



Republic of the Philippines
Supreme Court
Baguio City

EN BANC

RAPPLER, INC.,
 Petitioner,

G.R. No. 222702

Present:

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

- versus -

ANDRES D. BAUTISTA,
 Respondent.

Promulgated:

April 5, 2016

x

M. Forlongan - Thomas

RESOLUTION

CARPIO, J.:

Petitioner Rappler, Inc. (petitioner) filed a petition for *certiorari* and prohibition against Andres D. Bautista (respondent), in his capacity as Chairman of the Commission on Elections (COMELEC). The petition seeks to nullify Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the Memorandum of Agreement (MOA) on the 2016 presidential and vice-presidential debates, for being executed without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and for violating the fundamental rights of petitioner protected under the Constitution. The MOA, signed on 13 January 2016, was executed by the COMELEC through its Chairman, respondent Bautista, and the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP), and the various media networks, namely: ABS-CBN Corporation, GMA Network, Inc., Nine Media

* On official leave.

W

Corporation, TV5 Network, Inc., Philstar Daily, Inc., Philippine Daily Inquirer, Inc., Manila Bulletin Publishing Corporation, Philippine Business Daily Mirror Publishing, Inc., and petitioner. Under the MOA, the KBP was designated as Debate Coordinator while ABS-CBN, GMA, Nine Media, and TV5, together with their respective print media partners were designated as Lead Networks.

Petitioner alleged that on 21 September 2015, respondent called for a meeting with various media outlets to discuss the “PiliPinas 2016 Debates,” for presidential and vice-presidential candidates, which the COMELEC was organizing.¹ Respondent showed a presentation explaining the framework of the debates, in which there will be three presidential debates and one vice presidential debate. Respondent proposed that petitioner and Google, Inc. be in charge of online and social media engagement. Respondent announced during the meeting that KBP will coordinate with all media entities regarding the organization and conduct of the debates.

On 22 September 2015, petitioner sent a proposed draft for broadcast pool guidelines to COMELEC and the KBP. A broadcast pool has a common audio and video feed of the debates, and the cost will be apportioned among those needing access to the same. KBP informed petitioner that the proposal will be discussed in the next meeting.

On 19 October 2015, another meeting was held at the COMELEC office to discuss a draft MOA on the debates. In the draft, petitioner and Google's participation were dropped in favor of the online outlets owned by the Lead Networks. After the meeting, the representatives of the Lead Networks drew lots to determine who will host each leg of the debates. GMA and its partner Philippine Daily Inquirer sponsored the first presidential debate in Mindanao on 21 February 2016; TV5, Philippine Star, and Businessworld sponsored the second phase of presidential debate in the Visayas on 20 March 2016; ABS-CBN and Manila Bulletin will sponsor the presidential debate to be held in Luzon on 24 April 2016; and the lone vice-presidential debate will be sponsored by CNN, Business Mirror, and petitioner on 10 April 2016. Petitioner alleged that the draft MOA permitted online streaming, provided proper attribution is given the Lead Network.

¹ Section 7.3 of Republic Act No. 9006 (Fair Election Act) provides:

7.3. The COMELEC may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates. The debates among presidential candidates shall be scheduled on three (3) different calendar days: the first debate shall be scheduled within the first and second week of the campaign period; the second debate within the fifth and sixth week of the campaign period; and the third debate shall be scheduled within the tenth and eleventh week of the campaign period.

The sponsoring television or radio network may sell airtime for commercials and advertisements to interested advertisers and sponsors. The COMELEC shall promulgate rules and regulations for the holding of such debates.



On 12 January 2016, petitioner was informed that the MOA signing was scheduled the following day. Upon petitioner's request, the draft MOA was emailed to petitioner on the evening of 12 January 2016. Petitioner communicated with respondent its concerns regarding certain provisions of the MOA particularly regarding online streaming and the imposition of a maximum limit of two minutes of debate excerpts for news reporting. Respondent assured petitioner that its concerns will be addressed afterwards, but it has to sign the MOA because time was of the essence. On 13 January 2016, petitioner, along with other media networks and entities, executed the MOA with the KBP and the COMELEC for the conduct of the three presidential debates and one vice-presidential debate. Petitioner alleged that it made several communications with respondent and the COMELEC Commissioners regarding its concerns on some of the MOA provisions, but petitioner received no response. Hence, this petition.

In this petition for *certiorari* and prohibition, petitioner prays for the Court to render judgment:

- a. Declaring null and void, for being unconstitutional, pertinent parts of the Memorandum of Agreement that violate the rights of the Petitioner, specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 [of the MOA];
- b. Prohibiting the Respondent from implementing specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA;
- c. Pending resolution of this case, issuing a Preliminary Injunction enjoining the Respondent from implementing Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA; and
- d. Pending resolution of this case, issuing a Preliminary Mandatory Injunction requiring the Respondent to ensure an unimpaired and equal access to all mass media, online or traditional, to all the Debates.²

Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA read:

VI
ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x

² *Rollo*, p. 28.



C. ONLINE STREAMING

x x x x

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;

D. NEWS REPORTING AND FAIR USE

20. Allow a maximum of two minutes of excerpt from the debates they have produced to be used for news reporting or fair use by other media or entities as allowed by the copyright law: Provided, that the use of excerpts longer than two minutes shall be subject to the consent of the Lead Network concerned;³

Respondent argues that the petition should be dismissed for its procedural defects. In several cases, this Court has acted liberally and set aside procedural lapses in cases involving transcendental issues of public interest,⁴ especially when time constraint is a factor to be considered, as in this case. As held in *GMA Network, Inc. v. Commission on Elections*:⁵

Respondent claims that *certiorari* and prohibition are not the proper remedies that petitioners have taken to question the assailed Resolution of the COMELEC. Technically, respondent may have a point. However, considering the very important and pivotal issues raised, and the limited time, such technicality should not deter the Court from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance. “[T]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.⁶

The urgency to resolve this case is apparent considering that the televised debates have already started and only two of the scheduled four national debates remain to be staged.⁷ And considering the importance of the

³ Id. at 40-41.

⁴ *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Barin*, 553 Phil. 1 (2007); *Rivera v. Hon. Espiritu*, 425 Phil. 169 (2002).

⁵ G.R. Nos. 205357, 205374, 205592, 205852, and 206360, 2 September 2014, 734 SCRA 88.

⁶ Id. at 126.

⁷ The first presidential debate, sponsored by GMA and its print media partner, Philippine Daily Inquirer, was held in Cagayan de Oro City on 21 February 2016. The second presidential debate, sponsored by TV5 and its partners, Philippine Star and BusinessWorld, was held in Cebu City on 20 March 2016. ABS-CBN and its print media partner, Manila Bulletin, will sponsor the last presidential debate, which will be held in Pangasinan on 24 April 2016. The sole vice-presidential debate will be sponsored by CNN Philippines, in partnership with Business Mirror and petitioner Rappler, in Manila on 10 April 2016; <<http://www.philstar.com/news-feature/2016/02/24/1556331/infographic-presidential-debates-schedule>>; <<http://cnnphilippines.com/news/2016/01/13/comelec-presidential-debates-cnn-philippines-gma-abs-cbn-tv5-philippine-star-rappler-business-mirror-manila-bulletin.html>>.

2

debates in informing the electorate of the positions of the presidential and vice-presidential candidates on vital issues affecting the nation, this case falls under the exception laid down in *GMA Network, Inc. v. Commission on Elections*.

Petitioner is a signatory to the MOA. In fact, the sole vice-presidential debate, to be held in Manila on 10 April 2016, will be sponsored by CNN Philippines (owned and operated by Nine Media Corporation) and its partners Business Mirror and petitioner. Petitioner, however, is alleging that it is being discriminated particularly as regards the MOA provisions on live audio broadcast via online streaming. Petitioner argues that the MOA grants radio stations the right to simultaneously broadcast live the audio of the debates, even if the radio stations are not obliged to perform any obligation under the MOA. Yet, this right to broadcast by live streaming online the audio of the debates is denied petitioner and other online media entities, which also have the capacity to live stream the audio of the debates. Petitioner insists that it signed the MOA believing in good faith the issues it has raised will be resolved by the COMELEC.

The provisions on Live Broadcast and Online Streaming under the MOA read:

VI

ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x

B1. LIVE BROADCAST

10. Broadcast the debates produced by the Lead Networks in their respective television stations and other news media platforms;
11. Provide a live feed of the debate to other radio stations, other than those of the Lead Network's, for simultaneous broadcast;
12. Provide a live feed of the debates produced by them to radio stations not belonging to any of the Lead Networks for simultaneous broadcast;

x x x x

C. ONLINE STREAMING

17. Live broadcast the debates produced by the Lead Networks on *their* respective web sites and social media sites for free viewing by the public;
18. Maintain a copy of the debate produced by the Lead Network on its on-line site(s) for free viewing by the public during the period of elections



or longer;

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;⁸ (Boldfacing and underscoring supplied)

Petitioner's demand to exercise the right to live stream the debates is a contractual right of petitioner under the MOA. Under Part VI (C), paragraph 19 of the MOA, the Lead Networks are expressly mandated to “**allow the debates they have produced to be shown or streamed on other websites,**” but “**subject to copyright conditions or separate negotiations with the Lead Networks.**” The use of the word “or” means that compliance with the “copyright conditions” is sufficient for petitioner to exercise its right to live stream the debates in its website.

The “copyright conditions” refer to the limitations on copyright as provided under Section 184.1(c) of the Intellectual Property Code (IPC), thus:

SEC. 184. *Limitations on Copyright.* – 184.1 Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

x x x x

(c) **The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved; Provided, That the source is clearly indicated;** (Sec. 11, P.D. No. 49) (Boldfacing and underscoring supplied)

Under this provision, the debates fall under “**addresses and other works of the same nature.**” Thus, the copyright conditions for the debates are: (1) **the reproduction or communication to the public by mass media of the debates is for information purposes;** (2) **the debates have not been expressly reserved by the Lead Networks (copyright holders);** and (3) **the source is clearly indicated.**

Condition 1 is complied because the live streaming by petitioner is obviously for information purposes. Condition 2 is also complied because Part VI (C), paragraph 19 of the MOA expressly “**allow[s] the debates x x x to be shown or streamed on other websites,**” including petitioner's website. This means that the “reproduction or communication (of the debates) to the

⁸ *Rollo*, p. 40.

public by mass media x x x has not been expressly reserved” or withheld. Condition 3 is complied by clearly indicating and acknowledging that the source of the debates is one or more of the Lead Networks.

Part VI (C), paragraph 19 of the MOA, which expressly allows the debates produced by the Lead Networks to be shown or streamed on other websites, **clearly means that the Lead Networks have not “expressly reserved” or withheld the use of the debate audio for online streaming.** In short, the MOA expressly allows the live streaming of the debates subject only to compliance with the “copyright conditions.” Once petitioner complies with the copyright conditions, petitioner can exercise the right to live stream the audio of the debates as expressly allowed by the MOA.

Under the MOA, the Lead Networks are mandated to promote the debates for maximum audience.⁹ **The MOA recognizes the public function of the debates and the need for the widest possible dissemination of the debates. The MOA has not reserved or withheld the reproduction of the debates to the public but has in fact expressly allowed the reproduction of the debates “subject to copyright conditions.”** Thus, petitioner may live stream the debate in its entirety by complying with the “copyright conditions,” including the condition that “the source is clearly indicated” and that there will be no alteration, which means that the streaming will include the proprietary graphics used by the Lead Networks. If petitioner opts for a clean feed without the proprietary graphics used by the Lead Networks, in order for petitioner to layer its own proprietary graphics and text on the same, then petitioner will have to negotiate separately with the Lead Networks. Similarly, if petitioner wants to alter the debate audio by deleting the advertisements, petitioner will also have to negotiate with the Lead Networks.

Once the conditions imposed under Section 184.1(c) of the IPC are complied with, the information - in this case the live audio of the debates - now forms part of the public domain. There is now freedom of the press to report or publicly disseminate the live audio of the debates. In fact, the MOA recognizes the right of other mass media entities, not parties to the MOA, to reproduce the debates subject only to the same copyright conditions. The freedom of the press to report and disseminate the live audio of the debates, subject to compliance with Section 184.1(c) of the IPC, can no longer be infringed or subject to prior restraint. Such freedom of the press to report and disseminate the live audio of the debates is now protected and guaranteed under Section 4, Article III of the Constitution, which provides that “[N]o law shall be passed abridging the freedom x x x of the press.”

⁹ Under Part VI (A) (7) of the MOA, the Lead Networks shall “[p]romote the debates for maximum audience.”

The presidential and vice-presidential debates are held primarily for the benefit of the electorate to assist the electorate in making informed choices on election day. Through the conduct of the national debates among presidential and vice-presidential candidates, the electorate will have the “opportunity to be informed of the candidates’ qualifications and track record, platforms and programs, and their answers to significant issues of national concern.”¹⁰ The political nature of the national debates and the public’s interest in the wide availability of the information for the voters’ education certainly justify allowing the debates to be shown or streamed in other websites for wider dissemination, in accordance with the MOA.

Therefore, the debates should be allowed to be live streamed on other websites, including petitioner’s, as expressly mandated in Part VI (C), paragraph 19 of the MOA. The respondent, as representative of the COMELEC which provides over-all supervision under the MOA, including the power to “resolve issues that may arise among the parties involved in the organization of the debates,”¹¹ should be directed by this Court to implement Part VI (C), paragraph 19 of the MOA, which allows the debates to be shown or live streamed unaltered on petitioner’s and other websites subject to the copyright condition that the source is clearly indicated.

WHEREFORE, we **PARTIALLY GRANT** the petition. Respondent Andres D. Bautista, as Chairman of the COMELEC, is directed to implement Part VI (C), paragraph 19 of the MOA, which allows the debates to be shown or live streamed unaltered on petitioner’s and other websites

¹⁰ Stated on one of the WHEREAS clauses of the MOA.

¹¹ The MOA enumerates the roles and responsibilities of the COMELEC:

IV
ROLES AND RESPONSIBILITIES OF COMELEC


The COMELEC shall:

1. Formulate the policies, rules, and guidelines to be followed in organizing and conducting the debates pursuant to Section 7.3 of R.A. 9006;
2. Resolve issues that may arise among the parties involved in the organization of the debates;
3. Arrange the participation of the candidates in the debates, including the negotiations of the terms and conditions of participation. In this regard, a separate memorandum of agreement shall be executed between COMELEC and the participating candidates in order to specify the candidates’ roles and the rules which shall be binding upon them;
4. Approve the venue, format and mechanics for the debates;
5. Approve the debate moderators, panelists, and on-site live audiences for the debates proposed by the Lead Networks;
6. Approve the topics of the debates, in consultation with the Lead Networks, to ensure that they are in accordance with the objectives defined above and are consistent with the relevant election laws;
7. Enlist the support of other agencies or organizations in the preparation and conduct of the debates;
8. Provide guidelines for media coverage of the debates in accordance with election laws and this Agreement;
9. Provide over-all supervision for the debates.



subject to the copyright condition that the source is clearly indicated. Due to the time constraint, this Resolution is immediately executory.

SO ORDERED.




ANTONIO T. CARPIO
Associate Justice


WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice



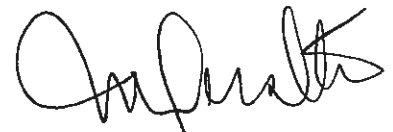
PRESBITERO J. VELASCO, JR.
Associate Justice



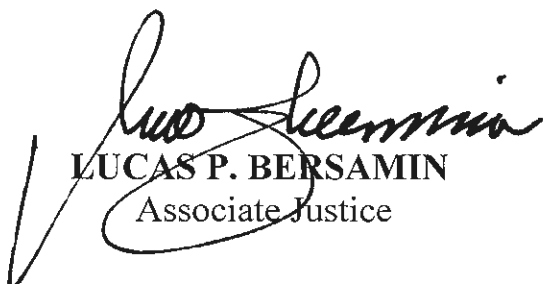
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



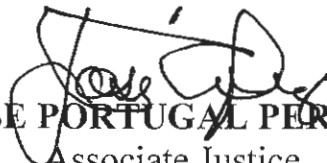
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
 Associate Justice



JOSE CATRAL MENDOZA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
 Associate Justice


I concur. So separate opinion.

MARVIC M.V.F. LEONEN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

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

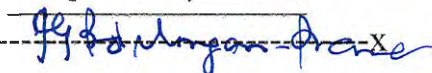

MARIA LOURDES P. A. SERENO
 Chief Justice

EN BANC

G.R. No. 222702: RAPPLER, INC., *petitioner* v. ANDRES D. BAUTISTA, *respondent*.

Promulgated:
April 5, 2016

x-----



CONCURRING OPINION

LEONEN, J.:

I concur.

In addition, I disagree that petitioner availed itself of the wrong remedy in raising before this Court a controversy involving the fundamental right to free speech.

I

Respondent argues that petitioner availed itself of the wrong remedy since certiorari cannot challenge “‘purely executive or administrative functions’ of agencies.”¹ Moreover, prohibition cannot lie as respondent was not exercising any ministerial function in entering into the Memorandum of Agreement on behalf of the Commission on Elections.² Respondent submits that petitioner ultimately seeks the reformation of a contract, and such cause of action should have been brought before the trial courts.³

A petition for certiorari and prohibition lies when an officer gravely abuses his or her discretion.

The Constitution provides for this Court’s expanded power of judicial review “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”⁴ This proviso was borne out of our country’s experience under Martial Law, to extend judicial review “to review political discretion that clearly breaches fundamental values and

¹ *Rollo*, p. 183, Comment, citing *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 108 (2013) [Per J. Bersamin, En Banc].

² *Id.*

³ *Id.* at 183–184.

⁴ CONST., art. VIII, sec. 1.



principles congealed in provisions of the Constitution.”⁵ Under the present Constitution, this Court has the power to resolve controversies involving acts done by any government branch or instrumentality with grave abuse of discretion.⁶

Procedurally, our Rules of Court provides for two (2) remedies in determining the existence of any grave abuse of discretion pursuant to this Court’s constitutional mandate: that is, the special civil actions for certiorari and prohibition under Rule 65.⁷

A petition for certiorari may be filed “[w]hen any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]”⁸ A petition for prohibition may be filed “[w]hen the proceedings of any tribunal, corporation, board, officer or person, whether exercising *judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]”⁹

Still, respondent’s contention that he only exercised administrative functions¹⁰ in relation to the Memorandum of Agreement fails to convince. Jurisprudence holds that the remedies of certiorari and prohibition have broader scope before this Court:

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial*

⁵ See J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. Nos. 208566, November 19, 2013, 710 SCRA 1, 290 [Per J. Perlas-Bernabe, En Banc].

⁶ Id.

⁷ *Araullo v. Aquino III*, G.R. Nos. 209287, July 1, 2014, 728 SCRA 1, 71 [Per J. Bersamin, En Banc]. Chief Justice Sereno, Associate Justices Peralta, Villarama, Jr., Perez, Mendoza, and Reyes concurred. Senior Associate Justice Carpio wrote a Separate Opinion. Associate Justice Velasco joined Associate Justice Del Castillo’s Separate Concurring and Dissenting Opinion. Associate Justice Brion wrote a Separate Opinion. Associate Justices Perlas-Bernabe and Leonen wrote Separate Concurring Opinions. Associate Justice Leonardo-De Castro took no part. In this Court’s February 3, 2015 Resolution <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/209287.pdf>> 8 [Per J. Bersamin, En Banc], the ponencia discussed; “The procedural challenges raised by the respondents, being a mere rehash of their earlier arguments herein, are dismissed for being already passed upon in the assailed decision.” See also *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 11 [Per J. Leonen, En Banc].

⁸ RULES OF COURT, Rule 65, sec. 1. Emphasis supplied.

⁹ RULES OF COURT, Rule 65, sec. 2. Emphasis supplied.

¹⁰ *Rollo*, p. 183, Comment.

l

functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.¹¹ (Emphasis supplied, citations omitted)

We recognize the need for a studied balance between complying with our duty under Article VIII, Section 1 of the Constitution and ensuring against acting as an advisory organ. We maintain our policy of judicial deference, but always vigilant against any grave abuse of discretion with its untold repercussions on fundamental rights.

Procedural lapses pursuant to the Rules of Court¹² cannot limit this Court's constitutional powers, including its duty to determine the existence of "grave abuse of discretion amounting to lack or excess of jurisdiction" by any governmental branch or instrumentality.¹³

This constitutional mandate does not qualify the nature of the action by a governmental branch or instrumentality; thus, limiting this to only judicial or quasi-judicial actions will be constitutionally suspect. To be sure, Article VIII, Section 1 does not do away with the policy of judicial deference. It cannot be read as license for active interference by this Court in the acts of other constitutional departments and government organs¹⁴ since judicial review requires the existence of a justiciable case with a ripe and actual controversy.¹⁵ Further, the existence of "grave abuse of discretion" requires capriciousness, arbitrariness, and actions without legal or constitutional basis.¹⁶

¹¹ *Araullo v. Aquino III*, G.R. Nos. 209287, July 1, 2014, 728 SCRA 1, 74–75 [Per J. Bersamin, En Banc].

¹² *Rollo*, pp. 183–189, Comment. Respondent raises, among others, wrong remedy and failure to implead indispensable parties.

¹³ CONST., art. VIII, sec. 1.

¹⁴ See *Angara v. Electoral Commission* 63 Phil. 139, 157–159 (1936) [Per J. Laurel, En Banc].

¹⁵ CONST., art. VIII, sec. 1.

¹⁶ See J. Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. Nos. 208566, November 19, 2013, 710 SCRA 1, 290 [Per J. Perlas-Bernabe, En Banc].

l

In my view, the Constitution itself has impliedly amended the Rules of Court, and it is time to expressly articulate this amendment to remove any occasion for misinterpretation.

It is our constitutional mandate to protect the People against government's infringement of fundamental rights, including actions by the Commission on Elections.¹⁷

II

The Memorandum of Agreement refers to Section 7.3 of Republic Act No. 9006, otherwise known as the Fair Elections Act. This provision states that “[t]he COMELEC [Commission on Elections] may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates[.]”¹⁸

Section 7.3 clearly empowers the Commission on Elections acting as a constitutional commission—and not the Commission on Elections Chair—to require networks to sponsor these debates. The alleged authority of the Chair was only “to create the Technical Working Group for the conduct of the presidential debate in connection with the May 9, 2016 election.” The Commission on Elections Minute Resolution No. 15.0560 reads:

**15-0560 IN THE MATTER OF THE CREATION OF THE
TE[CHNICAL] [WORKING] GROUP FOR THE CONDUCT OF
THE PRESIDENTIAL DEBATE PURSUANT TO REPUBLIC ACT
NO. 9006, IN CONNECTION WITH THE MAY 9, 2016 ELECTIONS**

In view of Republic Act No. 9006, otherwise known as the “Fair Election Act”, which provides for the holding of free, orderly, honest, peaceful, and credible election through fair election practices, and Section 7.3 thereof, which provides that the Commission on Elections may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) among vice presidential candidates, the Commission **RESOLVED**, as its hereby **RESOLVES**, to **authorize** Chairman J. Andres D. Bautista to create the Technical Working Group for the conduct of the presidential debate in connection with the May 9, 2016 Elections, with representatives from the Offices of the Members of the Commission en banc.

Let the Office of the Chairman implement this Resolution.

¹⁷ *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 12 [Per J. Leonen, En Banc].

¹⁸ Rep. Act No. 9006 (2001), sec. 7.3.

SO ORDERED.¹⁹ (Emphasis in the original)

Authority to create a technical working group does not equate to authority to enter into the assailed Memorandum of Agreement with the Lead Networks. Technical working groups often involve bringing together a pool of experts and representatives from the relevant interest groups to discuss ideas and proposals. This falls under the preparatory phase, not the executory stage. Members of a technical working group are not necessarily the same parties and signatories of any contract, memorandum, rules, or issuance resulting from their consultative meetings. By analogy, this Court can resolve to create a technical working group composed of trial court judges, among others, to aid its Special Committee in reviewing our Rules of Procedure, but it is still this Court, sitting En Banc, that will resolve to approve any recommended proposal by the group.²⁰

Even the Civil Code provides that “[i]f the agent contracts in the name of the principal, exceeding the scope of his [or her] authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal[.]”²¹ There is no showing that a Commission on Elections resolution explicitly authorizing respondent to enter the Memorandum of Agreement was attached to the Agreement as to assure the parties of respondent’s authority to sign on behalf of the Commission on Elections. There is also no showing that the Commission on Elections has resolved to approve or ratify the Memorandum of Agreement respondent signed.

III

The requirement under Rule 65 that there be no other plain, speedy, and adequate remedy in the ordinary course of law²² also exists. The debates pursuant to the Memorandum of Agreement have already been scheduled. Petitioner alleged that it was already denied the right to cover the February 21, 2016 Presidential Debate by GMA7, the first of the three (3) presidential debates to be organized in accordance with the Memorandum of Agreement.²³

While the Memorandum of Agreement includes an arbitration clause for dispute resolution,²⁴ the judiciary has the solemn duty in the allocation

¹⁹ *Rollo*, p. 200, Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections Held on July 29, 2015.

²⁰ *See, for example*, A.M. No. 08-8-7-SC (2016), The 2016 Revised Rules of Procedure for Small Claims Cases.

²¹ CIVIL CODE, art. 1898.

²² RULES OF COURT, Rule 65, secs. 1 and 2.

²³ *Rollo*, p. 12, Petition for Certiorari and Prohibition with Prayer for a Preliminary Mandatory Injunction.

²⁴ *Id.* at 43, Memorandum of Agreement, part XII. 2.

of constitutional boundaries and the resolution of conflicting claims on constitutional authority, thus:

In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

. . . The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution[.]²⁵

IV

The Petition raises very serious concerns about a fundamental constitutional right.

The Constitution mandates that “[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”²⁶ This proscription applies not only to legislations but even to governmental acts.²⁷

ABS-CBN v. Commission on Elections,²⁸ for example, involved respondent’s Resolution approving the issuance of a restraining order for the petitioner to stop conducting exit surveys.²⁹ This Court nullified the assailed Commission on Elections Resolution.³⁰ It held that “exit polls and the dissemination of their results through mass media constitute an essential part of the freedoms of speech and of the press.”³¹

²⁵ See *Angara v. Electoral Commission*, 63 Phil 139, 157 (1936) [Per J. Laurel]. See also *Araullo v. Aquino III*, G.R. Nos. 209287, July 1, 2014, 728 SCRA 1, 70–71 [Per J. Bersamin, En Banc].

²⁶ CONST., art. III, sec. 4.

²⁷ See *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 32 [Per J. Leonen, En Banc]

²⁸ 380 Phil 780 (2000) [Per J. Panganiban, En Banc].

²⁹ Id. at 787. See also *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 32 [Per J. Leonen, En Banc]

³⁰ *ABS-CBN Broadcasting Corporation v. Commission on Elections*, 380 Phil 780, 800 (2000) [Per J. Panganiban, En Banc].

³¹ Id. at 787.

The evil sought to be prevented in the protection of free speech is especially grave during elections. In *Osmeña v. Commission on Elections*,³² this Court mentioned how “discussion of public issues and debate on the qualifications of candidates in an election are essential to the proper functioning of the government established by our Constitution.”³³ *Adiong v. Commission on Elections*³⁴ has explained the importance of protecting free speech that contributes to the web of information ensuring the meaningful exercise of our right of suffrage:

We have adopted the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials. Too many restrictions will deny to people the robust, uninhibited, and wide open debate, the generating of interest essential if our elections will truly be free, clean and honest.

We have also ruled that the preferred freedom of expression calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage.³⁵ (Citations omitted)

Freedom of speech is affected when government grants benefits to some media outlets, i.e. lead networks, while unreasonably denying the same privileges to the others. This has the effect of stifling speech especially when the actions of a government agency such as the Commission on Elections have the effect of endowing a monopoly in the market of free speech. In *Diocese of Bacolod v. Commission on Elections*,³⁶ we examined free speech in light of equality in opportunity and deliberative democracy:

The scope of the guarantee of free expression takes into consideration the constitutional respect for human potentiality and the effect of speech. It valorizes the ability of human beings to express and their necessity to relate. On the other hand, a complete guarantee must also take into consideration the effects it will have in a deliberative democracy. Skewed distribution of resources as well as the cultural hegemony of the majority may have the effect of drowning out the speech and the messages of those in the minority. In a sense, social inequality does have its effect on the exercise and effect of the guarantee of free speech. Those who have more will have better access to media that reaches a wider audience than those who have less. Those who espouse the more popular ideas will have better reception than the subversive and

³² 351 Phil 692 (1998) [Per J. Mendoza, En Banc].

³³ Id. at 719.

³⁴ G.R. No. 103956, March 31, 1992, 207 SCRA 712 [Per J. Gutierrez, Jr., En Banc].

³⁵ *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 716 [Per J. Gutierrez, Jr., En Banc]. See also *Mutuc v. Commission on Elections*, 146 Phil 798, 805–806 (1970) [Per J. Fernando, En Banc].

³⁶ G.R. No. 205728, January 21, 2015
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>
[Per J. Leonen, En Banc].

the dissenters of society. To be really heard and understood, the marginalized view normally undergoes its own degree of struggle.³⁷

Here, respondent contends that entering into the Memorandum of Agreement does not trigger Article IX-C, Section 4 of the Constitution as this provision involves its coercive power, while the Memorandum of Agreement was consensual.³⁸ Moreover, the provision pertains to equal opportunity for candidates and not mass media entities:

Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or –controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.³⁹

Article II, Section 24 of the Constitution states that “[t]he State recognizes the vital role of communication and information in nation building.” Article III, Section 7 provides that “[t]he right of the people to information on matters of public concern shall be recognized.” These provisions create a constitutional framework of opening all possible and available channels for expression to ensure that information on public matters have the widest reach. In this age of information technology, media has expanded from traditional print, radio, and television. Internet has sped data gathering and multiplied the types of output produced. The evolution of multimedia introduced packaging data into compact packets such as “infographics” and “memes.” Many from this generation no longer listen to the radio or watch television, and instead are more used to live streaming videos online on their cellular phones or laptops. Social media newsfeeds allow for real-time posting of video excerpts or “screen caps,” and engaging comments and reactions that stimulate public discussions on important public matters such as elections. Article IX-C, Section 4 on the Commission on Elections’ power of supervision or regulation of media, communication, or information during election period is situated within this context. The Commission on Elections’ power of supervision and regulation over media during election period should not be exercised in a way that constricts avenues for public discourse.

³⁷ Id. at 62.

³⁸ *Rollo*, p. 191, Comment,

³⁹ CONST., art. IX-C, sec.4.

V

Freedom of expression is a fundamental and preferred right.⁴⁰ Any governmental act in prior restraint of speech—that is, any “official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination”⁴¹—carries a heavy burden of unconstitutionality.⁴² Speech restraint regulation may also be either content-based, “based on the subject matter of the utterance or speech,” or content-neutral, “merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards.”⁴³

The effect of government’s mandate empowering lead networks from excluding other media is a prior restraint, albeit indirectly. The evil of prior restraint is not made less effective when a private corporation exercises it on behalf of government.

In *GMA Network, Inc. v. Commission on Elections*,⁴⁴ this Court declared as unconstitutional Section 9(a) of Resolution No. 9615, as amended,⁴⁵ that interpreted the 120- and 180-minute airtime allocation for television and radio advertisements under Section 6 of the Fair Elections Act as total aggregate per candidate instead of per station as previously applied. A Concurring Opinion discussed free speech scrutiny against any kind of prior restraint:

While the Commission on Elections does have the competence to interpret Section 6, it must do so without running afoul of the fundamental rights enshrined in our Constitution, especially of the guarantee of freedom of expression and the right to suffrage. *Not only must the Commission on Elections have the competence, it must also be cognizant of our doctrines in relation to any kind of prior restraint.*

....

⁴⁰ See *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> 41 [Per J. Leonen, En Banc], citing *Reyes v. Bagatsing*, 210 Phil 457, 475 (1983) [Per C.J. Fernando, En Banc]; *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 715 and 717 [Per J. Gutierrez, Jr., En Banc]; *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, 151-A Phil 656, 676 (1973) [Per J. Makasiar, En Banc].

⁴¹ *Chavez v. Gonzales*, 569 Phil 155, 203 (2008) [Per C.J. Puno, En Banc].

⁴² See J. Leonen, Concurring Opinion in *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357_1leon.pdf> 2 [Per J. Peralta, En Banc], citing *Iglesia ni Cristo v. Court of Appeals*, 328 Phil 893, 928 (1996) [Per J. Puno, En Banc]; *Social Weather Station v. Commission on Elections*, 409 Phil 571, 584–585 (2001) [Per J. Mendoza, En Banc].

⁴³ *Chavez v. Gonzales*, 569 Phil 155, 203 (2008) [Per C.J. Puno, En Banc].

⁴⁴ *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357.pdf>> [Per J. Peralta, En Banc].

⁴⁵ *Id.* at 45.

What Resolution No. 9615 does not take into consideration is that television and radio networks are not similarly situated. *The industry structure consists of network giants with tremendous bargaining powers that dwarf local community networks.* Thus, a candidate with only a total aggregate of 120/180 minutes of airtime allocation will choose a national network with greater audience coverage to reach more members of the electorate. Consequently, the big networks can dictate the price, which it can logically set at a higher price to translate to more profits. This is true in any setting especially in industries with high barriers to entry and where there are few participants with a high degree of market dominance. *Reducing the airtime simply results in a reduction of speech and not a reduction of expenses.*

Resolution No. 9615 may result in local community television and radio networks not being chosen by candidates running for national offices. Hence, advertisement by those running for national office will generally be tailored for the national audience. This new aggregate time may, therefore, mean that local issues which national candidates should also address may not be the subject of wide-ranging discussions.

....

Election regulations are not always content-neutral regulations, and even if they were, they do not necessarily carry a mantle of immunity from free speech scrutiny. The question always is whether the regulations are narrowly tailored so as to meet a significant governmental interest and so that there is a lesser risk of excluding ideas for a public dialogue. The scrutiny for regulations which restrict speech during elections should be greater considering that these exercises substantiate the important right to suffrage. Reducing airtime to extremely low levels reduce information to slogans and sound bites which may impoverish public dialogue. We know that lacking the enlightenment that comes with information and analysis makes the electorate's role to exact accountability from elected public officers a sham[.]⁴⁶ (Emphasis supplied, citations omitted)

Petitioner points out that “[r]espondent surrendered the [Commission on Elections’] bargaining position and rather than asking the Lead Networks for concessions to ensure broader participation of other media outlets, the [r]espondent granted them exclusive rights which they would have enjoyed only if they produced their own debates without [the Commission on Elections’] participation.”⁴⁷

Undoubtedly, respondent as Chair and without proper authorization from the Commission on Elections En Banc facilitated and endorsed a contract that favored lead networks at the expense of smaller internet-based

⁴⁶ See J. Leonen, Concurring Opinion in *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357_leonen.pdf> 8, 10–12 [Per J. Peralta, En Banc].

⁴⁷ *Rollo*, p. 12, Petition for Certiorari and Prohibition with Prayer for a Preliminary Mandatory Injunction.

e

media outlets like petitioner. His doing so magnified the standpoints of those arbitrarily considered as lead and weakened the expression of the point of view of others. Certainly, the laudable effort to inform the public on substantial issues in the upcoming elections should not be purchased at the cost of the fundamental freedoms of those with less capital.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petition. The respondent Andres D. Bautista, as Chair of the Commission on Elections, is directed to implement Part VI (C), paragraph 19 of the Memorandum of Agreement, which allows the debates to be shown or live-streamed unaltered in petitioner's and other websites subject to the copyright condition that the source is clearly indicated.



MARVIC M.V.F. LEONEN
Associate Justice