



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**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,

G.R. No. 258805

Present:

GESMUNDO, *C.J.*,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 LAZARO-JAVIER,*
 INTING,**
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO,
 MARQUEZ,
 KHO, JR.,*** and
 SINGH, *JJ.*

-versus-

**COMMISSION ON
 ELECTIONS, 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

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DECISION

MARQUEZ, J.:

It is settled that the Commission on Elections (COMELEC) has broad authority to regulate the election paraphernalia of political candidates. The extent of its authority over election paraphernalia owned and displayed by

* On official business.

** No part.

*** No part.

private persons, however, is less well-defined. The instant controversy presents the Court with an opportunity to determine with certainty the metes and bounds of the COMELEC's power to regulate private speech relating to elections and designed to influence the electorate's choice of political candidates.

Before the Court is a Petition for *Certiorari*, Prohibition, and *Mandamus*¹ filed by petitioners St. Anthony College of Roxas City, Inc. (St. Anthony College), represented by Sr. Geraldine J. Denoga, D.C., Dr. Pilita De Jesus Licalalde, and Dr. Anton Mari Hao Lim (Dr. Lim; collectively, St. Anthony College et al.) against the COMELEC, represented by Acting Chairperson Commissioner Socorro B. Inting, and Director James Arthur B. Jimenez, in his capacity as Spokesperson of the COMELEC and Director IV of the COMELEC Department for Education and Information (EID).²

St. Anthony College et al. are owners or co-owners of tarpaulins, posters, murals, and other materials expressing support and soliciting votes for former Vice President Maria Leonor Gerona Robredo (Robredo), who was a presidential candidate in the May 9, 2022 national and local elections.³ They allege that these privately-owned materials were displayed in their respective private properties but were "forcefully dismantled, removed, destroyed, defaced, and/or confiscated" by the COMELEC's regional or field election officers pursuant to the COMELEC's "*Oplan Baklas*."⁴

According to St. Anthony College et al., the COMELEC's "*Oplan Baklas*" involves the removal and confiscation of "oversized" tarpaulins, posters, and campaign materials, including those owned by private individuals and posted or installed within their premises, residences, or establishments, pursuant to COMELEC Resolution No. 10730.⁵

The pertinent provisions of COMELEC Resolution No. 10730 on the size limits of campaign materials and the COMELEC's authority to remove non-compliant materials provide:

SECTION 6. *Lawful Election Propaganda*. – Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for **all bona fide candidates** seeking national and local elective positions, subject to the limitation on authorized expenses of **candidates and parties**, observation of truth in advertising, and to the supervision and regulation by the COMELEC.

Lawful election propaganda shall include:

¹ *Rollo*, pp. 3–60.

² *Id.* at 7–9.

³ *Id.* at 7–8.

⁴ *Id.* at 8.

⁵ *Id.* at 11. Titled "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" (2021).

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....

c. **Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet**, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;

....

Parties and candidates are hereby encouraged to use recyclable and environment-friendly materials and avoid those that contain hazardous chemicals and substances in the production of their campaign and election propaganda.

In local government units where local legislation governing the use of plastic and other similar materials exist, **parties and candidates** shall comply with the same.

Candidates and parties are required to incorporate sign language interpreters and closed captioning in broadcast election propaganda intended for exhibition on television and/or the internet, and are encouraged to ensure the availability of their respective printed campaign materials in Braille.

....

SECTION 20. *Posting of Campaign Materials.* – **Parties and candidates** may post lawful campaign material in:

a. Authorized common poster areas in public places, subject to the requirements and/or limitations set forth in the next following section; and

b. Private property, provided that the posting has the consent of the owner thereof and that the applicable provisions of Section 6 herein are complied with. The posting of campaign materials in public places outside of the designated common poster areas, on private property without the consent of the owner, or in violation of Section 6 hereof, and in those places enumerated under Section 7 (f) of these Rules and the like, is prohibited. Persons posting the same shall be liable together with the candidates and other persons who caused the posting. It will be presumed that the candidates and parties caused the posting of campaign materials outside the common poster areas if they do not remove the same within three (3) days from notice issued by the Election Officer of the city or municipality where the election propaganda is posted or displayed. (Annex "D" of COMELEC Resolution 9616, series of 2013)

Members of the PNP and other law enforcement agencies called upon by the Election Officer or other COMELEC officials may file the appropriate charges against the violators of this Section.

SECTION 21. *Common Poster Areas.* – Parties and independent candidates may, upon authority of the COMELEC, through the City or Municipal

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Election Officer concerned, construct common poster areas, at their expense, wherein they can post, display, or exhibit their election propaganda to announce or further their candidacy subject to the following requirements and/or limitations:

....

o. No lawful election propaganda materials shall be allowed outside the common poster areas except on private property with the consent of the owner or in such other places mentioned in these Rules and **must comply with the allowable size (2ft x 3ft) requirements for posters.** Any violation hereof shall be punishable as an election offense;

....

SECTION 24. *Headquarters Signboard.* – Before the start of the campaign period, only one (1) signboard, not exceeding three (3) feet by eight (8) feet in size, identifying the place as the headquarters of the party or candidates is allowed to be displayed. Parties may put up the signboard announcing their headquarters not earlier than five (5) days before the start of the campaign period. Individual candidates may put up the signboard announcing their headquarters not earlier than the start of the campaign period. Only lawful election propaganda material may be displayed or posted therein and only during the campaign period.

....

SECTION 26. *Removal, Confiscation, or Destruction of Prohibited Propaganda Materials.* – **Any prohibited form of election propaganda shall be stopped, confiscated, removed, destroyed, or torn down by COMELEC representatives, at the expense of the candidate or political party for whose apparent benefit the prohibited election propaganda materials have been produced, displayed, and disseminated.**

Any person, party, association, government agency may likewise report to the COMELEC any prohibited form of election propaganda for confiscation, removal, destruction and/or prevention of the distribution of any propaganda material on the ground that the same is illegal, as listed under Section 7 of this Resolution.

The COMELEC may, motu proprio, immediately order the removal, destruction and/or confiscation of any prohibited propaganda material, or those materials which contain statements or representations that are illegal. (Emphases and underscoring supplied)

On February 9, 2022, Dr. Lim discovered that COMELEC personnel removed his “oversized” Robredo tarpaulins posted on his private property in Zamboanga City.⁶ According to Dr. Lim, the COMELEC also removed “oversized” Robredo tarpaulins owned by other supporters of Robredo and installed within their private residences and/or establishments in Zamboanga

⁶ *Id.* at 14.

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City.⁷ Two days later, Dr. Lim and other affected supporters sent a demand letter to Atty. Stephen Roy M. Cañete (Atty. Cañete), Election Officer IV of the COMELEC Zamboanga City.⁸ In their letter, Dr. Lim and his companions demanded that the COMELEC cease and desist from illegally removing volunteer-funded materials posted in private properties and volunteer centers.⁹ As of the date of the Petition, they had yet to receive a response from the COMELEC Zamboanga City or Atty. Cañete.¹⁰

In a letter dated February 14, 2022, the COMELEC informed St. Anthony College that the “oversized” Robredo tarpaulins placed in front of its building violated COMELEC Resolution No. 10730, and thus directed the school to remove the tarpaulins within 24 hours.¹¹ Failure to comply would be deemed an election offense.¹² However, St. Anthony College later learned that one of its tarpaulins had already been taken down by the COMELEC on the same day.¹³

Like Dr. Lim, St. Anthony College wrote to the COMELEC maintaining that the latter’s order to remove St. Anthony College’s election materials from its private property is unconstitutional and declaring its intention to retain the tarpaulins within its private property and to refuse entry to any person seeking to remove or destroy these materials.¹⁴ St. Anthony College also demanded that the COMELEC return all the seized tarpaulins, posters, and other campaign materials.¹⁵

On February 16, 2022, personnel of the Philippine National Police (PNP), the Bureau of Fire and Protection, and the COMELEC allegedly removed “oversized” Robredo tarpaulins and posters posted inside and outside the “Leni-Kiko” volunteer center in Santiago, Isabela. This volunteer center is owned by the family of Dr. Licalde.¹⁶ When confronted, the PNP personnel claimed that they were merely complying with the COMELEC’s request.¹⁷

On March 1, 2022, St. Anthony et al. filed the instant Petition, with prayer for temporary restraining order and motion for the conduct of special raffle. In support of their prayer for a temporary restraining order, they claim paramount necessity to prevent further irreparable and grave damage from the COMELEC’s actions.¹⁸

⁷ *Id.*

⁸ *Id.* at 137–143.

⁹ *Id.*

¹⁰ *Id.* at 14.

¹¹ *Id.* at 14–15.

¹² *Id.* at 15.

¹³ *Id.*

¹⁴ *Id.* at 146–149.

¹⁵ *Id.* at 148.

¹⁶ *Id.* at 15.

¹⁷ *Id.*

¹⁸ *Id.* at 48.

On March 8, 2022, the Court issued a temporary restraining order.¹⁹

St. Anthony College et al. invoke the Court's expanded judicial power and argue that a petition for *certiorari* and prohibition is an appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify the acts of the legislative and executive departments.²⁰ They claim that they have been "directly, materially, and personally injured" by the COMELEC's unconstitutional interpretation and implementation of Sections 21(o), 24, and 26, COMELEC Resolution No. 10730, and thus have standing to file the instant Petition.²¹ The injury they suffered "is not just in the form of expenses in the production of the materials[;] worse their cherished political right to speech and expression have been utterly trampled upon and disregarded. Further, their right to property has also been disregarded by the trespass of the COMELEC representatives and other government officials acting under its authority and stead."²² They also claim standing based on their public rights as citizens.²³

As to the requirement of ripeness, St. Anthony College et al. insist that the controversy is sufficiently ripe for adjudication. COMELEC's "erroneous interpretation and implementation of Sections 21(o), 24 and 26 of COMELEC Resolution No. 10730 have both been accomplished and are being threatened to be accomplished, to the detriment of Petitioners, those who may be similarly situated, and the rest of the nation."²⁴ This "constitutes a justiciable controversy . . . as it involves 'a definite and concrete dispute touching on the legal relations of parties having adverse legal interests.'"²⁵ "*Oplan Baklas*" is still being implemented and the COMELEC's acts are capable of repetition, calling for judicial action.²⁶

While St. Anthony College et al. acknowledge the hierarchy of courts, the transcendental importance of the constitutional issues raised and the preferred protection given to political speech justify their direct recourse to the Court.²⁷ They also cite the Court's power to suspend procedural rules in the interest of substantial justice and ask the Court to set aside procedural barriers, if any, in view of the paramount public interest involved in the case.²⁸

On the merits, St. Anthony College et al. argue that COMELEC's erroneous interpretation and implementation of Sections 21(o), 24, and 26,

¹⁹ *Id.* at 150.

²⁰ *Id.* at 218–222.

²¹ *Id.* at 19.

²² *Id.* at 20.

²³ *Id.* at 21.

²⁴ *Id.* at 23.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 24–26.

²⁸ *Id.* at 27.

COMELEC Resolution No. 10730, constitute grave abuse of discretion amounting to lack or excess of jurisdiction.²⁹ The COMELEC has no legal basis to regulate the expressions made by St. Anthony College et al. within their private property as its power to regulate the posting of election propaganda under Sections 3 and 6, Republic Act No. 9006,³⁰ applies only to political parties, party-list groups, and *bona fide* candidates.³¹

The COMELEC also violated St. Anthony College et al.'s constitutional rights to freedom of speech and expression. Its supervisory power does not extend to individuals expressing their preferred candidates in an election by placing election campaign materials on their own property,³² and its content-based regulation does not pass the clear and present danger test because the posting of tarpaulins does not endanger any compelling and substantial state interest.³³

In addition to St. Anthony College et al.'s right of freedom of speech and expression, the COMELEC violated their right not to be deprived of property without due process of law.³⁴ A regulation on the use of property can only be valid if it equalizes opportunity, time, and space for all candidates, and puts a stop to excessive campaign spending.³⁵ These two requisites were not met, as the disputed election materials were produced by volunteer-driven initiatives using their own funds and properties.³⁶

²⁹ *Id.*

³⁰ Titled the "Fair Election Act" (2001). The cited provisions read:

SECTION 3. *Lawful Election Propaganda.* – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

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SECTION 9. *Posting of Campaign Materials.* – The COMELEC may authorize political parties and party-list groups to erect common poster areas for their candidates in not more than ten (10) public places such as plazas, markets, barangay centers and the like, wherein candidates can post, display or exhibit election propaganda: Provided, That the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.

Independent candidates with no political parties, may likewise be authorized to erect common poster areas in no more than ten (10) public places, the size of which shall not exceed four (4) by six (6) feet or its equivalent.

Candidates may post any lawful propaganda material in private places with the consent of the owner thereof, and in public places or property which shall be allocated equitably and impartially among the candidates.

³¹ *Rollo*, pp. 28–34.

³² *Id.* at 35.

³³ *Id.* at 38–43.

³⁴ *Id.* at 43–48.

³⁵ *Id.* at 47.

³⁶ *Id.*

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For its part, the COMELEC seeks the dismissal of the Petition, arguing that a petition for *certiorari*, prohibition, and *mandamus* is not proper as the assailed actions are not judicial, quasi-judicial, or mandatory acts; rather, they were done in the exercise of the COMELEC's quasi-legislative functions.³⁷ Even assuming that this is the correct remedy, however, St. Anthony et al. failed to prove grave abuse of discretion on the part of the COMELEC³⁸ and violated the doctrine of hierarchy of courts, having failed to allege any special and compelling reasons of public interest that would justify their direct recourse to the Court.³⁹ In addition, St. Anthony et al. did not exhaust administrative remedies. While they filed letter-replies before their respective election officers, they filed the present Petition with the Court without waiting for a response or otherwise pursuing administrative relief before the COMELEC itself.⁴⁰

Responding to the substantive arguments raised by St. Anthony College et al., the COMELEC argues that the election materials owned and displayed by St. Anthony College et al., are "political advertisements" or "election propaganda" as defined under Section 1(16), COMELEC Resolution No. 10730, and are thus subject to regulation by the COMELEC.⁴¹

The size limitation on posters is also permissible under Section 2(7), Article IX-C, Constitution,⁴² which specifically allows the COMELEC to regulate the time, manner, and place of election propaganda.⁴³ One such

³⁷ *Id.* at 185–188.

³⁸ *Id.* at 188–190.

³⁹ *Id.* at 190–193.

⁴⁰ *Id.* at 193–198.

⁴¹ The cited provision reads:

16. "Political advertisement," or "election propaganda" refers to **any matter broadcasted, published, printed, displayed or exhibited, in any medium, which contains the name, image, logo, brand, insignia, initials, and other symbol or graphic representation that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office.** In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.

Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which — when taken as a whole — has for its principal object the endorsement of a candidate only, or which were posted in return for consideration or are otherwise capable of pecuniary estimation. (Emphasis supplied)

⁴² The cited provision reads:

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 candidacies.

⁴³ *Rollo*, p. 201.

regulation is found in Section 3, Republic Act No. 9006, which provides the 2 by 3 feet size limit for posters.⁴⁴ Assuming that Section 3, Republic Act No. 9006, is limited to candidates and political parties, the size limitation in Section 82, Batas Pambansa Blg. 881 (Omnibus Election Code)⁴⁵ does not distinguish between candidates and private individuals and is thus applicable to St. Anthony College et al. and other private persons.⁴⁶ This size restriction “furthers the important and substantial governmental interest of ensuring equal opportunity for public information campaigns among candidates, orderly elections, and minimizing election spending,” and does not restrict freedom of expression.⁴⁷ It is a content-neutral regulation within the constitutional power of the Government, and is sufficiently justified by a compelling state interest.⁴⁸

We grant the Petition.

In *Diocese of Bacolod v. Commission on Elections*,⁴⁹ therein petitioners displayed a privately-owned tarpaulin, 6 by 10 feet in size, on private property.⁵⁰ The tarpaulin listed several candidates for election in the May 2013 elections as either “Team Buhay” or “Team Patay.”⁵¹

The COMELEC Law Department deemed the tarpaulin “oversized,” i.e., larger than the size limit of 2 by 3 feet under COMELEC Resolution No.

⁴⁴ *Id.* at 201–202.

⁴⁵ The cited provision reads:

SECTION. 82. Lawful election propaganda. - Lawful election propaganda shall include:

- a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;
- b. Handwritten or printed letters urging voters to vote for or against any particular candidate;
- c. Cloth, paper or cardboard posters, whether framed or posted, with an area exceeding two feet by three feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size, shall be allowed: Provided, That said streamers may not be displayed except one week before the date of the meeting or rally and that it shall be removed within seventy-two hours after said meeting or rally; or
- d. All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission’s authorization shall be published in two newspapers of general circulation throughout the nation for at least twice within one week after the authorization has been granted.

⁴⁶ *Rollo*, pp. 203–204.

⁴⁷ *Id.* at 202–204.

⁴⁸ *Id.* at 204–206.

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

⁵⁰ *Id.* at 314.

⁵¹ *Id.*

9615,⁵² and ordered the petitioners to remove it;⁵³ otherwise, petitioners would be charged with an election offense.⁵⁴ Petitioners filed a petition for *certiorari* and prohibition with application for preliminary injunction and temporary restraining order with the Court.⁵⁵

The COMELEC raised procedural objections similar to its arguments in this case, claiming that *certiorari* is an improper remedy and that petitioners violated the doctrine of hierarchy of courts and exhaustion of administrative remedies.

The Court in that case disposed of the objections relating to its jurisdiction vis-à-vis the COMELEC's jurisdiction in election cases as follows:

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.

.....

The more relevant provision for jurisdiction in this case is Article VIII, Section 5(1) of the Constitution. This provision provides for this court's original jurisdiction over petitions for certiorari and prohibition. This should be read alongside the expanded jurisdiction of the court in Article VIII, Section 1 of the Constitution.

Certainly, a breach of the fundamental right of expression by COMELEC is grave abuse of discretion. Thus, **the constitutionality of the notice and letter coming from COMELEC is within this court's power to review.**

During elections, we have the power and the duty to correct any grave abuse of discretion or any act tainted with unconstitutionality on the part of any government branch or instrumentality. This includes actions by the COMELEC. Furthermore, it is this court's constitutional mandate to protect the people against government's infringement of their fundamental rights. This constitutional mandate

⁵² Titled "Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the 'Fair Election Act,' in connection to the 13 May 2013 National and Local Elections, and Subsequent Elections" (2013). COMELEC Resolution No. 10730—the Resolution relevant to the present controversy—is the counterpart resolution issued by the COMELEC for the May 2022 Elections.

⁵³ 751 Phil. 301, 315 (2015) [Per J. Leonen, *En Banc*].

⁵⁴ *Id.* at 316.

⁵⁵ *Id.* at 317.

outweighs the jurisdiction vested with the COMELEC.⁵⁶ (Citations omitted; emphases and underscoring supplied)

The Court also dismissed the COMELEC's arguments on petitioners' alleged violation of the doctrine of hierarchy of courts, holding that "the Court has 'full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition'"⁵⁷ and that the petition fell within several exceptions to the doctrine.⁵⁸ As to petitioners' alleged failure to exhaust administrative remedies by pursuing available remedies before the COMELEC, the Court held that "[t]he principle of exhaustion of administrative remedies yields in order to protect this fundamental right [to political speech]."⁵⁹

While the Court's decision to allow due course to the petition in *Diocese of Bacolod* was a *pro hac vice* ruling,⁶⁰ the same factors considered by the Court in that case are present here. The COMELEC's actions have created a chilling effect, and St. Anthony College et al. have been threatened with prosecution for the exercise of their right to political speech.

In addition, direct recourse to the Court is justified under the Court's ruling in *Gios-Samar, Inc. v. Department of Transportation and Communication*.⁶¹ In that case, the Court clarified that the decisive factor in permitting the invocation of the Court's original jurisdiction in the issuance of extraordinary writs is the nature of the question raised by the parties, and that **the Court will only allow direct recourse when the issue raised is a pure question of law.**⁶² Thus, "when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case."⁶³

The factual background of the present controversy is not disputed, and the only issue before the Court is a pure question of law, i.e., the extent of the COMELEC's authority to regulate privately-owned election paraphernalia.

⁵⁶ *Id.* at 325–327.

⁵⁷ *Id.* at 330–331, citing *Roque, Jr. v. Commission on Elections*, 615 Phil. 149, 201 (2009) [Per J. Velasco, Jr., *En Banc*].

⁵⁸ *Id.* at 331–335.

⁵⁹ *Id.* at 343.

⁶⁰ See *The Diocese of Bacolod, represented by the Most Rev. Bishop Navarra v. Commission on Elections*, 789 Phil. 197, 208 (2016) [Per J. Leonen, *En Banc*], where the Court denied the motion for reconsideration filed by COMELEC with finality.

⁶¹ 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

⁶² *Ocampo v. Macapagal-Arroyo*, G.R. No. 182734, January 10, 2023 [Per J. Gaerlan, *En Banc*], at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. Citing *Gios-Samar, Inc. v. Department of Transportation and Communication*, 849 Phil. 120 (2019) [Per J. Jardeleza, *En Banc*].

⁶³ 849 Phil. 120, at 129 (2019) [Per J. Jardeleza, *En Banc*].

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Accordingly, the case is ripe for adjudication and, as in *Diocese of Bacolod*, it would be “manifest injustice if the Court does not take jurisdiction over this case.”⁶⁴

Diocese of Bacolod also provides guidance on the resolution of the substantive arguments raised by the parties.

In that case, the Court decided in favor of petitioners, with the Court ruling that the COMELEC’s regulation of the former’s “Team Buhay” and “Team Patay” tarpaulin was unconstitutional. The Court found that their message was primarily an advocacy of a social issue,⁶⁵ as distinguished from election paraphernalia from candidates and political parties, which “are more declarative and descriptive and contain no sophisticated literary allusion to any social objective . . . [and] usually simply exhort the public to vote for a person with a brief description of the attributes of the candidate.”⁶⁶ Accordingly, the Court held that “[r]egulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is unconstitutional.”⁶⁷

While the Court found that the “Team Buhay” and “Team Patay” tarpaulin was not election paraphernalia and that the COMELEC’s regulation of such material was therefore unconstitutional, the Court also clarified that **there may be valid regulation of private speech that amounts to election paraphernalia**. To determine whether such a regulation is valid, the Court provided the following test:

This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.

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**

⁶⁴ *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 327 (2015) [Per J. Leonen, *En Banc*].

⁶⁵ *Id.* at 383.

⁶⁶ *Id.* at 384–385.

⁶⁷ *Id.* at 394–395.

private property.⁶⁸ (Citations omitted; emphases and underscoring supplied)

After providing the above test, the Court in *Diocese of Bacolod* held that the subject tarpaulin constituted social advocacy and not election paraphernalia, and that the size restriction under Section 3.3, Republic Act No. 9006, and Section 6(c), COMELEC Resolution No. 9615, would not pass the test of reasonability:

This is not the situation, however, in this case for two reasons. First, as discussed, **the principal message in the twin tarpaulins of petitioners consists of a social advocacy.**

Second, as pointed out in the concurring opinion of Justice Antonio Carpio, the present law — Section 3.3 of Republic Act No. 9006 and Section 6(c) of COMELEC Resolution No. 9615 — if applied to this case, will not pass the test of reasonability. **A fixed size for election posters or tarpaulins without any relation to the distance from the intended average audience will be arbitrary.** At certain distances, posters measuring 2 by 3 feet could no longer be read by the general public and, hence, would render speech meaningless. **It will amount to the abridgement of speech with political consequences.**⁶⁹ (Emphasis supplied)

While *Diocese of Bacolod* may not be on all fours with the instant case, considering that it involved social advocacy and not election paraphernalia, the Court has also cited the *Diocese of Bacolod* test in a case involving election surveys, which “partake of the nature of election propaganda.”⁷⁰ In *Social Weather Stations, Inc. v. Commission on Elections*,⁷¹ the Court cited *Diocese of Bacolod*, and articulated the above test as the “required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate.”⁷² The Court then applied the *Diocese of Bacolod* test to published election surveys, which have “the tendency to shape voter preferences,” and are thus “declarative speech in the context of an electoral campaign properly subject to regulation.”

We thus proceed to evaluate Resolution No. 9674’s requirement of disclosing the names of subscribers to election surveys in light of the requisites for valid regulation of declarative speech by private entities in the context of an election campaign:

First, the text of Section 5.2(a) of the Fair Election Act supports the inclusion of subscribers among those persons who “paid for the survey[.]” Thus, Resolution No. 9674 is a regulation finding basis in statute.

⁶⁸ *Id.* at 395.

⁶⁹ *Id.* at 395–396.

⁷⁰ *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 517 (2015) [Per J. Leonen, *En Banc*].

⁷¹ *Id.*

⁷² *Id.* at 516.



COMELEC correctly points out that in Section 5.2(a) of the Fair Election Act, those who “commissioned” and those who “paid for” the published survey are separated by the disjunctive term “or.” This disassociates those who “commissioned” from those who “paid for” and identifies them as alternatives to each other. Section 5.2(a) thus requires the disclosure of two (2) classes of persons: “[first,] those who commissioned or sponsored the survey; and [second,] those who paid for the survey.”

The second class makes no distinction between those who pay for a specific survey and those who pay for election surveys in general. Indeed, subscribers do not escape the burden of paying for the component articles comprising a subscription. They may pay for them in aggregate, but they pay for them just the same. From the text of Section 5.2(a), the legislative intent or regulatory concern is clear: “those who have financed, one way or another, the [published] survey” must be disclosed.

Second, not only an important or substantial state interest but even a compelling one reasonably grounds Resolution No. 9674’s inclusion of subscribers to election surveys. Thus, regardless of whether an intermediate or a strict standard is used, Resolution No. 9674 passes scrutiny.

It is settled that constitutionally declared principles are a compelling state interest:

Compelling governmental interest would include constitutionally declared principles. We have held, for example, that “the welfare of children and the State’s mandate to protect and care for them, as *parens patriae*, constitute a substantial and compelling government interest in regulating . . . utterances in TV broadcast.”

Here, we have established that the regulation of election surveys effects the constitutional policy, articulated in Article II, Section 26, and reiterated and affirmed in Article IX-C, Section 4 and Article XIII, Section 26 of the 1987 Constitution, of “guarantee[ing] equal access to opportunities for public service[.]”

Resolution No. 9674 addresses the reality that an election survey is formative as it is descriptive. It can be a means to shape the preference of voters and, thus, the outcome of elections. In the hands of those whose end is to get a candidate elected, it is a means for such end and partakes of the nature of election propaganda. Accordingly, the imperative of “fair” elections impels their regulation.

Lastly, Resolution No. 9674 is “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 is “demonstrably the least restrictive means to achieve that object.”

While it does regulate expression (i.e., petitioners’ publication of election surveys), it does not go so far as to suppress desired expression. There is neither prohibition nor censorship specifically aimed at election surveys. The freedom to publish election surveys remains. All Resolution

No. 9674 does is articulate a regulation as regards the *manner* of publication, that is, that the disclosure of those who commissioned and/or paid for, including those subscribed to, published election surveys must be made.⁷³

In marked contrast to *Diocese of Bacolod*, where the Court found that the restricted speech was in the nature of social advocacy rather than election paraphernalia, the parties do not dispute that the materials subject of the instant controversy are election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency.⁷⁴ These materials are “declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only.”⁷⁵ Accordingly, the application of the *Diocese of Bacolod* test, in accordance with the required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate as enunciated in *Social Weather Stations, Inc. v. Commission on Elections*,⁷⁶ is proper.

The Court finds that the COMELEC’s implementation of “*Oplan Baklas*” as to St. Anthony College et al.’s election paraphernalia is unconstitutional as it is not allowed by law.

The COMELEC’s argument that the election paraphernalia owned by St. Anthony College et al. fall within the definition of “political advertisement” or “election propaganda” under Section 1(16), COMELEC Resolution No. 10730,⁷⁷ and are thus subject to regulation ignores the Court’s express ruling in *Diocese of Bacolod* on the scope of the COMELEC’s regulatory powers under Republic Act No. 9006. As held by the Court in that case, Sections 3 and 9, Republic Act No. 9006, as well as the implementing rules and regulations issued by the COMELEC, apply only to candidates and political parties:

⁷³ *Id.* at 517–520.

⁷⁴ *Rollo*, pp. 9–10 and 91–106.

⁷⁵ *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 395 (2015) [Per J. Leonen, *En Banc*].

⁷⁶ *Social Weather Stations, Inc. v. Commission on Elections*, 757 Phil. 483, 516 (2015) [Per J. Leonen, *En Banc*].

⁷⁷ The cited provision reads:

16. “Political advertisement,” or “election propaganda” refers to any matter broadcasted, published, printed, displayed or exhibited, in any medium, which contains the name, image, logo, brand, insignia, initials, and other symbol or graphic representation that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office. In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.

Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which — when taken as a whole — has for its principal object the endorsement of a candidate only, or which were posted in return for consideration or are otherwise capable of pecuniary estimation.

... Section 9 of the Fair Election Act on the posting of campaign materials only mentions “parties” and “candidates”:

SECTION 9. Posting of Campaign Materials. — The COMELEC may authorize **political parties and party-list groups** to erect common poster areas for their candidates in not more than ten (10) public places such as plazas, markets, barangay centers and the like, wherein **candidates can post, display or exhibit election propaganda**: Provided, That the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.

Independent **candidates** with no political parties may likewise be authorized to erect common poster areas in not more than ten (10) public places, the size of which shall not exceed four (4) by six (6) feet or its equivalent.

Candidates may post any lawful propaganda material in private places with the consent of the owner thereof, and in public places or property which shall be allocated equitably and impartially among the candidates.

Similarly, Section 17 of COMELEC Resolution No. 9615, the rules and regulations implementing the Fair Election Act [for the May 2013 elections], provides as follows:

SECTION 17. Posting of Campaign Materials. — **Parties and candidates** may post any lawful campaign material in:

- a. Authorized common poster areas in public places subject to the requirements and/or limitations set forth in the next following section; and
- b. Private places provided it has the consent of the owner thereof.

The posting of campaign materials in public places outside of the designated common poster areas and those enumerated under Section 7 (g) of these Rules and the like is prohibited. Persons posting the same shall be liable together with the candidates and other persons who caused the posting. It will be presumed that the **candidates and parties** caused the posting of campaign materials outside the common poster areas if they do not remove the same within three (3) days from notice which shall be issued by the Election Officer of the city or municipality where the unlawful election propaganda are posted or displayed.

Members of the PNP and other law enforcement agencies called upon by the Election Officer or other officials of the COMELEC shall apprehend the violators caught in the act, and file the appropriate charges against them.



Respondents considered the tarpaulin as a campaign material in their issuances. **The above provisions regulating the posting of campaign materials only apply to candidates and political parties, and petitioners are neither of the two.**

Section 3 of Republic Act No. 9006 on “Lawful Election Propaganda” also states that these are “allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties. . . .” Section 6 of COMELEC Resolution No. 9615 provides for a similar wording.

These provisions show that **election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties.** Some level of coordination with the candidates and political parties for whom the election propaganda are released would ensure that these candidates and political parties maintain within the authorized expenses limitation.⁷⁸ (Citations omitted; emphases and underscoring supplied)

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, Republic Act No. 9006. To apply the size restrictions under Republic Act No. 9006 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.

Like their counterpart provisions in COMELEC Resolution No. 9615,⁷⁹ which the Court held apply only to candidates and political parties, Sections 6 and 20, COMELEC Resolution No. 10730, refer only to candidates and political parties. Such being the case, they provide no more basis for the COMELEC’s actions in 2022 than COMELEC Resolution No. 9615 did in 2013, and the COMELEC cannot rely on the above-cited provisions of Republic Act No. 9006 or its various implementing rules and regulations to justify its intrusion into the private property of St. Anthony College et al. and the taking of their privately-owned election paraphernalia. The arguments raised by St. Anthony College et al. on this point are well-taken.

⁷⁸ *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 347–349 (2015) [Per J. Leonen, *En Banc*].

⁷⁹ Sections 6 and 17, as discussed above.

The COMELEC's argument that the size limitation in Section 82, Omnibus Election Code, does not distinguish between candidates and private individuals and is thus applicable to St. Anthony College et al. and other private persons⁸⁰ lacks merit, as Section 82, Omnibus Election Code, was impliedly repealed by Republic Act No. 9006.

While implied repeals are disfavored, they are recognized by the Court when there is clear proof of inconsistency so repugnant that the two laws cannot be enforced.⁸¹ In *Genuino v. Commission on Audit*,⁸² the Court cited *Mecano v. Commission on Audit*⁸³ and held:

While it is true that implied repeals are not favored, they are nevertheless not prohibited. In *Mecano v. Commission on Audit*, the Court held:

Implied repeal by irreconcilable inconsistency takes place when **the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, the one law cannot be enforced without nullifying the other.**⁸⁴ (Emphasis supplied; citation omitted)

A comparison of Section 82, Omnibus Election Code, and Section 3, Republic Act No. 9006, will demonstrate that these two provisions are irreconcilably inconsistent and cannot be enforced together:

Omnibus Election Code	Republic Act No. 9006
SECTION 82. Lawful election propaganda. - Lawful election propaganda shall include	SECTION 3. Lawful Election Propaganda. - Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).

⁸⁰ *Rollo*, pp. 203–204.

⁸¹ *De Lima v. Guerrero*, 819 Phil. 616, 725 (2017) [Per J. Velasco, Jr., *En Banc*].

⁸² G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, *En Banc*].

⁸³ 290-A Phil. 272 (1992) [Per J. Campos, Jr., *En Banc*].

⁸⁴ *Genuino v. Commission on Audit*, G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, *En Banc*], at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<p>a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;</p> <p>b. Handwritten or printed letters urging voters to vote for or against any particular candidate;</p> <p>c. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two feet by three feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size, shall be allowed: Provided, That said streamers may not be displayed except one week before the date of the meeting or rally and that it shall be removed within seventy-two hours after said meeting or rally;</p> <p>or</p> <p>d. All other forms of election propaganda not prohibited by this Code as the Commission may authorize after due notice to all interested parties and hearing where all the interested parties were given an equal opportunity to be heard: Provided, That the Commission's authorization shall be published in two newspapers of general circulation throughout the nation for at least twice within one week after the authorization has been granted. (Emphases supplied)</p>	<p>For the purpose of this Act, lawful election propaganda shall include:</p> <p>3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;</p> <p>3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;</p> <p>3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: <i>Provided</i>, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;</p> <p>.....</p> <p>3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act. (Emphases supplied)</p>
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First, the above-quoted provisions regulate the same subject matter: lawful election propaganda. However, and as pointed out by COMELEC itself, Section 82, Omnibus Election Code, does not contain any language limiting its application to candidates or members of political parties. In contrast, Section 3, Republic Act No. 9006, enumerates "registered political

parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions.” The express mention of candidates and political parties in Republic Act No. 9006, the later law, limits the definition of election propaganda to materials paid for, and displayed by, candidates and political parties.⁸⁵ **To rule that Section 82, Omnibus Election Code, permits the COMELEC to regulate private election materials on private property, would render ineffective the limitation introduced by Republic Act No. 9006.**

Second, the Omnibus Election Code and Republic Act No. 9006 impose different restrictions on election propaganda. While the size limitations are the same, paragraph c, Section 82, Omnibus Election Code, provides that on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three feet by eight feet in size may be displayed **one week before the date of the meeting or rally** and must be **removed within 72 hours after said meeting or rally**. On the other hand, par. 3.3, Section 3, Republic Act No. 9006, provides that these streamers may be displayed **five days before the date of the meeting or rally** and must be **removed within 24 hours after said meeting or rally**.

⁸⁵ See *Genuino v. Commission on Audit*, G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, *En Banc*]. In finding that the 1987 Constitution impliedly repealed Presidential Decree No. 1869, the Court emphasized that sec. 2, art. XII-D, 1987 Constitution, expressly mentions government-owned or controlled corporations with original charters, while its counterpart provision in the 1973 Constitution did not:

This repeal by implication becomes even more evident if We take notice of the fact that PD 1869 was enacted in 1983, or before the promulgation of the 1987 Constitution. Thus, when PD 1869 was passed, it was under the authority of the 1973 Constitution, under which Art. XII-D, Sec. 2 states:

SECTION 2. The Commission on Audit shall have the following powers and functions:

(1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property.

Interestingly, Art. IX-D, Sec. 3 of the 1987 Constitution which prohibits the passage of a law exempting any government entity from the jurisdiction of the COA, neither existed nor had a counterpart provision in the 1973 Constitution.

While the above-cited provision may seem essentially similar to its counterpart in the 1987 Constitution, a closer look will reveal one significant difference: the provision in the 1987 Constitution specifically mentions government-owned or controlled corporations with original charters, while the 1973 Constitution version did not. In the Court's view, this reveals the clear intention of the framers of the 1987 Constitution to strengthen and widen the audit jurisdiction of the COA. (Emphasis and underscoring supplied)

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Under the contemporaneous construction rule, “the practice and interpretive regulations by officers, administrative agencies, departmental heads, and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a statute.”⁸⁶ In this regard, it bears emphasis that it is the restriction under par. 3.3, Section 3, Republic Act No. 9006, that the COMELEC implemented in the 2001, 2004, 2007, 2010, 2013, 2016, 2019, and 2022 national and local elections,⁸⁷ and not the restriction under par. c, Section 82, Omnibus Election Code. Thus, the COMELEC’s own contemporaneous construction demonstrates that Section 3, Republic Act No. 9006, impliedly repealed Section 82, Omnibus Election Code.

Third, Republic Act No. 9006 expressly repealed⁸⁸ Section 85, Omnibus Election Code,⁸⁹ and Sections 10 and 11, Republic Act No. 6646.⁹⁰

⁸⁶ J. Kho, Concurring and Dissenting Opinion in *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, *En Banc*], at 17. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

⁸⁷ COMELEC Resolution No. 10730, sec. 6(c); COMELEC Resolution No. 10488, sec.6(d); COMELEC Resolution No. 10049, sec. 6(d); COMELEC Resolution No. 9615, sec. 6(d); COMELEC Resolution No. 8758, sec. 8(d); COMELEC Resolution No. 7767, sec. 10(d); COMELEC Resolution No. 6520, sec. 10(d); COMELEC Resolution No. 3636, sec. 9(c).

⁸⁸ Republic Act No. 9006, sec. 14.

⁸⁹ SECTION. 85. Prohibited forms of election propaganda. - It shall be unlawful:

- a. To print, publish, post or distribute any poster, pamphlet, circular, handbill, or printed matter urging voters to vote for or against any candidate unless they bear the names and addresses of the printer and payor as required in Section 84 hereof;
- b. To erect, put up, make use of, attach, float or display any billboard, tinplate-poster, balloons and the like, of whatever size, shape, form or kind, advertising for or against any candidate or political party;
- c. To purchase, manufacture, request, distribute or accept electoral propaganda gadgets, such as pens, lighters, fans of whatever nature, flashlights, athletic goods or materials, wallets, shirts, hats, bandanas, matches, cigarettes and the like, except that campaign supporters accompanying a candidate shall be allowed to wear hats and/or shirts or T-shirts advertising a candidate;
- d. To show or display publicly any advertisement or propaganda for or against any candidate by means of cinematography, audio-visual units or other screen projections except telecasts which may be allowed as hereinafter provided; and
- e. For any radio broadcasting or television station to sell or give free of charge air time for campaign and other political purposes except as authorized in this Code under the rules and regulations promulgated by the Commission pursuant thereto.

Any prohibited election propaganda gadget or advertisement shall be stopped, confiscated or torn down by the representative of the Commission upon specific authority of the Commission.

⁹⁰ SECTION. 10. *Common Poster Areas*. – The Commission shall designate common poster areas in strategic public places such as markets, barangay centers and the like wherein candidates can post, display, or exhibit election propaganda to announce or further their candidacy.

Whenever feasible common billboards may be installed by the Commission and/or non-partisan private or civic organizations which the Commission may authorize whenever available, after due notice and

This express repeal further bolsters the conclusion that Congress intended for election propaganda to be governed by Republic Act No. 9006, not the Omnibus Election Code or any other law.

This conclusion is further supported by the discussion of the Bicameral Conference Committee on the Disagreeing Provisions of SB No. 1742 and HB No. 9000:

CHAIRMAN ROCO. Yes. Yes. So, okay. **Section 3, there is a small item on Section 3, we are now both on lawful election propaganda. That's the . . . We lifted this from Section 82. So they're essentially the same.**

CHAIRMAN SYJUCO. Mr. Chairman.

CHAIRMAN ROCO. Yes, please.

CHAIRMAN SYJUCO. **Both House and Senate versions seek to amend Section 82 . . . of B.P. Bilang 881.** May I propose that the House and Senate versions be merged to read as follows: *Section 3. Section 82 of Batas Pambansa Bilang 881, as amended, is hereby further amended to read as follows: "Section 82. Lawful Election Propaganda.*

CHAIRMAN SYJUCO. (continuing) . . . cards, decals, stickers or other written or printed materials, the size of which does not exceed 8 and one-half inches in width and 14 inches in length.

....

CHAIRMAN ROCO. Yes. Mr. Chairman, and I mean subject to the members' consent, again in principle, we don't find any difficulty with this. So, this is acceptable, essentially.

Can I just call attention to a styling change. **Because we are now making it into a separate statute with the Declaration of Principle. Section 3,**

hearing, in strategic places where it may be readily seen or read, with the heaviest pedestrian and/or vehicular traffic in the city or municipality.

The space in such common poster areas or billboards shall be allocated free of charge, if feasible, equitably and impartially among the candidates in the province, city or municipality.

SECTION 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: (a) to draw, paint, inscribe, write, post, display or publicly exhibit any election propaganda in any place, whether private or public, except in the common poster areas and/or billboards provided in the immediately preceding section, at the candidate's own residence, or at the campaign headquarters of the candidate or political party: Provided, That such posters or election propaganda shall in no case exceed two (2) feet by three (3) feet in area: Provided, further, That at the site of and on the occasion of a public meeting or rally, streamers, not more than two (2) and not exceeding three (3) feet by eight (8) feet each may be displayed five (5) days before the date of the meeting or rally, and shall be removed within twenty-four (24) hours after said meeting or rally; and (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.

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we have to be already lawful election propaganda, no. In other words, we will no longer say that Section 82 is hereby amended as follows: The amendatory clause will then be all contained in the repealing of the amendatory clauses. We put it all together so that it becomes a new independent statute. I mean it looks great actually for the new Speaker, especially if we can get this done and approve this on Monday, that on his first week, basically in less than one week, you have a law.⁹¹ (Emphasis and underscoring supplied)

In sum, Congress did not pass Republic Act No. 9006 seeking to carve out a rule specific to candidates and political parties while retaining Section 82, Omnibus Election Code, as the rule applicable to the general public. On the contrary, Congress intended to *amend* Section 82, Omnibus Election Code, by reproducing it **with modifications** in Republic Act No. 9006. Consequently, Section 82 has been impliedly repealed by Section 3, Republic Act No. 9006, and COMELEC cannot justify its assailed actions by citing the Omnibus Election Code.

Because neither Republic Act No. 9006 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 displayed on private property, the COMELEC's implementation of "*Oplan Baklas*" as to the election materials owned and displayed by St. Anthony College et al. is an impermissible encroachment on the latter's right to freedom of speech and expression.

Absent any legal basis for the removal of St. Anthony College et al.'s election paraphernalia, "*Oplan Baklas*" also violates their property rights. The COMELEC does not dispute that St. Anthony College et al. own the election materials or properties subject of the present Petition. Thus, the Court's reasoning in *Diocese of Bacolod* applies squarely to the facts at hand:

Even though the tarpaulin is readily seen by the public, **the tarpaulin remains the private property of petitioners. Their right to use their property is likewise protected by the Constitution.**

.....

COMELEC Resolution No. 9615 and the Fair Election Act intend to prevent the posting of election propaganda in private property without the consent of the owners of such private property. COMELEC has incorrectly implemented these regulations. **Consistent with our ruling in *Adiong*, we find that the act of respondents in seeking to restrain petitioners from posting the tarpaulin in their own private property is an impermissible encroachment on the right to property.**⁹² (Citations omitted; emphasis supplied)

⁹¹ Minutes of the Meeting of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1742 and House Bill No. 9000, November 23, 2000, pp. 8–10.

⁹² *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 396–398 (2015) [Per J. Leonen, *En Banc*].



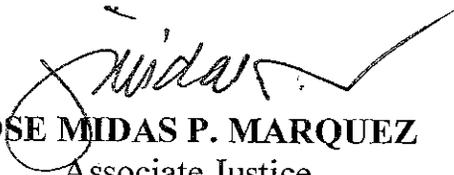
The Court has always protected political speech as one of the most important expressions guaranteed by the Constitution, and freedom of speech and expression is at the core of civil liberties and must be protected at all costs for the sake of democracy.⁹³ While the Court acknowledges the zeal and dedication with which the COMELEC performs its duties and fulfills its mandate to ensure free and fair elections, the best intentions cannot justify impermissible infringements on constitutional rights. After all:

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.**⁹⁴
(Emphasis and underscoring supplied)

In fine, the COMELEC's **implementation** of "*Oplan Baklas*" as against St. Anthony et al., is unconstitutional as it exceeded the bounds of permissible regulation under Republic Act No. 9006 and COMELEC Resolution No. 10730.

ACCORDINGLY, the instant Petition is **GRANTED**. The temporary restraining order previously issued is made **PERMANENT**. The seizure and destruction of privately-owned tarpaulins, posters, billboards, murals, and other election materials installed or posted on private properties are declared **UNCONSTITUTIONAL**. The Commission on Elections is ordered to return and/or restore the election materials belonging to petitioners St. Anthony College of Roxas, Inc., Dr. Pilita De Jesus Liceralde, and Dr. Anton Mari Hao Lim within 15 days from finality of this Decision.

SO ORDERED.


JOSE MIDAS P. MARQUEZ
Associate Justice

⁹³ See *GMA Network, Inc. v. Commission on Elections*, 742 Phil. 174, 228 (2014) [Per J. Peralta, *En Banc*], citing *In the Matter of the Allegations Contained in the Columns of Mr. Macasaet Published in Malaya Dated September 19, 20 and 21, 2007*, 583 Phil. 391, 437 (2008) [Per J. R.T. Reyes, *En Banc*].

⁹⁴ *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 325 (2015) [Per J. Leonen, *En Banc*].

WE CONCUR:

Please see separate opinion
Agree
ALEXANDER G. GESMUNDO
Chief Justice

Concur. see separate opinion.

[Signature]
MARYIC M.V.F. LEONEN
Associate Justice

[Signature]
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
But let her vote
see concurrence

[Signature]
RAMON RALL L. HERNANDO
Associate Justice

[Signature]
AMY C. LAZARO-JAVIER
Associate Justice
(On Official Business)

no part
HENRI JEAN PAUL B. INTING
Associate Justice

[Signature]
RODIL V. ZALAMEDA
Associate Justice

Please see dissent
[Signature]
MARIO N. LOPEZ
Associate Justice

[Signature]
SAMUEL H. GAERLAN
Associate Justice

[Signature]
RICARDO R. ROSARIO
Associate Justice

[Signature]
JHOSEP Y. LOPEZ
Associate Justice

[Signature]
JAPAR B. DIMAAMPAO
Associate Justice

no part
ANTONIO T. KHO, JR.
Associate Justice

[Signature]
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice