this case, *this is not the situation that confronts us*. In such cases, it will simply be a matter for investigation and proof of fraud on the part of the COMELEC.


The guarantee of freedom of expression to individuals without any relationship to any political candidate should not be held hostage by the possibility of abuse by those seeking to be elected. It is true that there can be underhanded, covert, or illicit dealings so as to hide the candidate’s real levels of expenditures. However, labelling all expressions of private parties that tend to have an effect on the debate in the elections as election paraphernalia would be too broad a remedy that can stifle genuine speech like in this case. Instead, to address this evil, better and more effective enforcement will be the least restrictive means to the fundamental freedom.

On the other extreme, moved by the credentials and the message of a candidate, others will spend their own resources in order to lend support for the campaigns. This may be without agreement between the speaker and the candidate or his or her political party. In lieu of donating funds to the campaign, they will instead use their resources directly in a way that the candidate or political party would have done so. This may *effectively skirt the constitutional and statutory limits of campaign spending*.

Again, this is *not the situation in this case*.²⁵ (Emphasis supplied)

To emphasize, *Diocese* points out that not regulating private citizens’ manner of expression through election paraphernalia may result in two extremes. *First*, endorsement materials can be “made ostensibly by ‘friends’ but in reality are really paid for by the candidate or political party.” This strategy “*skirts the constitutional value that provides for equal opportunities for all candidates*.” *Second*, non-candidates can opt not to donate funds to their candidates’ campaign but instead use their resources directly in a way

²⁵ *Id.* at 382–383.



that the candidate or political party would have done so. This may *effectively skirt the constitutional and statutory limits of campaign spending*.

To further illustrate, a candidate may spend to print an oversized posters in violation of the COMELEC's regulation and then ask private citizens to display such posters on their properties or walls along the highway. Of course, the private citizens may consent to the use of their properties for such purpose. This strategy may amount to an indirect transgression of election rules on the part of the candidate. Based on these considerations, content-based regulation on election paraphernalia appears to be necessary.

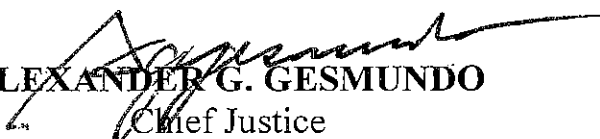
In the present case, considering that the COMELEC's assailed act can already be rendered invalid for lack of statutory authority, it is my view that the Court should exercise judicial restraint in delving into the discussion on freedom of expression and determining what amounts to permissible regulation on election paraphernalia. To stress, the Court should take caution in unduly expanding the application of *Diocese* to situations that squarely involve election paraphernalia.

When the proper case is brought before the Court, it must take into account the two extremes mentioned above when deciding whether to render unconstitutional a future statute that would impose a size limit on election paraphernalia of non-candidates. Such case, however, is not before the Court yet. For now, rendering invalid or *ultra vires* for lack of statutory basis the implementation of the assailed COMELEC resolution is sufficient.

Here, in exercising judicial restraint by not squarely applying *Diocese* to the facts of the case at bar, the Court would be giving the legislature the opportunity to craft laws imposing permissible limitations on private citizens' exercise of their freedom of expression through election paraphernalia so that the aforementioned abuses may be avoided. Nevertheless, it must be underscored that such permissible restrictions must constitute only content-neutral regulations and not prohibit the contents of expression.

All told, it is my view that the resolution of this case should be limited to a declaration that the COMELEC currently lacks statutory authority to impose the size limitations on election paraphernalia that are posted by private citizens within their own properties. Hence, the seizure and destruction of St. Anthony College et al.'s privately-owned election paraphernalia in their private properties are *ultra vires* for lack of statutory basis.

ACCORDINGLY, I vote to **GRANT** the Petition to restrain the implementation of *Oplan Baklas* under COMELEC Resolution No. 10730.


ALEXANDER G. GESMUNDO
Chief Justice