EN BANC

G.R. No. 252578 – ATTY. HOWARD M. CALLEJA, *et al.*, *Petitioners*, *v.* EXECUTIVE SECRETARY, *et al.*, *Respondents*;

G.R. No. 252579 – REP. EDCEL C. LAGMAN, *Petitioner*, *v.* SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 252580 – MELENCIO S. STA. MARIA, *et al.*, *Petitioners*, *v.* SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 252585 – BAYAN MUNA PARTY-LIST REPRESENTATIVES CARLOS ISAGANI T. ZARATE, *et al.*, *Petitioners*, *v.* PRESIDENT RODRIGO DUTERTE, *et al.*, *Respondents*;

G.R. No. 252613 – RUDOLF PHILIP B. JURADO, *Petitioner*, *v.* THE ANTI-TERRORISM COUNCIL, *et al.*, *Respondents*;

G.R. No. 252623 – CENTER FOR TRADE UNION AND HUMAN RIGHTS (CTUHR), *et al.*, *Petitioners*, *v.* HON. RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 252624 – CHRISTIAN S. MONSOD, *et al.*, *Petitioners*, *v.* SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 252646 – SANLAKAS, represented by MARIE MARGUERITE M. LOPEZ, *Petitioner*, *v.* RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 252702 – FEDERATION OF FREE WORKERS (FFW-NAGKAISA) herein represented by its NATIONAL PRESIDENT ATTY. JOSE SONNY MATULA, *et al.*, *Petitioners*, *v.* OFFICE OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, *et al.*, *Respondents*;

G.R. No. 252726 – JOSE J. FERRER, JR., *Petitioner*, *v.* SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 252733 – BAGONG ALYANSANG MAKABAYAN (BAYAN) SECRETARY GENERAL RENATO REYES, JR., *et al.*, *Petitioners*, *v.* RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 252736 – ANTONIO T. CARPIO, *et al.*, *Petitioners*, *v.* ANTI-TERRORISM COUNCIL, *et al.*, *Respondents*;

G.R. No. 252741 – MA. CERES P. DOYO, *et al.*, *Petitioners*, *v.* SALVADOR MEDIALDEA, in his capacity as EXECUTIVE SECRETARY, *et al.*, *Respondents*;

G.R. No. 252747 – NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES, ***et al.,*** *Petitioners, v.* **ANTI-TERRORISM COUNCIL,** ***et al.,*** *Respondents*;

G.R. No. 252755 – KABATAANG TAGAPAGTANGGOL NG KARAPATAN, represented by its NATIONAL CONVENER BRYAN EZRA C. GONZALES, ***et al.,*** *Petitioners, v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents*;

G.R. No. 252759 – ALGAMAR A. LATIPH, ***et al.,*** *Petitioners, v.* **SENATE, represented by its PRESIDENT, VICENTE C. SOTTO III,** ***et al.,*** *Respondents*;

G.R. No. 252765 – THE ALTERNATIVE LAW GROUPS, INC. (ALG), *Petitioner, v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents*;

G.R. No. 252767 – BISHOP BRODERICK S. PABILLO, ***et al.,*** *Petitioners, v.* **PRESIDENT RODRIGO R. DUTERTE,** ***et al.,*** *Respondents*;

G.R. No. 252768 – GENERAL ASSEMBLY OF WOMEN FOR REFORMS, ***et al.,*** *Petitioners, v.* **PRESIDENT RODRIGO ROA DUTERTE,** ***et al.,*** *Respondents*;

UDK No. 16663 – LAWRENCE A. YERBO, *Petitioner, v.* **OFFICES OF THE HONORABLE SENATE PRESIDENT,** ***et al.,*** *Respondents*;

G.R. No. 252802 – HENDY ABENDAN OF CENTER FOR YOUTH PARTICIPATION AND DEVELOPMENT INITIATIVES, ***et al.,*** *Petitioners, v.* **HON. SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents*;

G.R. No. 252809 – CONCERNED ONLINE CITIZENS, represented and joined by MARK L. AVERILLA, ***et al.,*** *Petitioners, v.* **EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA,** ***et al.,*** *Respondents*;

G.R. No. 252903 – CONCERNED LAWYERS FOR CIVIL LIBERTIES (CLCL) MEMBERS RENE A.V. SAGUISAG, ***et al.,*** *Petitioners, v.* **RODRIGO DUTERTE,** ***et al.,*** *Respondents*;

G.R. No. 252904 – BEVERLY LONGID, ***et al.,*** *Petitioners, v.* **ANTI-TERRORISM COUNCIL,** ***et al.,*** *Respondents*;

G.R. No. 252905 – CENTER FOR INTERNATIONAL LAW (CENTERLAW), Inc., represented by its President, JOEL R. BUTUYAN, ***et al.,*** *Petitioners, v.* **SENATE OF THE PHILIPPINES,** ***et al.,*** *Respondents*;

G.R. No. 252916 – MAIN T. MOHAMMAD, *et al.*, *Petitioners*, *v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 252921 – BRGY. MAGLAKING, SAN CARLOS CITY, PANGASINAN SANGGUNIANG KABATAAN (SK) CHAIRPERSON LEMUEL GIO FERNANDEZ CAYABYAB, *et al.*, *Petitioners*, *v.* RODRIGO R. DUTERTE, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, *et al.*, *Respondents*;

G.R. No. 252984 – ASSOCIATION OF MAJOR RELIGIOUS SUPERIORS IN THE PHILLIPPINES (represented by its Co-Chairpersons, FR. CIELITO R. ALMAZAN OFM, *et al.*), *et al.*, *Petitioners*, *v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 253018 – UNIVERSITY OF THE PHILIPPINES (UP)-SYSTEM FACULTY REGENT DR. RAMON GUILLERMO, *et al.*, *Petitioners*, *v.* H.E. RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 253100 – PHILIPPINE BAR ASSOCIATION, *Petitioner*, *v.* THE EXECUTIVE SECRETARY, *et al.*, *Respondents*;

G.R. No. 253118 – BALAY REHABILITATION CENTER, INC. (BALAY), *et al.*, *Petitioners*, *v.* RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 253124 – INTEGRATED BAR OF THE PHILS., *et al.*, *Petitioners*, *v.* SENATE OF THE PHILIPPINES, *et al.*, *Respondents*;

G.R. No. 253242 – COORDINATING COUNCIL FOR PEOPLE'S DEVELOPMENT AND GOVERNANCE, INC. (CPDG) represented by VICE PRESIDENT ROCHELLE M. PORRAS, *et al.*, *Petitioners*, *v.* RODRIGO R. DUTERTE, *et al.*, *Respondents*;

G.R. No. 253252 – PHILIPPINE MISEREOR PARTNERSHIP, INC., *et al.*, *Petitioners*, *v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*;

G.R. No. 253254 – PAGKAKAISA NG KABABAIHAN PARA SA KALAYAAN (KAISA KA) ACTION AND SOLIDARITY FOR THE EMPOWERMENT OF WOMEN (ASSERT-WOMEN), *et al.*, *Petitioners*, *v.* ANTI-TERRORISM COUNCIL, *et al.*, *Respondents*;

G.R. No. 254191 – ANAK MINDANAO (AMIN) PARTY-LIST REPRESENTATIVE AMIHILDA SANGCOPAN, *et al.*, *Petitioners*, *v.* EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, *et al.*, *Respondents*; and

G.R. No. 253420 – HAROUN ALRASHID ALONTO LUCMAN, JR., *et al.*, *Petitioners*, *v.* SALVADOR C. MEDIALDEA in his capacity as EXECUTIVE SECRETARY, *et al.*, *Respondents*.

Promulgated:

December 7, 2021

x----------x

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

The present consolidated petitions – thirty-seven (37) in total – assail the constitutionality of Republic Act No. (RA) 11479,[1] otherwise known as the Anti-Terrorism Act of 2020 (ATA), for its alleged violation of numerous constitutional rights and liberties, as well as the doctrine of separation of powers. The petitioners argue that the law is void on its face under the vagueness/overbreadth standards, among others, and as such, tainted with grave abuse of discretion, rendering it null in its entirety.

The *ponencia* accepted the facial challenge, but only with respect to certain facts and circumstances relative to Sections 4 to 6 (with respect to *training*), 8 to 10 (with respect to membership under the third paragraph), 12 (with respect to *training* and *expert advice or assistance* as forms of material support), 25 to 28 (with respect to designation and proscription), and 29 (on detention) of the ATA. The delimitation proceeded from the view that pursuant to prevailing Philippine jurisprudence, facial challenges on legislative acts are permissible only if they curtail the right to freedom of expression and its cognate rights. Utilizing this framework, the majority then found the following portions of the law unconstitutional: **(1)** the clause "*which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety*" found in the *proviso* of Section 4; and **(2)** the second paragraph of Section 25.

First off, I fully concur with the *ponencia*'s delimited facial challenge framework. **Considering the present status of our jurisprudence on facial challenges (which until overturned in the proper case therefor remains good law), as well as the already complex nature of the issues accepted by the Court in these permissible facial challenges, the majority's approach is – to my mind – a prudent and practical exercise of discretion that justifies a refusal to adjudicate all other issues raised by the petitioners that do not relate to said rights, or those that are too speculative and raise genuine questions of fact.** *I caution, however, that this delimitation does not*

---

[1] Entitled "AN ACT TO PREVENT, PROHIBIT AND PENALIZE TERRORISM, THEREBY REPEALING REPUBLIC ACT NO. 9372, OTHERWISE KNOWN AS THE 'HUMAN SECURITY ACT OF 2007,'" approved on July 3, 2020.

– as it should not – preclude subsequent constitutional challenges that may present appropriate factual situations that can more sharply address the unresolved issues raised against the other provisions of the law. Further, it does not – as it should not – preclude a doctrinal shift by this Court of its present framework on facial challenges which may be undertaken in a future case, but not in this already complex case riddled with already complicated issues.

Anent the procedural matters, I likewise fully agree that petitioners, except for petitioners in G.R. No. 253118 (*Balay Rehabilitation Center, Inc. v.* Duterte) and UDK 16663 (*Yerbo v. Offices of the Honorable Senate President and the Honorable Speaker of the House of Representatives*), have sufficiently complied with the requisites for the Court's exercise of its judicial power. Based on the assertions traversed by the *ponencia*, I am convinced that petitioners have shown credible and imminent threat of injury to their rights that may result from the law's implementation. Similarly, I find that the accepted issues in this case raise serious and genuine concerns affecting freedom of expression and its cognate rights that justify this Court's immediate action.

My **concurrence** with the said framework as well as the *ponente*'s views on most of the prominent substantive issues consequently traversed in the *ponencia* pursuant thereto, *on the one hand*, and my **dissent** against the majority's ruling upholding the validity of the phrase "*organized for the purpose of engaging in terrorism*" found in the third paragraph of Section 10, as well as the third mode of designation found under the third paragraph of Section 25 of the ATA, *on the other*, are forthwith explicated in this Opinion.

I. Facial and as-applied challenges, and the propriety of the ponencia's delimited framework.

In concept, a *facial challenge* contends that a government law, rule, regulation, or policy is unconstitutional as written, or on its face, or on the very text of the policy itself.[2] It is typically described as "a head-on attack on the legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications x x x."[3] Thus, it may result in invalidating the law in its entirety based on its wording (on its face)

---

[2] See Hudson, David L. Jr., *Facial Challenges*, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> (last visited December 21, 2021).

[3] See Kreit, Alex, *Making Sense of Facial and As-Applied Challenges*, September 27, 2009, 18 William & Mary Bill of Rights Journal 657 (2010), Thomas Jefferson School of Law Research Paper No. 1478984 <https://ssrn.com/abstract=1478984> (last visited December 21, 2021). See also <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1168&context=wmborj> (last visited December 21, 2021).

often after a consideration of all or almost all of its possible unconstitutional applications beyond the particular circumstances of a petitioner.[4]

Facial challenges are often raised using the void-for-vagueness and overbreadth standards. Under the vagueness standard, a statute is rendered void if it "'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' [and because] it encourages arbitrary and erratic arrests and convictions x x x."[5] Meanwhile, the overbreadth standard leads to a finding of unconstitutionality if a statute indiscriminately and unnecessarily broadly sweeps, thereby invading the area of protected freedoms.[6]

These common tests notwithstanding, there have been cases where the Court employed the strict scrutiny test in ostensible facial challenge cases, such as in *Ople v. Torres*,[7] *White Light Corporation v. City of Manila*,[8] *Serrano v. Galant Maritime Services, Inc.*,[9] and *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*.[10] Under the strict scrutiny test, a statute would pass constitutional muster only if it is: (1) necessary to achieve a compelling State interest; and (2) the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.[11]

In contrast to a facial challenge, an *as-applied challenge* contends that a government law, rule, regulation, or policy is unconstitutional as applied to a particular activity/ies.[12] It "concedes that the statute may be constitutional in many of its applications, but contends that it is not so under the particular circumstances of the case."[13] Because of its nature as specifically tailored only to a particular and specific set of facts and rights, an as-applied challenge may result in invalidating the statute only as-applied to the petitioner. This is accomplished by carving out an exception for the petitioner's case from the application of the statute, or severing or removing the unconstitutional

---

4 See Hudson, David L. Jr., *Facial Challenges*, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> (last visited December 21, 2021).

5 *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). See also *Kolender v. Lawson*, 461 U.S. 352 (1983) and *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

6 See *Shelton v. Tucker*, 364 U.S. 479 (1960); and *NAACP v. Alabama*, 377 U.S. 288 (1964).

7 354 Phil. 948 (1998).

8 596 Phil. 444 (2009).

9 601 Phil. 245 (2009).

10 815 Phil. 1067 (2017).

11 See id. at 1116; citing *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 98 (2014).

12 See Hudson, David L. Jr., *As-applied Challenges*, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/892/as-applied-challenges> (last visited December 21, 2021). See also Fallon, Richard H. Jr., *Facial Challenges, Saving Constructions, and Statutory Severability*, Texas Law Review, Vol. 99, Issue 2, p. 228 <https://texaslawreview.org/facial-challenges-saving-constructions-and-statutory-severability/> and <https://texaslawreview.org/wp-content/uploads/2020/12/Fallon.Printer.pdf> (last visited December 21, 2020).

13 See Kreit, Alex, *Making Sense of Facial and As-Applied Challenges*, September 27, 2009, 18 William & Mary Bill of Rights Journal 657 (2010), Thomas Jefferson School of Law Research Paper No. 1478984 <https://ssrn.com/abstract=1478984> (last visited December 21, 2021). See also Sandefur, Timothy, *The Timing of Facial Challenges*, Akron Law Review, Vol. 43, Issue 1, Article 2 <http://ideaexchange.uakron.edu/akronlawreview/vol43/iss1/2> (last visited December 21, 2021).

application (*i.e.*, unconstitutional application in the petitioner's case) from the constitutional application.[14]

In the Philippine context, the first explicit use of the term "facial challenge" in our jurisprudence can be traced to the Opinion of Associate Justice Vicente V. Mendoza (Justice Mendoza) in the case of *Cruz v. Secretary of Environment*[15] – a case involving a petition for prohibition and mandamus filed by Isagani Cruz and Cesar Europa directly before the Court assailing the constitutionality of certain provisions of RA No. 8371, otherwise known as the "Indigenous Peoples Rights Act" (IPRA). Noting that petitioners therein lacked standing and filed the suit "only to settle what they believe to be the doubtful character of the law in question," Justice Mendoza voted to dismiss the petition because "were [the Court] to assume jurisdiction and decide wholesale the constitutional validity of the IPRA," and declare it void on its face, would not only run counter to "the established rule that a party can question the validity of a statute only if, as applied to him, it is unconstitutional."[16] It would also "[upset] the balance of power among the three branches of the government and erecting, as it were, x x x the Supreme Court, as a third branch of Congress, with power not only to invalidate statutes but even to rewrite them."[17] Evidently seeking to limit, if not curtail, further attempts by litigants in directly assailing before the Court – and the Court in deciding wholesale – the constitutional validity of any law based only on an alleged "doubtful character of the law in question," he posited that facial challenges to statutes are allowed only when they operate in the area of freedom of expression because of the "'chilling' effect on freedom of expression," *viz.*:

> The only instance where a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional, but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute "on its face" rather than "as applied" is permitted in the interest of preventing a "chilling" effect on freedom of expression.[18]

Justice Mendoza reiterated this position in his Opinion[19] in *Estrada v. Sandiganbayan*,[20] which the *ponencia* therein adopted. Quoting the

---

14 See Hudson, David L. Jr., *Facial Challenges* and *As-applied Challenges*, The First Amendment Encyclopedia <https://www.mtsu.edu/first-amendment/article/954/facial-challenges> and <https://www.mtsu.edu/first-amendment/article/892/as-applied-challenges> (last visited December 21, 2021).

15 *Cruz v. Secretary of Environment*, 400 Phil. 904 (2000).

16 Id.

17 Id.

18 Id.

19 Note that while Justice Mendoza stated that "the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing 'on their faces' statutes in free speech cases or, as they are called in American Law, First Amendment cases[,]" he likewise declared that "strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race and facial challenges are allowed for this purpose." (See *Estrada v. Sandiganbayan*, 421 Phil. 290, 431 & 428 [2001].)

20 Id.

observations of Justice Mendoza, the Court explained that **a facial challenge "is allowed to be made to a vague statute and to one which is overbroad because of possible 'chilling effect' upon protected speech.**"[21] The rationale for this principle was provided in the following manner:

> The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, **the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity." The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.**[22]
> (underscoring and emphasis supplied; citations omitted)

In said case, the Court, however, instructed that the foregoing concepts do not apply to penal statutes considering that these laws have "general *in terrorem* effect resulting from their very existence, and, if a facial challenge is allowed for this reason alone, **the State may well be prevented from enacting laws against socially harmful conduct.**"[23] Further, considering that, among others, an ""on its face' invalidation of statutes results in striking them down entirely on the ground that they might be applied to parties not before the Court whose activities are constitutionally protected[,]"[24] the Court cautioned that a facial challenge is *a "'manifestly strong medicine,' to be employed 'sparingly and only as a last resort,' and is generally disfavored.*"[25]

The Court, in the succeeding cases of *Romualdez v. Sandiganbayan*,[26] *Spouses Romualdez v. Commission on Elections*,[27] and *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council* (*Southern Hemisphere*),[28] reiterated that penal statutes cannot be the subject of facial invalidation. In *Southern Hemisphere*, the Court reminded that a facial challenge is allowed in free speech cases "**to avert the 'chilling effect' on protected speech, the exercise of which should not at all times be abridged.**"[29]

However, the Court eventually clarified this prohibition against the application of facial challenges to penal statutes in *Disini v. Secretary of*

---

21 Id. at 430.
22 Id.
23 Id; emphasis supplied.
24 Id. at 432; citations omitted.
25 Id. at 433; citations omitted.
26 479 Phil. 265 (2004).
27 576 Phil. 357 (2008).
28 646 Phil. 452 (2010).
29 Id. at 489; citing Section 4, Article III of the 1987 CONSTITUTION.

Justice (*Disini*),[30] declaring that the same is true **only when the penal statutes do not encroach upon free speech rights**, thus:

> When a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable. The inapplicability of the doctrine must be carefully delineated. As Justice Antonio T. Carpio explained in his dissent in *Romualdez v. Commission on Elections*, "we must view these statements of the Court on the inapplicability of the overbreadth and vagueness doctrines to penal statutes as appropriate only insofar as these doctrines are used to mount 'facial' challenges to penal statutes not involving free speech."[31]

Only a few months after the promulgation of *Disini*, the Court once more employed the facial challenge in the case of *Spouses Imbong v. Ochoa* (*Spouses Imbong*),[32] under a seemingly expanded version of the facial analysis.

At this juncture, it deserves clarification that while *Spouses Imbong* states that this Court "has expanded [the] scope [of facial challenges] to cover statutes not only regulating free speech, but also those involving religious freedom, and **other fundamental rights**," the *ponencia* cannot be faulted in concluding that the phrase "other fundamental rights" pertains only to rights that are cognate to free speech, similar to religious freedom. To recount, *Imbong* only states that:

> In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. While this Court has withheld the application of facial challenges to strictly penal statutes, it has **expanded** its scope to cover statutes not only regulating **free speech**, but also those involving **religious freedom**, and **other fundamental rights**. The underlying reason for this modification is simple. x x x[33] (underscoring supplied; citations omitted)

Notably, such pronouncements should be read in relation to the context in which they were made. In the immediately preceding paragraph, the Court provided a brief discussion of US jurisprudence, which enumerated what these "fundamental rights" include. Thus:

> In United States *(US)* constitutional law, a **facial challenge**, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only **protected speech**, but also **all other rights** in the First Amendment. These include **religious freedom, freedom of the press**, and the **right of the people to peaceably assemble**, and to **petition the Government for a redress of grievances**. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of

---

30 Supra note 11.
31 Id. at 121.
32 732 Phil. 1 (2014).
33 Id. at 126.

> expression, as they are modes which one's thoughts are externalized.[34]
> (emphases and underscoring supplied; citations omitted)

Based on the foregoing, it may be reasonably argued that the Philippine law "modification" to the concept of facial challenges under US Constitutional Law is **only with reference to the withholding of the application of facial challenges to strictly penal statutes**. Nonetheless, with respect to the expansion in scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights, the term "fundamental rights" was not explicitly interpreted in *Spouses Imbong* to include all other constitutional rights. Thus, the phrase "fundamental rights" ought to pertain to the same character as the immediately preceding term "religious freedom" found in the same "but also" clause. This, in turn, is consistent with the fundamental rights covered under the US Constitutional Law, such as "freedom of the press and peaceful assembly." If *Spouses Imbong* intended to truly expand the scope of facial challenges to all other fundamental rights, then the Court should have clearly specified or provided examples of what these other rights are, for ample guidance.

One may argue that the Court, in *Spouses Imbong*, actually took cognizance of other constitutional rights in a facial challenge, such as the right to life and to equal protection, as when it tackled the other issues raised by some of therein petitioners. However, in my view, this supposed expansion, if anything, remains to be ambiguous.

To highlight this ambiguity, there has been **no categorical qualification or abandonment** by the Court in *Spouses Imbong* of the well-entrenched *Southern Hemisphere* dictum that facial challenges in free speech cases are presently justified "by the aim to avert the 'chilling effect' on protected speech, the exercise of which should not at all times be abridged." If indeed a doctrinal shift was meaningfully intended, then the Court ought to have lucidly explained its reasons relative to the established *Southern Hemisphere* rule.

Thus, with these uncertainties, the *ponencia* is justified in restrictively interpreting the phrase "other fundamental rights" in *Spouses Imbong* as to cover only free speech and its cognate rights.

In any event, subsequent cases after *Spouses Imbong* have continued to echo the *Southern Hemisphere* framework on facial challenges.

For one, in *SPARK v. Quezon City*,[35] the Court rejected the invocation of the overbreadth doctrine, considering that petitioners therein have not claimed any transgression of their rights to free speech or any inhibition of

---

[34] Id. at 125.
[35] Supra note 10.

speech-related conduct. The Court stated the ruling in *Southern Hemisphere* that "***the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases.***"[36] Even later, in *Falcis III v. Civil Registrar General*,[37] the Court similarly pronounced that "***a facial challenge requires a showing of curtailment of the right to freedom of expression, because its basis is that an overly broad statute may chill otherwise constitutional speech.***"[38]

Based on the foregoing discussions, it is thus apparent that prevailing jurisprudence, at the time the present consolidated petitions were filed, still restrict the operation of facial challenges to cases infringing on the freedom of expression and its cognate rights. This rule remains "good law" up until the Court clearly and unmistakably modifies or overturns the same once the appropriate opportunity arrives to re-examine its bearings. As this case is already riddled with numerous complicated issues upon the submission of a staggering 37 petitions, prudence and practicality dictate that the Court should refrain from adding another layer of complexity in the disposition of the instant petitions.

Hence, for these reasons, I fully concur with the *ponencia*'s circumscribed but balanced approach in resolving this case. Besides, as the *ponencia* also explains, the other issues raised in these petitions against the other provisions of the law outside of the accepted issues "are too speculative and raise genuine questions of fact that require submission of concrete evidence x x x"[39] and therefore, cannot be resolved even outside the delimited facial challenge framework. Evidently, the actual case and controversy/ripeness requisite for the exercise of judicial power still precludes the Court from resolving these other arguments of petitioners that patently raise conjectural or theoretical questions.[40]

---

36 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 28, at 490.

37 G.R. No. 217910, September 3, 2019.

38 See id.

39 *Ponencia*, p. 80.

40 Note that courts are barred from rendering advisory opinions (see *Belgica v. Ochoa*, 721 Phil. 416 [2016]). See also *Garcia v. Executive Secretary*, 602 Phil. 64 (2009); and *Falcis III v. Civil Registrar General*, supra note 37.

The bar on advisory opinions can be traced to the 1793 "Correspondence of the Justices" involving the queries sent by Secretary of State Thomas Jefferson, of then newly-formed US government led by President George Washington, to US Supreme Court Chief Justice Jay and his fellow Justices. The questions concerned America's obligations to the warring British and French powers under its treaties and international law. Jefferson's letter requested "in the first place, their opinion, whether the public may, with propriety, be availed of their advice on these questions?" The Jay Court refused to answer, reasoning that "it would be improper for them to answer legal questions 'extrajudicially' in light of '[t]he Lines of Separation' between the branches and 'their being in certain Respects checks on each other.'" (See *Advisory Opinions and the Influence of the Supreme Court over American Policymaking*, Harvard Law Review, 2011 <https://harvardlawreview.org/wp-content/uploads/pdfs/vol124_advisory_opinions.pdf> [last visited December 21, 2021].) See also *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1992); citing Chief Justice Jay's response to Jefferson's Letter in the "Letter of August 8, 1793, 3 Johnston, Correspondence and Public Papers of John Jay (1891), 489. See further <https://constitution.congress.gov/browse/essay/artIII_S2_C1_2_3/> (last visited December 21, 2021).

II. Section 4 and its proviso.

On the substantive merits, I likewise concur with the *ponencia* in upholding the validity of Section 4[41] of the ATA, but invalidating the clause "*which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety*" found in the *proviso*.

Again, under our prevailing jurisprudence, facial challenges are proper only when raised against statutes that infringe on freedom of expression and its cognate rights. Because of this jurisprudential limitation, the present facial challenge against Section 4 of the ATA can only be entertained with respect to the *proviso* that evidently affects and relates to the freedom of expression. As can be gleaned from its text, Section 4 of the ATA consists of two (2) parts, the first of which relates to pure conduct that has nothing to do with expression. It enumerates the varied acts that could manifestly result to the destruction of life, limb, or property (*i.e.*, acts intended to cause death or serious bodily injury to any person, or endangers a person's life, or extensive damage or destruction to a government or public facility, public place or private property, etc.), as well as the purposes (*i.e.*, to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, etc.) which must indispensably accompany the acts in order for the same to be penalized as terrorism. The second part, on the other hand, is the *proviso* which explicitly relates to and affects expression and related expressive conduct. Within the context of the free speech submissions, these two (2) parts must be conjointly passed upon as they are substantially related to – and hence, cannot be simply extricated from – one another.

At this juncture, it must be borne in mind that the Court is authorized to employ the various aids to statutory construction in order to draw out the

---

41 Section 4. *Terrorism.* – Subject to Section 49 of this Act, terrorism is committed by any person who, within or outside the Philippines, regardless of the stage of execution:

(a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person's life;

(b) Engages in acts intended to cause extensive damage or destruction to a government or public facility, public place or private property;

(c) Engages in acts intended to cause extensive interference with, damage or destruction to critical infrastructure;

(d) Develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and

(e) Release of dangerous substances, or causing fire, floods or explosions when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety, shall be guilty of committing terrorism and shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592, otherwise known as "An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as amended, otherwise known as the Revised Penal Code": *Provided*, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety.

proper interpretation of Section 4 so that the legislative will may be reflected in its implementation and operation. Under our constitutional scheme, the Supreme Court is the ultimate guardian of the Constitution, and as such, has the distinguished but delicate power and duty of testing the validity of legislative acts for their conformity with the Constitution.[42] ***Notably, aside from the interrelation of Section 4's two parts, based on the entire law's structure, it is further apparent that the numerous provisions of the ATA depend for their operation on the definition provided in Section 4***. Clearly, therefore, Section 4 plays a central and crucial role in the operation and implementation of the ATA for which a clarifying interpretation is essential.

Section 4's main part complies with substantive due process; presumption of constitutionality prevails.

As a general rule in constitutional law, a statute enjoys the presumption of constitutionality. In its most basic sense, the presumption means that courts, in passing upon the validity of a law, will afford some deference to the act of co-equal branches of the government pursuant to the separation of powers principle.[43] Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[44] But, ***if any reasonable basis may be conceived which supports the statute, the same should be upheld***.[45] It therefore places a heavy burden on the assailant to prove beyond reasonable doubt that the act is incompatible with the constitution. Verily, to doubt is to sustain.[46]

Petitioners essentially argue that Section 4 of the ATA violates the constitutional right to substantive due process and freedom of expression. Thus, it was incumbent upon petitioners in this case to clearly prove the alleged unequivocal breach or conflict with the Constitution.

Substantive due process requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just. "It demands the intrinsic validity of the law in interfering with the rights of the person to life, liberty or property."[47] In penology, case law states that due process requires the terms of a penal statute to "be sufficiently explicit to

---

42 See *Escabarte v. Heirs of Benigno Isaw*, G.R. No. 208595, August 28, 2019, 915 SCRA 325, 335-339; citing *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267 (1987).

43 See *Joint Ship Manning Group, Inc. v. Social Security System*, G.R. No. 247471, July 7, 2020; citing *Lim v. People*, 438 Phil. 749, 755 (2002); *La Union Electric Cooperative, Inc. v. Judge Yaranon*, 259 Phil. 457, 466 (1989); and *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 674 (2004).

44 See *City of Cagayan de Oro v. Cagayan Electric Power & Light Co., Inc.*, G.R. No. 224825, October 17, 2018, 884 SCRA 1, 24. See also *Joint Ship Manning Group, Inc. v. Social Security System*, id.

45 See *Joint Ship Manning Group, Inc. v. Social Security System*, id.

46 See *Joint Ship Manning Group, Inc. v. Social Security System*, id.; and *City of Cagayan de Oro v. Cagayan Electric Power & Light Co., Inc.*, supra note 44.

47 *Rama v. Moises*, 802 Phil. 29, 59 (2016). See also *Pimentel III v. Commission on Elections (COMELEC)*, 571 Phil. 596, 631 (2008); citing *City of Manila v. Laguio, Jr.*, 495 Phil. 289 (2005).

inform those who are subject to it what conduct on their part will render them liable to its penalties."[48] As once remarked by eminent constitutionalist Fr. Joaquin Bernas, "due process requires not only that the accused be informed of the offense he is charged with [as contained in the Information] but also that he must be able to **understand what the law commands and prohibits**."[49] The requirement stems from the principle that penal laws are construed strictly against the State and liberally in favor of the accused.[50] Accordingly, it is incumbent upon Congress to "provide a precise definition of forbidden acts."[51]

Despite these key premises, the due process clause does not impose any "constitutional or statutory duty to the legislature to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act x x x."[52] "A criminal statute is not rendered uncertain and void because general terms are used therein."[53] "As long as the law affords some comprehensible guide or rule that would inform those who are subject to it what conduct would render them liable to its penalties, its validity will be sustained[;]"[54] otherwise, the Court will not hesitate to strike down the provision.

Applying these precepts, I also find that the main part of Section 4 sufficiently contains comprehensible standards that would enable its subjects to know what conduct would render them liable to its penalties. Thus, it complies with constitutional substantive due process requirements. Allow me, however, to expound upon the following points:

First, the acts sought to be penalized under the main part of Section 4 of the ATA must be indispensably accompanied by any of the six (6) listed purposes. More importantly, the acts and purposes must be characterized by

---

48 *People v. Dela Piedra*, 403 Phil. 31, 47 (2001). "The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning." "A criminal statute that 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,' or is so indefinite that 'it encourages arbitrary and erratic arrests and convictions,' is void for vagueness." (See id. at 47-48.)

49 Bernas, Joaquin, The 1987 Constitution of the Republic of the Philippines: A Commentary.

50 See *People v. Purisima*, 176 Phil. 186, 201 (1978). In *Idos v. Court of Appeals*, 357 Phil. 198, 206 (1998), the Court stated that to constitute a crime, an act "must come clearly within both the spirit and letter of the [penal] statute."

51 See *People v. Purisima*, id. at 208.

52 *Perez v. LPG Refillers Association of the Philippines, Inc.*, 558 Phil. 177, 180-181 (2007); citing *Estrada v. Sandiganbayan*, supra note 19, at 347-348.

53 Id. See also *United States v. Petrillo*, 332 U.S. 1 (1947). In *United States v. National Dairy Products Corp.*, 372 U.S. 29 (1963), the US Supreme Court held that "[t]he delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases." In cases where the statute's application is constitutionally doubtful, a "limiting construction could be given to the statute by the court responsible for its construction x x x." "The strong presumptive validity that attaches to an Act of Congress has led this Court to hold many times that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language." Note that this case differentiated the approach to vagueness between cases arising under the First Amendment and those which do not.

54 *Estrada v. Sandiganbayan*, supra note 19, at 344. See also *Kolender v. Lawson*, supra note 5. See further Hing, Bill, Immigration Law and Social Justice, 2nd Edition, which reads: "In that sense, the doctrine is a corollary of the separation of powers—requiring that Congress, rather than the executive or judicial branch, define what conduct is sanctionable and what is not."

the severity and gravity of the damage or destruction caused or projected to be caused by the act committed.[55]

A perusal of the deliberations reveals that the legislature not only intended for the purposes to accompany and qualify the acts enumerated under subsections (a) to (e) of Section 4. More significantly, they intended to punish the various acts enumerated under the main part of Section 4 only in **their most serious forms, characterized by the gravity or magnitude of their resulting or intended effects**. In fact, interspersed across the main part are terms that evidently qualify the nature of the punishable acts as envisioned by Congress. For example, subsections (b) and (c) employ the term "extensive" to qualify the gravity of the intended damage or interference. On the other hand, the adjective "seriously" was used to qualify the character of the purposes "*to destabilize or destroy the fundamental political, economic, or social structures of the country*" and "*undermine public safety*" such that the resolve to destabilize or destroy fundamental structures or undermine public safety are shown to be genuine and grave.

Meanwhile, the addition of the phrase "*nature and context*" to further qualify the purposes leads to a reasonable conclusion that the legislature intended the same severity of damage across all six (6) listed purposes,[56] and thus, must be understood in this context.[57] Accordingly, since the law intended the purposes to accompany and qualify the acts enumerated under subsections (a) to (e), it can be concluded that ***any criminal act short of the gravity and severity that the legislature intended cannot be categorized as terrorism under Section 4***. In fact, as clarified during the Senate deliberations, the distinction between the crime of terrorism under the ATA and ordinary crimes will depend on the intent and purpose of the act,[58] as determined from the acts done and their effect, context, and implication.[59]

To further clarify each of the penalized acts, it can be gleaned that the phrase "*engages in acts intended to*" in subsections (a), (b), and (c), refers to acts that cause or result in the damage or destruction of a person's life or limb,

---

55 "Research conducted on the effect of terrorist attacks on victims has revealed that acts of terrorist violence often produce high proportions of significantly affected victims, *i.e.* that they tend to be at the higher end on the scale of effects." <https://www.unodc.org/e4j/en/terrorism/module-14/key-issues/effects-of-terrorism.html> (last visited December 21, 2021).

56 The other five (5) purposes under the ATA are: (i) "to intimidate the general public or a segment thereof;" (ii) to "create an atmosphere or spread a message of fear;" (iii) "to provoke or influence by intimidation the government or any international organization;" (iv) "create a public emergency;" and (v) "seriously undermine public safety."

57 Appearing twice in the purposes is the term "intimidate." The first purpose is to "intimidate the general public or a segment thereof" while the third purpose is to "provoke or influence by intimidation the government or any international organization." To "provoke" which is ordinarily understood as simply to "stimulate or give rise to (a reaction or emotion, typically a strong or unwelcome one) in someone" must be read together with "intimidation" or intimidate, which in ordinary parlance means "to frighten" especially "to **compel or deter** by or as if by threats." <https://www.encyclopedia.com/humanities/dictionaries-thesauruses-pictures-and-press-releases/provoke-0> and <https://www.merriam-webster.com/dictionary/intimidate> (last visited November 14, 2021).

58 See Senate Deliberations, Records, Vol. I, dated January 21, 2020, January 22, 2020, January 28, 2020, and February 3, 2020.

59 See Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, p. 15.

or of property. On the other hand, the phrase "*endangers a person's life*" in subsection (a) can be construed as nothing more than a restatement of the contemplated scenarios of "death or serious bodily injury" found in the same provision, as evident from the co-sponsor's speech during the deliberations,[60] and **thus precludes the inclusion of innocent conduct or mere thought within the acts punishable as terrorism**. Meanwhile, the extensive destruction caused to "*government or public facility, public place, or private property*" under subsection (b) can be read similarly with the extensive interference with or destruction to "*critical infrastructure*" under subsection (c) to refer to damage or destruction that is so severe as to debilitate key governmental functions, as may be seen from the sponsor's explanation[61] and following the definition of *critical infrastructure* under Section 3 (a) of the ATA, which would thus separate it from the ordinary crime of arson.[62]

Second, while not all of the terms used in the main part of Section 4 of the ATA have been defined in the law, their meaning can be discerned from common usage, as well as case law.

Moreover, it can be observed that even prior to the enactment of the Human Security Act (HSA) and the ATA, the Omnibus Election Code (OEC) already employed the term "terrorism" in several of its provisions.[63] While the OEC does not itself define "terrorism,"[64] case law[65] shows that the character of the acts considered as terrorism under our election laws is not significantly different from the character of the terrorist acts envisioned under the ATA. In either situation, the acts considered as terrorism are characterized by serious

---

60 See Senate Deliberations, Records, Vol. I, Session No. 32, November 5, 2019, p. 50.

61 See Senate Deliberations, Records, Vol. 1, Session No. 44, January 21, 2020, p. 16

62 "[T]here are two (2) categories of the crime of arson: 1) destructive arson, under Art. 320 of the Revised Penal Code, as amended by Republic Act No. 7659 [punishable by *reclusion perpetua*]; and 2) simple arson, under Presidential Decree No. 1613 [punishable by *prision mayor*]." Destructive arson is characterized as a heinous crime committed by "malicious[ly] burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other military, government or commercial establishments by any person or group of persons" with an "inherent or manifest wickedness, viciousness, atrocity and perversity." On the other hand, simple arson involves the malicious burning of "public and private structures" and contemplates "crimes with less significant social, economic, political and national security implications than Destructive Arson." (See *Buebos v. People*, 573 Phil. 347, 364-365 [2008]; citation omitted.)

63 See Sections 6, 68, and 261 (e) of the OEC.

64 Parenthetically, the term "terrorism" was also mentioned in the now-repealed Presidential Decree (PD) No. 1736 entitled "Amending Presidential Decree Numbered Eight Hundred Eighty-Five, Otherwise Known As The Revised Anti-Subversion Law, As Amended" (September 12, 1980), which amended PD No. 885 entitled "Outlawing Subversive Organizations, Penalizing Membership Therein And For Other Purposes" (February 3, 1976); PD No. 1835 entitled "Codifying the Various Laws on Anti-Subversion and Increasing the Penalties for Membership in Subversive Organizations" (January 16, 1981) which outlawed the Communist Party of the Philippines as organized conspiracy for the purpose of overthrowing the Government of the Republic of the Philippines by, among others, force, violence, or terrorism, and penalized the act of conspiring with any other person for the purpose of over-throwing the Government of the Republic of the Philippines by the use of, among others, terrorism; PD No. 1975, amending PD No. 1835; as well as in Executive Order (EO) No. 167, Series of 1987 (May 5, 1987), repealing P.D. No. 1835. While these repealed likewise did not define terrorism, similar observations can be made with regard to the character of the destruction or damage sought to be penalized.

65 For example, see *Diangka v. COMELEC*, 380 Phil. 859 (2000), wherein the acts considered as election terrorist acts include stealing of the ballots, ballot boxes, and other election paraphernalia using threats and intimidation, as well as the indiscriminate firing in the air of firearms near the location of several election precincts during election day. See also *Abayon v. HRET*, 785 Phil. 683 (2016); *Vera v. Avelino*, 77 Phil. 192 (1946); *Sanchez v. COMELEC*, 199 Phil. 617 (1982); and *Tan v. COMELEC*, 463 Phil. 212 (2003).

or grave violence, threat, and/or intimidation (in addition to fraud that evidently bears particular relevance only to election terrorism).

Third and last, the ATA's definition of terrorism is consistent with international instruments. In fact, the law's sponsor pointed out during the deliberations that the proposed definition of terrorism is consistent with the United Nations (UN)'s proposed Comprehensive Convention on International Terrorism (Proposed Convention)[66] and is comparable with the anti-terrorism laws of other Association of Southeast Asian Nations (ASEAN) countries. It can also be noted that the terms used in Section 4 of the ATA also bear similarities with those used in defining terrorist offenses under the Directive (EU) 2017/541 of The European Parliament and of The Council (15 March 2017) on combating terrorism.[67] In fact, the definition of terrorism under Section 4 appears to be in parallel with the definition of terrorist acts in various international instruments in that: (1) the latter require the performance or commission of acts (overt acts) which are: (*a*) generally considered as offenses under the domestic or national laws,[68] or (*b*) specified crimes or acts that could rightfully be considered as crimes under domestic law or under

---

66 See <https://www.ilsa.org/Jessup/Jessup08/basicmats/unterrorism.pdf> (last visited December 21, 2021).

67 See <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017L0541> (last visited December 21, 2021).

68 See the 1937 League of Nations draft convention for the prevention and punishment of terrorism, which defines terrorism as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public" <https://dl.wdl.org/11579/service/11579.pdf> (last visited December 21, 2021); 1998 Cairo Arab Convention, which defines terrorist offence as "[a]ny [offense] or attempted [offense] committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law" <https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf> (last visited December 21, 2021); UN GA Resolution 49/60, which defines terrorism as "[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable x x x" <https://undocs.org/en/A/RES/49/60> (last visited December 21, 2021); DIRECTIVE (EU) 2017/541 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (2017) <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017L0541> (last visited December 21, 2021); ASEAN Convention on Counter Terrorism (2007) <https://asean.org/?static_post=asean-convention-on-counter-terrorism> (last visited December 21, 2021); International Convention for the Suppression of the Financing of Terrorism (New York 1999) <https://www.un.org/law/cod/finterr.htm> (last visited December 21, 2021); the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on October 26, 1979 <https://www.iaea.org/sites/default/files/infcirc274.pdf> (last visited December 21, 2021) as well as the Amendment thereto (Vienna 2005) < https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280478876> (last visited December 21, 2021); and the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on October 14, 2005 <https://www.refworld.org/docid/49f58c8a2.html> (last visited December 21, 2021).

International Humanitarian Law,[69] or (*c*) acts without lawful authority;[70] and (2) majority of the definitions also require that the acts or offenses are coupled with or qualified by any or a combination of the following aim, intent, or purpose: (*a*) intimidating a population;[71] (*b*) compelling a government or an international organization to do or to abstain from doing any act;[72] (*c*) causing substantial damage to property or to the environment;[73] (*d*) causing death or serious bodily injury;[74] (*e*) causing extensive destruction of such a place where such destruction results in or is likely to result in major economic loss;[75] and (*f*) seriously destabilising or destroying the fundamental political,

---

69 See UNSCR 2170 Adopted by the Security Council on August 15, 2014, which impliedly defined or considered the following acts as terrorist acts: Kidnapping and hostage-taking; terrorist acts of the Islamic State in Iraq and the Levant (ISIL) and its violent extremist ideology; gross, systematic and widespread abuses of human rights and violations of international humanitarian law by the ISIL; indiscriminate killing and deliberate targeting of civilians; numerous atrocities, mass executions and extrajudicial killings, including of soldiers; persecution of individuals and entire communities on the basis of their religion or belief; kidnapping of civilians; forced displacement of members of minority groups; killing and maiming of children; recruitment and use of children; rape and other forms of sexual violence; arbitrary detention; attacks on schools and hospitals; destruction of cultural and religious sites; obstructing the exercise of economic, social and cultural rights, including the right to education; and widespread or systematic attacks directed against any civilian populations because of their ethnic or political background, religion or belief which may constitute a crime against humanity <https://www.undocs.org/S/RES/2170%20(2014)> (last visited December 21, 2021). See also Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 <https://www.unodc.org/pdf/crime/terrorism/Commonwealth_Chapter_3.pdf> (last visited December 21, 2021).

70 See Convention on the Physical Protection of Nuclear Material (1979); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (1988); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Rome 1988); International Convention for the Suppression of Terrorist Bombings (New York 1997; International Convention for the Suppression of the Financing of Terrorism, (New York 1999) <https://www.un.org/law/cod/finterr.htm> (last visited December 21, 2021); International Convention for the Suppression of Acts of Nuclear Terrorism (New York 2005); Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005 <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280478876> (last visited December 21, 2021); Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005 <https://www.refworld.org/docid/49f58c8a2.html> (last visited December 21, 2021); and Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005 <https://www.refworld.org/docid/49f58cee2.html> and <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/SUA-Treaties.aspx> (last visited December 21, 2021).

71 See Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; International Convention for the Suppression of the Financing of Terrorism; Comprehensive Convention on International Terrorism; Directive (EU) 2017/541 of the European Parliament and of the Council; EU Council Framework Decision; UNSCR 1566; UN GA Resolution 49/60; 1998 Cairo Arab Convention; and 1937 League of Nations draft convention for the prevention and punishment of terrorism.

72 See Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; International Convention for the Suppression of Acts of Nuclear Terrorism; International Convention for the Suppression of the Financing of Terrorism; International Convention Against the Taking of Hostages; Comprehensive Convention on International Terrorism; Directive (EU) 2017/541 of the European Parliament and of the Council; EU Council Framework Decision; and UNSCR 1566.

73 See International Convention for the Suppression of Acts of Nuclear Terrorism; and 1998 Cairo Arab Convention.

74 See International Convention for the Suppression of Acts of Nuclear Terrorism; International Convention for the Suppression of Terrorist Bombings; and UNSCR 1566.

75 See International Convention for the Suppression of Terrorist Bombings.

constitutional, economic or social structures of a country or an international organization.[76]

In fine, in order for an act to be punishable under Section 4 of the ATA, it must: (*i*) indispensably be accompanied by any of the enumerated purposes, and (*ii*) be characterized by gravity and severity of the resulting or intended effects, which is determined by the case's nature and context. Accordingly, subject to the *ponencia*'s clarifying and narrowing construction, I agree that there is no constitutional infirmity presented in these cases enough to warrant the striking down of Section 4's main part. I, however, find it apt to mention that the definitive application of the various instances mentioned in Section 4 must undergo judicial scrutiny upon the proper ripe case filed therefor so as to allow jurisprudence on this relatively new – if not, barely illuminated – legal subject to evolve.

The "not intended" clause in Section 4's proviso is invalid; presumption of unconstitutionality was not overcome.

With respect to laws regulating speech based on its content, the presumption of constitutionality is reversed. Case law settles that content-based restrictions on speech bear a heavy presumption of unconstitutionality[77] and are subject to strict scrutiny.[78] Accordingly, it was incumbent upon the government, in this case, to prove that the *proviso* complies with the constitutional standards.

Freedom of expression is considered as the foundation of a free, open, and democratic society.[79] It is an indispensable condition to the exercise of almost all other civil and political rights.[80] Thus, it is given a preferred status that stands on a higher level than substantive economic freedom or other liberties.[81] In its essence, the right to free expression involves the freedom to disseminate ideas and beliefs, regardless of its subject and tenor,[82] and

---

76 See Directive (EU) 2017/541 of the European Parliament and of the Council; and EU Council Framework Decision.

77 See *Chavez v. Gonzales*, supra note 78; *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 584 (2001); and *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 928 (1996). See also *United States v. Alvarez*, 567 U.S. 709 (2012); *R.A.V. v. St. Paul*, 505 U.S. 377 (1992); and *United States v. Stevens*, 559 U.S. 460 (2010).

78 See *Chavez v. Gonzales*, id.; and *Nicolas-Lewis v. Comelec*, G.R. No. 223705, August 14, 2019, 913 SCRA 515, 552. See also *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *United States v. Alvarez*, id.; *United States v. Stevens*, id. See further Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

79 See Associate Justice Antonio T. Carpio's (Justice Carpio) Opinion in *Chavez v. Gonzales*, id. at 235.

80 See Justice Carpio's Opinion in *Chavez v. Gonzales*, id. at 235-236. See also *Diocese of Bacolod v. COMELEC*, 751 Phil. 301, 355 (2015) where the Court stated that "*[s]peech may be said to be inextricably linked to freedom itself as '[t]he right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.*'"

81 See *Chavez v. Gonzales*, id. at 195.

82 See Justice Carpio's Opinion in *Chavez v. Gonzales*, id. at 236. See also *Thornhill v. Alabama*, 310 U.S. 88 (1940); citing The Continental Congress (Journal of the Continental Congress, 1904 ed., Vol. I, pp.

includes **the entire range of communication, from vocal or verbal expressions to expressive conduct or symbolic speech that incorporates both speech and non-speech elements, including inaction.**[83]

Because of the fundamental role that freedom of expression plays in our democratic society, particularly the vital necessity of a free exchange of ideas for society to thrive, 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."[84] In this regard, the "government lacks the power to restrict expression because of its message, its ideas, its subject matter, or its content" [85] and "may not be prohibited merely because the ideas are themselves offensive to some of their hearers"[86] or "simply because society finds the idea itself offensive or disagreeable,"[87] or constitutes as "sharp attacks on government and public officials."[88] For these reasons, a governmental action that restricts speech comes to this Court bearing a heavy presumption against its constitutional validity.[89]

Over time, however, the Court has carved out narrow and well-defined exceptions to the rule on restrictions upon the content of speech.[90] These exceptions are borne out of the recognition that some types of speech may be injurious to the equal right of others or those of the community or society, and

---

104, 108) in its letter sent to the Inhabitants of Quebec (October 26, 1774), where it was held: "**The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects, and its consequential promotion of union among them whereby oppressive officers are ashamed or intimidated into more honourable and just modes of conducting affairs.** x x x **Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.**" (emphases and underscoring supplied)

83 See *Diocese of Bacolod v. COMELEC*, supra note 81, at 355-356.

84 See Section 4, Article III of the 1987 Constitution.

85 See *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011); citing *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002). See also *United States v. Alvarez*, supra note 78; and *R.A.V. v. St. Paul*, supra note 78.

86 See *Matal v. Tam*, No. 15–1293, June 19, 2017; citing *Street v. New York*, 394 U.S. 576, 592 (1969). See also *Chavez v. Gonzales*, supra note 78, at 197-198 which declared: "Freedom of speech and of the press x x x **belongs as well – if not more – to those who question, who do not conform, who differ. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view 'induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'** To paraphrase Justice Holmes, **it is freedom for the thought that we hate, no less than for the thought that agrees with us.**" (Emphases supplied; citations omitted).

87 See *Matal v. Tam*, id.; citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989). See also *Salonga v. Paño*, 219 Phil. 402 (1985).

88 See *Watts v. U.S.*, 394 U.S. 705 (1969). See also *Winters v. New York*, 333 U.S. 507, 510 (1948).

89 See *Chavez v. Gonzales*, supra note 78, at 204; and *Social Weather Stations, Inc. v. COMELEC*, supra note 78. See also *United States v. Alvarez*, supra note 78; *R.A.V. v. St. Paul*, supra note 78; and *United States v. Stevens*, supra note 78.

90 See Justice Carpio's Opinion in *Chavez v. Gonzales*, id. at 237. See also *ponencia* in *Chavez v. Gonzales*, id. at 198-201; and *MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines, Inc.*, 444 Phil. 230 (2003). See further *Brown v. Entertainment Merchants Association*, supra note 86; *United States v. Stevens*, supra note 78; *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942); *Cohen v. California*, 403 U.S. 15 (1971); and *United States v. Alvarez*, supra note 78.

thus, may be subjected to regulation by the State under its pervasive police power.[91] The few well-defined and narrow areas where the exceptions are said to apply include pornography, advocacy of imminent lawless action, danger to national security, false or misleading advertisement, and libel.[92] Outside of these limited categories, the expression is protected and are not subject to prior restraint.[93]

Furthermore, it is settled that statutes regulating speech based on its content are subject to the strictest scrutiny.[94] The approach requires the existence of a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society, and a direct causal link between the restriction imposed and the injury to be prevented.[95] In addition, the restriction must be reasonably and narrowly drawn to fit the regulatory purpose, with the "least restrictive means among available, effective alternatives"[96] undertaken.[97] Accordingly, the government action will only be sustained if the government shows a compelling interest and the restraint is necessary to protect such interest. But even in such a case, the restraint shall be *narrowly drawn* – if "readily susceptible" to such a construction[98] – to the extent necessary to protect or attain the compelling State interest;[99] otherwise, the statute must be struck down as unconstitutional.

Reinforcing the right to freedom of expression is the constitutional guarantee against deprivation of liberty without due process of law. The conception of liberty embraces the right to freedom of expression. Thus, pursuant to due process, the extent and limits of the permissible restriction on expression must be sufficiently and clearly expressed so as to give persons of ordinary intelligence fair notice that their contemplated speech is forbidden by the statute and to preclude arbitrary law enforcement. Because of the due process requisite and the constitutional guarantee against government intrusion on speech, the "standards of permissible statutory vagueness are strict[er] in the area of free expression."[100] Thus, a statute may be properly invalidated when it infringes on free speech and expression despite an attempt to narrowly construe it. Indeed, the uncertainty as to the scope of a law's proscriptions will have a **chilling effect** on expression that must be guarded

---

91 See *Chavez v. Gonzales*, supra note 78, at 199. The Court therein also held: "*For freedom of expression is not an absolute, nor is it an 'unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.*'"

92 See Justice Carpio's Opinion in *Chavez v. Gonzales*, supra note 78, at 237. See also *Soriano v. Laguardia*, 605 Phil. 43, 97 (2009).

93 See Justice Carpio's Opinion in *Chavez v. Gonzales*, id.

94 See *Chavez v. Gonzales*, id. at 206. See also *Keyishian v. Board of Regent*, supra note 79; *United States v. Alvarez*, supra note 78; *United States v. Stevens*, supra note 78; and Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

95 See *United States v. Alvarez*, id.

96 See id.

97 See *Chavez v. Gonzales*, supra note 78, at 207; and *Nicolas-Lewis v. COMELEC*, , supra note 79, at 592.

98 See *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). See also *Smith v. Goguen*, 415 U.S. 566 (1974), where the US Supreme Court held the assailed statute unconstitutionally vague because of the "absence of any ascertainable standard for inclusion and exclusion" such that it "offends the Due Process Clause." See further *Baggett v. Bullitt*, 377 U.S. 360 (1964).

99 See Justice Carpio's Opinion in *Chavez v. Gonzales*, supra note 78, at 240.

100 *Keyishian v. Board of Regent*, supra note 79.

against by the reasonable specificity of the subject regulation. If the law is unreasonably ambiguous, speech will be unduly chilled.

Parenthetically, even in those well-defined areas where content-based restrictions on speech are permissible, the regulation can be constitutionally challenged on the grounds that a "substantial amount of protected speech is prohibited or chilled in the process."[101] A statute that fails to draw distinction between constitutionally protected and unprotected expressions may be struck down for impermissibly overreaching and intruding upon the freedoms guaranteed by the free speech rights as secured by the due process clause.[102] For these reasons, it has been held that "the usual doctrines as to the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expense and inconvenience of criminal prosecution."[103]

Finally, it should be emphasized that, as held in *Chavez v. Gonzales*,[104] a content-based restriction on expression shall be permitted only when it is shown that "*words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the lawmaker has a right to prevent x x x.*"[105] Known as the **clear and present danger** (CPD) rule, which case law recognizes as the applicable test for determining the validity of limitations on freedom of expression,[106] it has since undergone several modifications.[107] Its latest iteration, enunciated in ***Brandenburg v. Ohio*** (*Bradenburg*)[108] which has been

---

101 See Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited December 21, 2021).

102 See *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

103 See *Smith v. California*, 361 U.S. 147 (1959). See also *U.S. v. Harriss*, 347 U.S. 612 (1954).

104 Supra note 78.

105 Id. at 212; citing *Eastern Broadcasting Generation (DYRE) v. Dans*, 222 Phil. 151, 157 (1985).

106 See id. at 214; citing *Eastern Broadcasting Generation (DYRE) v. Dans*, id. See also *Primicias v. Fugoso*, 80 Phil. 71 (1948); *American Bible Society v. City of Manila*, 101 Phil. 386 (1957); *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *Navarro v. Villegas*, G.R. No. L-31687, February 26, 1970; *Imbong v. Ferrer*, 146 Phil. 30 (1970); *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, 151-A Phil. 656 (1973); and *Anti-Bases Coalition v. Bagatsing*, 210 Phil. 457 (1983), among others.

107 Established in *Schenck v. United States* (249 U.S. 47 [1919]) by Justice Oliver Wendell Holmes: "*The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity or degree.*" It was revised in *Dennis v. United States* (341 U.S. 494 [1951]), where the US Supreme Court, through J. Vinson adopting the test as announced by Judge Learned Hand in the lower court (in *Masses Publishing Co. v. Patten*, 244 F. 535 [S.D.N.Y. 1917], *rev'd.*, 246 F. 24 (2d Cir. 1917)), held that "*[i]n each case, [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.*"

108 See *Brandenburg v. Ohio*, supra note 103; citing *Noto v. United States*, 367 U.S. 290, 297-298 (1961). See also Alexander Tsesis, *Terrorist Speech on Social Media*, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited December 22, 2021); and Laura K. Donahue, *Terrorist Speech and the Future of Free Expression*, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing *Watts v. U.S.*, 394 U.S. 705 (1969) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited December 22, 2021), which point out that the First Amendment protection includes patently

equally recognized in our jurisdiction,[109] refined the rule by limiting its application to expression where there is imminent lawless action,[110] *viz.*: "***where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action***." Thus, under the *Brandenburg* doctrine, advocating for the use of force or violating the law is protected, unless it is (*i*) directed to inciting or producing, (*ii*) imminent lawless action, and (*iii*) is likely to incite or produce such action.[111] In this situation, the burden to show the existence of a grave and imminent danger that would justify adverse action lies on the government.[112] Moreover, the proof of such imminence must be objective and convincing, not subjective or conjectural.[113]

Applying the foregoing principles to this case, I affirmingly conclude that the "not intended" clause constitutes as an impermissible content-based restraint on expression that cannot be saved by a narrowing construction. For reference, it reads:

> *Provided*, That, terrorism as defined in this section shall not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, **which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety**. (emphasis supplied)

Irrefragably, "*advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights*" are not included in the definition of terrorism (as found in Section 4's main part), and hence, shall not be considered as terrorist acts. These are constitutionally protected exercises of the right to freedom of expression which occupy a preferred position in the hierarchy of civil liberties.[114] However, it is apparent that the "not intended" clause qualifies and essentially contradicts said recognition. When read together, the protected expressions of advocacy, protest, and other similar exercises of civil and political rights are not included from the definition of terrorism **only when** they are "***not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety***." Thus, when perceived to have any

---

offensive, disrespectful, and obnoxious speech, including political support of heinous terror speech that poses no danger, expresses no intentional menace, nor is coordinated with any designated terrorist organization.

109 See Justice Carpio's Opinion in *Chavez v. Gonzales*, supra note 78; and *Nicolas-Lewis v. COMELEC*, supra note 79. See also *MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines*, supra note 91.

110 See Justice Carpio's Opinion in *Chavez v. Gonzales*, id. at 241-242; and *Nicolas-Lewis v. COMELEC*, id. at 586.

111 See *Brandenburg v. Ohio*, supra note 103, as recognized in our jurisprudence in *Salonga v. Paño*, supra note 88 ; and *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, supra note 91.

112 See Chief Justice Claudio S. Teehankee, Sr.'s Separate Opinion in *Reyes v. Bagatsing*, 210 Phil. 457, 478 (1983).

113 See id.

114 See *The Diocese of Bacolod v. COMELEC*, supra note 81, at 366; citing *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc*, supra at 676. See also Justice Carpio's Opinion in *Chavez v. Gonzales*, supra note 78, at 245; and *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992; citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 11 L. Ed. 686 (1964).

of these intended effects, the protected expressions shall be punished as terrorist acts. **Considering that it seeks to penalize expression based on its content, the "not intended" clause is subject to a heavy presumption of unconstitutionality and strict scrutiny**. As elaborated below, I find that while the State has a compelling interest to prevent and penalize terrorism, the restriction on the exercise of the right to freedom of expression under this provision is not necessary nor reasonably and narrowly drawn to protect said interest.

For one, the "not intended" clause fails to provide sufficient standards to distinguish between the expressions expressly excluded by the *proviso* from the definition of terrorism, and those which it considers as terrorist acts punishable under Section 4 of the ATA. Notably, intent is a state of mind, and therefore subjective. Thus, in order to be intelligibly deciphered, the law must provide the parameters by which to draw out this intent. The "not intended" clause, however, falls short of the due process requisite of reasonable specificity since it simply provides that said exercises of civil and political rights are punishable as terrorism when accompanied by any of the enumerated intent (*i.e.*, to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety). This deficiency in the stated parameters, therefore, effectively creates a situation where these protected exercises of the freedom of expression can be penalized as terrorism. But, as the law's sponsor clarified and explained during the deliberations, **they can never be considered as terrorism in the course of their exercise**.[115]

Moreover, the "not intended" clause evidently excluded the required standards of direct causal link, imminence and likelihood under the *Brandenburg* doctrine, and thus, reduced the level of protection given to expressions which the legislative intended. Thus, rather than clarifying the scope of Section 4, the "not intended" clause instead **blurs the line between protected expressions and punishable actions**. Given its vague contours, the

---

[115] See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, pp. 7-9. See also Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, particularly pp. 17-19 which read:

> **Senator Lacson. As pointed out by the honorable lady senator from Panay during her interpellations, *iyong* legitimate exercise *ay may* labor strike, and the laborers *ay nagkaroon ng* violence, *hindi sila mako-cover dito. Kasi* legitimate exercise of freedom of expression or *nag-e-*express *sila ng* dissent. *Kung iko-*cover *pa rin natin sila, medyo lalong magiging* wayward.**
>
> x x x x
>
> **Senator Lacson. For clarity and for emphasis, Mr. President, *para lamang malinaw*. This is one of the safeguards. *Kasi* if we do not include that proviso, I am sure the gentleman will be interpellating along that line. *Bakit kulang?* That is why we deemed it wise na *i-*qualify *na lamang natin na hindi kasama iyong* legitimate exercise of the freedom of expression, *et cetera.***
>
> x x x x
>
> **Senator Lacson. Those expressing dissent in the exercise of their freedom of expression. *Kung mag-*result regardless of who initiated, that could be initiated by their act of expressing their freedom of dissent or expression *na nag-*result *sa* violence, then they should not be covered under the definition of a terrorist act because, again, *babalik na naman tayo sa* intent and purpose.** (emphases and underscoring supplied)

"not intended" clause's regulation on speech not only impermissibly spills and overreaches into constitutionally protected expressions; it also runs the risk of chilling the exercise of this right for vagueness reasons.[116] An ordinary citizen has no fair guidance as to whether or not his expression, such as a tweet of frustration or criticism against the government, may be conceived by law enforcement agents as intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety. In the end, the speech is chilled by the fear of apprehension or prosecution.

For another, the "not intended" clause fails to provide sufficient standards to distinguish the expressions it seeks to penalize under Section 4 from the expressions penalized under other provisions of the law overtly penalizing expressions, *i.e.*, Section 5 (threat to commit terrorism), Section 8 (proposal to commit terrorism), and Section 9 (inciting to commit terrorism), as well as under Sections 6 and 12 (with respect to training). If the expression referred to in the "not intended" clause falls within those categories where prior restraint on speech is permitted, then they rightfully fall under any of these other provisions which overtly penalize expressions.

In sum, the absence of ascertainable standards for inclusion and exclusion under the *proviso*'s "not intended" clause is precisely what offends due process.[117] When the statute provides no guidance for limiting its coverage, such as when "Congress has sent inconsistent signals as to where the new line or lines should be drawn,"[118] the Court must decline such narrowing construction. In such a situation, the Court must not hesitate to strike down the offending provision, as the *ponencia* rightfully did in this case.

Sections 5, 8, and 9.

Sections 5, 8, and 9[119] of the ATA are likewise susceptible to a facial challenge, considering that they overtly target expression. Nonetheless, I also discern that these provisions are valid content-based restraints on expression and are, therefore, constitutional, as ruled by the *ponencia*.

---

116 See *Reno v. American Civil Liberties Union*, supra note 99; *Baggett v. Bullitt*, supra note 99; *Keyishian v. Board of Regents*, supra note 79.

117 See *Smith v. Goguen*, supra note 99.

118 See *Reno v. American Civil Liberties Union*, supra note 99.

119 Section 5. *Threat to Commit Terrorism.* – Any person who shall threaten to commit any of the acts mentioned in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Section 8. *Proposal to Commit Terrorism.* – Any person who proposes to commit terrorism as defined in Section 4 hereof shall suffer the penalty of imprisonment of twelve (12) years.

Section 9. *Inciting to Commit Terrorism.* – Any person who, without taking any direct part in the commission of terrorism, shall incite others to the execution of any of the acts specified in Section 4 hereof by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end, shall suffer the penalty of imprisonment of twelve (12) years.

To reiterate, statutes which penalize expression based on their content, such as Sections 5, 8, and 9 of the ATA, are subject to the strictest scrutiny[120] and a heavy presumption of unconstitutionality.[121] Moreover, it must be established that the expression sought to be restrained is: (*i*) directed to inciting or producing, (*ii*) imminent lawless action, and (*iii*) likely to incite or produce such action[122] pursuant to the *Brandenburg* standards.[123] Accordingly, in order that expression can be constitutionally proscribed, it must have been intended to produce a certain effect,[124] and must have a direct and unmistakable causal link to the criminal conduct;[125] the mere fact that "an audience may take 'serious offense' to particular expression"[126] is not sufficient to conclude that the expression is "likely" to produce the lawless action. Applying these parameters, Sections 5, 8, and 9 of the ATA are sufficiently clear and narrowly-tailored to meet a compelling state interest.

In particular, there is a **compelling state interest** in prohibiting and penalizing threat, proposal, and inciting to commit terrorism. Communication that can directly and unmistakably lead to or aid terrorist activities raises grave and serious international concern because it creates an atmosphere or a particular state of mind in the audience conducive to the commission of criminal acts.[127] For these reasons, and more, the criminalization of one or several forms of such expressions are made in various international instruments.[128] In fact, the prevention and deterrence of *incitement* to

---

120 See *Chavez v. Gonzales*, supra note 78, at 206; *Nicolas-Lewis v. COMELEC*, supra note 79; *MVRS Publications, Inc. v. Islamic Da'Wah Council of the Philippines, Inc.*, supra note 91. See also *Keyishian v. Board of Regent*, supra note 79; *United States v. Alvarez*, supra note 78; *United States v. Stevens*, supra note 78. See further Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

121 See *Social Weather Stations, Inc. v. COMELEC*, supra note 78; and *Iglesia ni Cristo v. Court of Appeals*, supra note 78. See also *United States v. Alvarez*, id.; *R.A.V. v. St. Paul*, supra note 78; *United States v. Stevens*, id.

122 See *Brandenburg v. Ohio*, supra note 103; citing *Noto v. United States*, supra note 109. See also Tsesis, Alexander, *Terrorist Speech on Social Media*, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited November 14, 2021); and Donahue, Laura K., *Terrorist Speech and the Future of Free Expression*, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing *Watts v. U.S.*, 394 U.S. 705 (1969) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

123 See *Brandenburg v. Ohio*, supra note 103, as recognized in our jurisprudence in *Salonga v. Paño*, supra note 88; and *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, supra note 91.

124 See Donahue, Laura K., *Terrorist Speech and the Future of Free Expression*, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 248 <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

125 See *United States v. Williams*, 553 U.S. 285 (2008).

126 See Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

127 See Seyed Ali Ehsankhah, *Incitement in International Criminal Law*, International Journal of Humanities and Cultural Studies, January 2016, p. 512 <www.ijhcs.com/> (last visited November 14, 2021); and Yael Ronen, *Incitement to Terrorist Act and International Law*, Leiden Journal of International Law, September 2010, pp. 654-657 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecb1a7cc1cbb4/download> (last visited November 14, 2021).

128 See <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf> (last visited November 14, 2021). These include: *(i)* the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention); *(ii)* the 1979 International Convention against the Taking of

terrorism in the interest of protecting national security and public order are legitimate grounds for limiting the freedom of expression under Article 19, Paragraph 3 of the International Covenant on Civil and Political Rights. They are also consistent with Article 20, paragraph 2 of the same Covenant, which requires States to prohibit any "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."[129] On the other hand, *proposal* and *threat* to commit terrorism are considered as unprotected expression[130] since they involve the communication of some illegal or violent activity which the state has a compelling interest to prevent. Finally, it can be observed that the ATA is not the first law that seeks to penalize these kinds of expressions where content-based restraint is permissible as the Revised Penal Code[131] is replete with provisions that penalize proposal, inciting, and threat. As with these provisions, the ATA simply recognizes the fact that certain expressions must give way to the equal rights and liberties of others – that evidently include the rights to life and property, as well as security which the law's sponsor noted.[132]

In the same vein, these provisions are **narrowly tailored** and are the least restrictive means to achieve the compelling State interest above-mentioned. For one, the ATA itself provides the elements for the crime of *proposal* to commit terrorism, *viz.:* the person (*i*) **has decided to commit** terrorism and (*ii*) **proposes its execution** to another or other person/s. As correctly observed by the *ponencia,* the phrase "decided to commit" is an important element of proposal under Section 8 that the State must indispensably prove – apart from the proposal aspect – in order to convict a person under its provisions. Considering that penal laws are construed in favor of the accused and strictly against the State, the latter must therefore prove beyond reasonable doubt that the accused "decided to commit" terrorism separately from the second element of proposal. Without this decision element, proof of the proposal alone, even if indisputably shown, cannot support a conviction.

Hostages (Hostages Convention); *(iii)* U.N. Security Council Resolution No. 1624; *(iv)* the 1980 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention); *(v)* the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic agents Convention); *(vi)* 1979 Convention on the Physical Protection of Nuclear Material; *(vii)* Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (as well as the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf); *(viii)* International Convention for the Suppression of Acts of Nuclear Terrorism; *(ix)* Amendment to the Convention on the Physical Protection of Nuclear Material; *(x)* Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; and *(xi)* Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

[129] See UNODC, *The Use of the Internet for Terrorist Purposes*, p. 6 < https://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf> (last visited November 14, 2021).

[130] See Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations,* May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021). This was also argued by Associate Solicitor General Galandines (in response to Justice Lopez's question) during the May 4, 2021 Oral Arguments.

[131] See Articles 115, 118, 136, 138, 142, 282, 283, 285, and 356 of the RPC.

[132] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 23.

Meanwhile, U.S. case law has defined *threats* as "statements where the speaker **means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals,**" even if the speaker does not "actually intend to carry out the threat."[133] In *U.S. v. Paguirigan*,[134] the Court has emphasized that *threat* under our penal laws is characterized by a "***deliberate purpose of creating in the mind of the person threatened the belief that the threat will be carried into effect***" as determined from the surrounding circumstances; otherwise, the crime committed is not threat but simply misdemeanor. Based on these characterizations, it is clear that the *threat* which criminal law penalizes contemplates of serious, genuine, and intentional expressions calculated to put the hearer or listener into fear, irrespective of whether the intended unlawful violent act is actually carried out. Thus, as the *ponencia* correctly held, the *threat* contemplated under Section 5 of the ATA includes only those that appears "credible" – as in fact expressly reflected under Rule 4.5 of the IRR – which must be determined based on the surrounding circumstances.

On the other hand, with respect to incitement to commit terrorism, a joint declaration of experts on freedom of expression, as well as the UN Secretary General, explains that "incitement should be understood as '*a direct call to engage in terrorism, with the intention that this will promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.*'"[135] The UN Secretary General also recommended that states prosecute incitement to terrorism only if it "directly encourages the commission of a crime, is intended to result in criminal action, and is likely to result in criminal action" in order for States to comply with international protection of freedoms of expression.[136] Moreover, it can be noted that under international law, incitement *per se* is generally punishable only where it leads to the

---

133 See *Virginia v. Black*, 538 U.S. 343 (2003); citing *Watts v. U.S.*, 394 U.S. 705 (1969). See also *Colorado in the interest of R.D.* (No. 17SC116, 2020 CO 44), involving threats made online, particularly in Twitter. See also Martin H. Redish and Matthew Fisher, *Terrorizing Advocacy and the First Amendment: Free Expression and the Fallacy of Mutual Exclusivity*, Fordham Law Review, Vol. 86, Issue 2 (2017), pp. 573-574; citing *Virginia v. Black*, 538 U.S. 343 (2003) <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5442&context=flr> (last visited November 14, 2021); Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021), likewise citing *Virginia v. Black*, id.; and Alexander Tsesis, *Terrorist Speech on Social Media*, Vanderbilt Law Review, Vol. 70:2 (2017) <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited November 14, 2021).

134 14 Phil. 450 (1909); citing *U.S. v. Sevilla*, 1 Phil. 143 (1902); and *U.S. v. Simeon*, 3 Phil. 388 (should be 688 (1904); emphasis supplied.

135 See Office of the United Nations High Commissioner for Human Rights, *Human Rights, Terrorism and Counter-Terrorism Fact Sheet No. 32*, pp. 43; citing "International mechanisms for promoting freedom of expression," joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression (21 December 2005). See also UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN D0c. A/63/337, paragraph 61 <https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> (last visited November 14, 2021).

136 See UN Secretary-General's Report on The Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN D0c. A/63/337, paragraph 62 < https://unispal.un.org/UNISPAL.NSF/0/549DE4D8937F3459852574DE0052C973> (last visited November 14, 2021).

commission of the substantive or target crime,[137] as it is considered merely as a mode of responsibility.[138] In this accord, for incitement to be thus penalized, the following factors must be considered: (*a*) causal connection of the incitement to the substantive crime in that it must have contributed significantly to the commission of the latter; (*b*) intentional act or awareness by the person of the substantial likelihood that the substantive crime will be committed; and (*c*) intent to bring about the crime incited or instigated.[139] Noticeably, as the *ponencia* perceived, Rule 4.9 of the ATA's Implementing Rules and Regulations (IRR) articulates these parameters in characterizing inciting to terrorism, and thus, further supports the conclusion that the law is narrowly tailored.

Finally, it can be observed that the legislature[140] intended these provisions to operate only within the confines of the intent-purposes parameters of Section 4 of the ATA, as well as for the clear and present danger rule – as already modified by the *Brandenburg* standards — and the relevant

---

137 See Wibke Kristin Timmermann, *Incitement in International Criminal Law*, International Review of the Red Cross, Vol. 88, No. 864, December 2006 <https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf> (last visited November 14, 2021); and Eric De Brabandere, *The Regulation of Incitement to Terrorism in International Law*, in: Hennebel, L. & Tigroudja, H. (Eds.), *Balancing Liberty and Security: The Human Rights Pendulum*, pp. 221-240, Nijmegen: Wolf Legal Publishers < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).
It has been noted that while most of the states reporting under Resolution 1624(2005) declare that they already criminalize incitement to violence or incitement to offences in general," "it is not clear whether these criminal provisions concern incitement as an inchoate offence, as conceived in the resolution, or as a form of complicity". The Second Report of the Counter-Terrorism Committee, for example, noted that "many States indicate that they address the problem of incitement through widely recognized accessory offences such as aiding, abetting, participating and soliciting." See Yael Ronen, *Incitement to Terrorist Act and International Law*, Leiden Journal of International Law, September 2010, pp. 652-653 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecb1a7cc1cbb4/download> (last visited November 14, 2021).
Note that under international law, the only instance where incitement is punishable regardless and independent of the commission of the substantive crime, and is therefore considered as an inchoate offense, is in connection with the crime of genocide and only when the same is direct and public (see Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide (Geneva Convention on Genocide), as well as Article 2 (3) (c) of the Statute of the International Tribunal for Rwanda (UN Security Council Resolution No. 955 (1994)) and Article 25 (3) (e) of the Rome Statute of the International Criminal Court. See also Wibke Kristin Timmermann, *Incitement in International Criminal Law*, International Review of the Red Cross, Vol. 88, No. 864, December 2006 < https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf> (last visited November 14, 2021); Yael Ronen, *Incitement to Terrorist Act and International Law*, Leiden Journal of International Law, September 2010, pp. 652-653 <https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecb1a7cc1cbb4/download> (last visited November 14, 2021); and Eric De Brabandere, *The Regulation of Incitement to Terrorism in International Law*, in: Hennebel, L. & Tigroudja, H. (Eds.), Balancing Liberty and Security: The Human Rights Pendulum, pp. 221-240, Nijmegen: Wolf Legal Publishers <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).

138 See Eric De Brabandere, *The Regulation of Incitement to Terrorism in International Law*, in: Hennebel, L. & Tigroudja, H. (Eds.), *Balancing Liberty and Security: The Human Rights Pendulum*, pp. 221-240, Nijmegen: Wolf Legal Publishers <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992987> (last visited November 14, 2021).

139 See Wibke Kristin Timmermann, *Incitement in International Criminal Law*, International Review of the Red Cross, Vol. 88, No. 864, December 2006 < https://www.icrc.org/en/doc/assets/files/other/irrc_864_timmermann.pdf> (last visited November 14, 2021).

140 See Senate Deliberations, Records, Vol. I, Session No. 45, pp. 10-11; and Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, pp. 14-17.

jurisprudence to guide the courts in their interpretation.[141] It should also be borne in mind that the necessity and proportionality requirements attached to content-based restrictions are deemed incorporated in the application of these Sections, such that mere propaganda or advocacy must be distinguished from those expressions that are clearly intended to incite, propose, or threaten acts of terrorism.

For all these reasons, the ineluctable conclusion is that in order for an expression to be penalized under Sections 5, 8, and 9 of the ATA, it is necessary that the expression is shown to have a direct, unmistakable, and immediate causal link to the intended terrorist act, as enumerated under Section 4 of the ATA, and that it is intended to promote, induce, or commence terrorism, and is likely to produce such action.[142] To note, the circumstances surrounding each case must be considered,[143] such as the words used and the context in which they were used[144] from which the intent can be inferred; and that the accused is shown to have transmitted the communication for the purposes of issuing a threat, proposal, or incitement, or with knowledge that the communication will be viewed as such.[145] Together, these factors should provide sufficient guidance to the courts, as well as the relevant law enforcement agencies and personnel in the implementation and application of these provisions of the ATA.

Sections 6 and 12.

I also recognize that Sections 6 and 12 of the ATA are susceptible to a facial challenge but only insofar as they penalize "training" and "expert advice or assistance." Indeed, as defined in the ATA and in the U.S. case of *Holder v. Humanitarian Law Project*[146] (*Holder*), as well as ordinary usage, these

---

141 See Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, p. 24.

142 See *United States v. Williams*, supra note 126. See also Dr. Bibi van Ginkel, *Incitement to Terrorism: A Matter of Prevention or Repression?*, ICCT Research Paper, August 2011, p. 15 <https://www.icct.nl/app/uploads/download/file/ICCT-Van-Ginkel-Incitement-To-Terrorism-August-2011.pdf> (last visited November 14, 2021).
Likewise see Yael Ronen, *Incitement to Terrorist Act and International Law, Leiden Journal of International Law*, September 2010, p. 669 < https://www.researchgate.net/publication/231996872_Incitement_to_Terrorist_Acts_and_International_Law/link/55e0034708aecb1a7cc1cbb4/download> (last visited November 14, 2021); citing *Prosecutor v. Nahimna*, Trial Judgment, Case No. ICTR-99–52-T, 3 December 2003.

143 See *Colorado in the interest of R.D.*, No. 17SC116, supra note 134, which provided the following factors to consider in determining whether a statement made online constitutes a true threat, *viz.:*

> In determining whether a statement is a true threat, a reviewing court must examine the words used, but it must also consider the context in which the statement was made. Particularly where the alleged threat is communicated online, the contextual factors courts should consider include, but are not limited to: (1) the statement's role in a broader exchange, if any, including surrounding events; (2) the medium or platform through which the statement was communicated, including any distinctive conventions or architectural features; (3) the manner in which the statement was conveyed (e.g., anonymously or not, privately or publicly); (4) the relationship between the speaker and recipient(s); and (5) the subjective reaction of the statement's intended or foreseeable recipient(s).

144 See *Colorado in the interest of R.D.*, No. 17SC116, supra note 134.

145 See *Elonis v. United States*, 575 U.S. __ (2015).

146 561 U.S. 1, 130 S. Ct. 2705 (2010). In this case, the validity of 18 U. S. C. §2339B of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) which penalizes the provision of material support or resources to foreign terrorist organizations was facially challenged on the ground that it violates the right

terms include communication or expressions which are protected under the right to freedom of expression, and the more specific intellectual liberty guarantee under the right to academic freedom, found under Section V, Article XIV of the Constitution.[147] As content-based restrictions on speech, these provisions are therefore, subject to strict judicial scrutiny[148] and the heavy presumption of unconstitutionality.[149] Based on these parameters, I find that with respect to *training* and *expert advice or assistance,* the *ponencia* correctly upheld the validity of Sections 6 and 12 of the ATA. I explain further.

Under the first prong of strict scrutiny, **compelling state interest** evidently exists in prohibiting and penalizing the provision of *training* and *expert advice and assistance* for the commission of terrorism. These are preventive measures that have been introduced in the law precisely for the purpose of preventing terrorism at its early stages, as emphasized by the law's sponsor throughout the legislative deliberations.[150] But more than preventing terrorist acts, penalizing support to terrorist activities, such as training and expert advice or assistance, can help prevent legitimizing terrorist groups, including their respective causes and agenda. As held in *Holder*,[151] "material support" is a valuable resource by definition that helps lend legitimacy to foreign terrorist groups which makes it easier for them to persist, recruit members, and raise funds — all of which facilitate more terrorist attacks.[152] Lastly, it should be recognized that the adoption of these preventive measures is consistent with the states' obligations "to prevent the commission of terrorist acts" provided in [UNSCR] No. 1373 (2001)[153] of the United Nations

---

to due process and freedom of expression. The assailed law defines material support with the ATA's definition of material support under Section 3 (e).

147 See *Ateneo de Manila University v. Capulong*, 294 Phil. 654, 672-673 (1993), which declared: "'Academic freedom,' the term as it evolved to describe the emerging rights related to intellectual liberty, **has traditionally been associated with freedom of thought, speech, expression and the press**; in other words, with the right of individuals in university communities, x x x to investigate, pursue, discuss and, x x x 'to follow the argument wherever it may lead,' free from internal and external interference or pressure." (emphasis supplied)

148 See *Chavez v. Gonzales*, supra note 78, at 205. See also *Keyishian v. Board of Regents*, supra note 79; *United States v. Alvarez*, supra note 78; *United States v. Stevens*, supra note 78; and Congressional Research Service, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, May 6, 2019 <https://fas.org/sgp/crs/terror/R45713.pdf> (last visited November 14, 2021).

149 See *Social Weather Stations, Inc. v. COMELEC*, supra note 78, at 584-585; and *Iglesia ni Cristo v. Court of Appeals*, supra note 78. See also *United States v. Alvarez*, id.; *R.A.V. v. St. Paul*, supra note 78; and *United States v. Stevens*, id.

150 See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 27.

151 561 U.S. 1, 130 S. Ct. 2705 (2010).

152 See also the following international instruments that call on States to take effective measures to penalize training and providing material resources support to terrorism: *(i)* UNSC Resolution No. 2178 (2014), September 24, 2014; *(ii)* Articles 2 and 3 of the EU COUNCIL FRAMEWORK DECISION 13 JUNE 2002 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02002F0475-20081209&from=EN> (last visited November 14, 2021); *(iii)* Articles 4, 7, and 8 of the DIRECTIVE (EU) 2017/541 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA 9 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32017L0541> (last visited November 14, 2021).

153 UNSCR No. 1373 obliges states to, among other: "*[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts*," "*[t]ake the necessary steps to prevent the commission of terrorist acts*," and "*[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws.*" See

Security Council (UNSC). Verily, the devastating human cost of terrorism, in addition to its debilitating impact on our social, economic, and political structures, calls for proactive measures that ensure that terrorist acts are thwarted at the onset.

Furthermore, under the second prong of strict scrutiny, these provisions are narrowly drawn and are the least restrictive means to achieve the compelling State interest.

Section 3 (k) of the ATA defines training as the "*giving of instruction or teaching* ***designed to impart a specific skill in relation to terrorism*** *as defined hereunder, as opposed to general knowledge.*" Based on this definition, it is clear that, in order to be punishable under Section 6 of the ATA, the training must involve the **transfer of specific information or competence calculated to enable the trainee to perform a particular task or function that can facilitate the commission of terrorism**. To my mind, the statement that the instruction or teaching must be "*designed to impart a specific skill in relation to terrorism*" "*as opposed to general* knowledge" sufficiently clarifies and narrows its coverage to the type of expression that the State has the right to restrain. Accordingly, *training* under Sections 6 and 12 shall be punishable only when the following elements concur: *(i)* the **training is with the purpose of committing terrorism**; *(ii)* the training is **intentionally designed to impart a skill in relation to terrorism**; and *(iii)* the **skill imparted has specific relation to a projected act of terrorism**, not mere general knowledge. Absent any one of these, any information or skill taught or imparted shall be considered as mere general knowledge that is expressly excluded from the law's operation.

The above interpretation on *training* is equally applicable to *expert advice or assistance* since both involve the giving of information or instruction; thus, the foregoing elements must concur for *expert advice or assistance* to be punishable. Additionally, it should be recognized that Section 12 of the ATA provides the element of **knowledge** that the individuals or groups of persons receiving the material support are "*committing or planning to commit terrorism*" as defined under Section 4. Thus, in order to penalize a person under Section 12 for providing material support in the form of *training* and/or *expert advice or assistance*, the State must sufficiently prove that the person knew that the recipient individuals or groups of persons are "*committing or planning to commit terrorism.*"

For another, it must be recognized that the term *support* under Section 12 of the ATA is explicitly qualified by the word **material**. To my mind, this qualification is relevant for it betrays an intention to limit Section 12's coverage to only those acts that play an essential, relevant, and significant role

---

<https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf> (last visited November 14, 2021); also <https://www.unodc.org/pdf/crime/terrorism/explanatory_english2.pdf> (last visited November 14, 2021).

in the planning or commission of terrorism. In fact, as explained in *Holder*,[154] "material support" refers only to a valuable resource that helps lend legitimacy to foreign terrorist groups and which makes it easier for them to persist, recruit members, and raise funds — all of which facilitate more terrorist attacks.[155] In this context, therefore, it should be clear that advice or assistance given in a professional capacity – including those given by lawyers and medical practitioners – which is not directly related to the planning or commission of terrorism is not covered by Section 12. Significantly, the exclusion of legal and medical advice or assistance from Section 12's coverage was explicitly guaranteed by the law's sponsor during the deliberations.[156]

Finally, the *training* and/or *expert advice or assistance* covered by these provisions should be read together with the *Brandenburg* standards.[157] Thus, it must be adequately demonstrated that the *training* or *expert advice or assistance* is (*i*) directed to inciting or producing, (*ii*) imminent lawless action, and (*iii*) is likely to incite or produce such action[158] before it can be penalized under Sections 6 and 12 of the ATA.

Section 10.

For similar reasons, I assent that Section 10[159] of the ATA is susceptible to a facial challenge insofar as it penalizes membership or association in a

---

[154] 561 U.S. 1, 130 S. Ct. 2705 (2010).

[155] Id.

[156] See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 22:

> Senator Pimentel. The phrase "MATERIAL SUPPORT" is being explained or defined. There is this phrase **"EXPERT ADVICE."** ***Natakot lamang po ako sa mgapanero/panera,*** **Mr. President.** Is legal advice...
>
> Senator Lacson. **Of course not, Mr. President. Even an advice coming from a doctor cannot be covered. It should be in relation to perpetrating an act of terrorism.** (emphases supplied)

[157] See *Brandenburg v. Ohio*, supra note 103, as recognized in our jurisprudence in *Salonga v. Paño*, supra note 88, at 426; and *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, supra note 91, at 256-257.

[158] See *Brandenburg v. Ohio*, id.; citing *Noto v. United States*, 367 U. S. 290, 367 U. S. 297-298 (1961). See also Alexander Tsesis, *Terrorist Speech on Social Media*, Vanderbilt Law Review, Vol. 70:2 (2017), p. 653 <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/89/2017/03/21162555/Terrorist-Speech-on-Social-Media.pdf> (last visited November 14, 2021); and Laura K. Donahue, *Terrorist Speech and the Future of Free Expression*, Georgetown University Law Cardozo Law Review Vol. 27:1 (2005), p. 249; citing *Watts v. U.S.*, 394 U.S. 705 (1969) < https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2352&context=facpub> (last visited November 14, 2021).

[159] Section 10. Recruitment to and Membership in a Terrorist Organization. — Any person who shall recruit another to participate in, join, commit or support terrorism or a terrorist individual or any terrorist organization, association or group of persons proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of life imprisonment without the benefit of parole and the benefits of Republic Act No. 10592.

The same penalty shall be imposed on any person who organizes or facilitates the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment which may be committed through any of the following means:

(a) Recruiting another person to serve in any capacity in or with an armed force in a foreign state, whether the armed force forms part of the armed forces of the government of that foreign state or otherwise;

terrorist organization, found under the third paragraph thereof. As case law holds, the right to freedom of association is deemed cognate of the right to freedom of expression because it represents an effective mechanism whereby other rights, such as freedom of thought, conscience, religion or belief, and expression, are exercised.[160] As such, it is likewise considered as a preferred freedom[161] expressly guaranteed under Section 8, Article III of the Constitution, as well as under the right to liberty of Section 1, Article III, and under Section 4, Article III, all of the Constitution.[162] Accordingly, any state action which may have the effect of curtailing its exercise is subject to the closest scrutiny.[163]

Applying these parameters, I find that **the validity of the third paragraph of Section 10 of the ATA must be upheld, *except for the phrase "organized for the purpose of engaging in terrorism," which clause was unfortunately upheld by the majority in this case***.

First, there are sufficient and compelling reasons to restrain the exercise of the freedom to associate with respect to terrorist organizations. Membership lends moral aid and psychological encouragement to the organization.[164] In the context of terrorism, it is a form of support that helps lend legitimacy to the terrorist group thereby allowing it to persist and facilitate more terrorist attacks. As such, it has been held that "when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in

---

(b) Publishing an advertisement or propaganda for the purpose of recruiting persons to serve in any capacity in or with such an armed force;

(c) Publishing an advertisement or propaganda containing any information relating to the place at which or the manner in which persons may make applications to serve or obtain information relating to service in any capacity in or with such armed force or relating to the manner in which persons may travel to a foreign state for the purpose of serving in any capacity in or with such armed force; or

(d) Performing any other act with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such armed force.

Any person who shall voluntarily and knowingly join any organization, association or group of persons knowing that such organization, association or group of persons is proscribed under Section 26 of this Act, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism, shall suffer the penalty of imprisonment of twelve (12) years.

160 See *Peralta v. COMELEC*, 172 Phil. 31, 53 (1978); and Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach, by the Organization for Security and Co-operation in Europe Vienna, February 2014, p. 55 <https://www.osce.org/files/f/documents/1/d/111438.pdf> (last visited November 14, 2021). See also *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958). See further <https://cfnhri.org/human-rights-topics/freedom-of-expression-association-and-peaceful-assembly/> (last visited November 14, 2021).

161 See *People v. Ferrer*, 150-C Phil. 551 (1972); citing *Kovacs vs. Cooper*, 336 U.S. 77 (1949); *Vera v. Arca*, 138 Phil. 369 (1969).

162 See *Vera v. Arca*, id.

163 See *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958). See also *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach* by the Organization for Security and Co-operation in Europe Vienna, February 2014, p. 55 <https://www.osce.org/files/f/documents/1/d/111438.pdf> (last visited November 14, 2021).

164 See *People v. Ferrer*, supra note162, 578; citing *Frankfeld vs. United States*, 198 F 2d. 879 (4th Cir. 1952).

which it is engaged."[165] For these reasons, penalizing and prohibiting membership in terrorist groups is considered as a necessary and reasonable measure to prevent and curtail terrorism. As explained by the law's sponsor, this is one of the several counterterrorism measures introduced in the ATA for the purpose of preventing terrorism at its early stages.[166]

Second, with the exception of the phrase "*organized for the purpose of engaging in terrorism*," the third paragraph of Section 10 of the ATA contains sufficiently clear and well-defined parameters to distinguish punishable from protected associations; hence, they are neither vague nor overbroad.

As can be deciphered from the third paragraph of Section 10 of the ATA, there are three (3) separate but interrelated elements that must concur in order for membership to be punishable thereunder, namely: *(1)* "***voluntarily* and *knowingly* join[ing]** [the] organization, association, or group of persons"; *(2)* "***knowing*** that [the] organization, association, or group of persons"; *(3)* is ***proscribed under Section 26, designated by the UNSC as a terrorist organization,* or *organized for the purpose of engaging in terrorism***. As earlier stated, penal laws are construed in favor of the accused and strictly against the State; hence, the latter must prove each of these elements beyond reasonable doubt.

Based on the foregoing, I conclude that the first two (2) instances of punishable membership under Section 10 are sufficiently clear and narrowly tailored as to preclude any arbitrary finding of membership, and are thus valid. Indeed, as the *ponencia* properly explained, the membership penalized under these two instances are limited to **knowing membership**, as distinguished from nominal membership, because of the *scienter* or knowledge[167] element (in addition to the *voluntariness* element) which attaches both to the *joining* of the organization, association or groups of persons, and to the nature or status of said organization either as proscribed under Section 26 or designated by the UNSC.[168] As the Court similarly found in *People v. Ferrer*,[169] these elements of *voluntarily and knowingly joining* and *knowledge* of the organization's status as a terrorist sufficiently circumscribe the law's operation as they betray the legislative intent[170] to criminalize only those voluntary and knowing membership.

---

165 Id.

166 See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, p. 27 and Senate Deliberations, Records, Vol. I, Issue No. 44, January 21, 2020, pp. 27-28.

167 See Black's Law Dictionary, Eight Edition (2004), p. 888, which defines "knowing" as "having or showing awareness or understanding; well-informed; deliberate, conscious." Knowingly, on the other hand, is defined as "*consciously; willfully; subject to complete understanding of the facts or circumstances.*" <https://legaldictionary.thefreedictionary.com/Knowingly> (last visited November 14, 2021) and doing something "with full awareness of what one is doing" (see <https://www.merriam-webster.com/thesaurus/knowingly> (last visited November 14, 2021).

168 *Ponencia*. p. 131.

169 See supra.

170 See Senate Deliberations, Records, Vol. I, dated February 3, 2020, p. 31.

Moreover, with respect to the second element, the person's knowledge of the nature or status of the organization, association, or groups of persons under the first two instances can be readily determined, considering that the procedure for proscription and UNSC designation can be found in the ATA and relevant international instruments, respectively. Hence, the person's knowledge of said nature or status can be ascertained from the circumstances surrounding the proscription or UNSC designation, as well as from the actual declaration of the status of the organization as a terrorist.

In contrast to the foregoing, the person's knowledge of the nature or status of the organization under the third instance of punishable membership, **covered by the phrase *organized for the purposes of engaging in terrorism***, cannot be rationally determined, considering that the law is completely silent with respect to the parameters for the determination of the organization's status as a terrorist.

To note, the majority view, as articulated in Chief Justice Alexander G. Gesmundo's (Chief Justice Gesmundo) opinion, propounds that the phrase is in fact clear, considering that Section 10 should be read in relation to Section 4, such that the phrase should cover only those organizations whose purpose is to engage in any of the five types of overt acts under the latter Section.[171] For this reason, the phrase "*organized for the purposes of engaging in terrorism*" was upheld.

I disagree. Plainly, the contentious phrase "*organized for the purposes of engaging in terrorism*" is unreasonably vague since it fails to provide sufficient guidance, on its face, whether or not the group covered by the third instance of membership needs to first commit or first attempt to commit any terrorist act to be deemed as "organized" for such purpose. As such, an ordinary person, much more law enforcement officers, may unwittingly construe the same to mean that **a mere purported intent to commit terrorism in the future is already sufficient to consider a group as having been "organized" for purpose of engaging in terrorism**. More importantly, **even the legislative deliberations fail to provide any clarification since the law's sponsor simply leaves the matter up to the evidence**.[172] ***Thus, the vagueness of this phrase leaves much to the discretion of the law enforcement officers which could very well lead to an arbitrary finding of terrorist membership under Section 10 of the ATA***.

In fine, the phrase "*organized for the purposes of engaging in terrorism*" is impermissibly vague and as such, constitutes an unconstitutional regulation on the freedom of association, which is a cognate right of speech. Thus, I dissent against the majority's ruling upholding its validity.

---

171 See Senate Deliberations, Records, Vol. I, Issue No. 47, January 28, 2020, pp. 24-28.

172 See Chief Justice Alexander G. Gesmundo's Opinion, pp. 156-158.

III. Designation and proscription: Sections 25, 26, 27, and 28.

As it has been with the provisions tackled in this discourse, the sections of the ATA dealing with designation and proscription can also be subject to a facial analysis in view of their **significant and consequential impact on the exercise of the right to freedom of expression and its cognate rights**. The broad and amplified scope of these counterterrorism measures may undeniably lead to the stifling of legitimate dissent and concerted civil actions. For these reasons, the relevant case law on content-based regulations on expression justifies a largely similar treatment for assessing the constitutional validity of the provisions on designation and proscription. While they are not regulations on expression *per se*, their highly deterrent effect almost equally restrains the exercise of the right as much as a content-based regulation on expression and association and should thus, be subject to the strictest scrutiny.

Applying these parameters, it is apparent that a compelling State interest underlies both designation and proscription. It is undeniable that these counterterrorism measures are not only intended to forestall possible terrorist activities of foreigners within Philippine jurisdiction or against Philippine nationals abroad, as well as to cooperate with global efforts against international terrorist groups who are known to operate across territorial borders pursuant to our international obligations under UNSCR No. 1373.[173] They are also impelled by the general considerations of ***law enforcement, public order, and public safety*** — all of which are State interests of a compelling nature and are therefore lawful subjects of state action. Moreover, these are accepted counterterrorism measures recognized by other jurisdictions which therefore, reinforce the reasonableness of these measures.[174]

I further find that designation, through automatic adoption of the UNSC listing, and the proscription measures are reasonable and narrowly tailored to meet the foregoing State interests. Particularly, with respect to designation through automatic adoption by the Anti-Terrorism Council (ATC) of the designation or listing made by the UNSC, I agree that ***there are adequate standards and rigorous procedures for listing (as well as delisting) under pertinent issuances of the UNSC and the UN Sanctions Committee***. These issuances include UNSC Resolution (UNSCR) No. 1373[175] and UNSCR No. 1555 (2004),[176] which enumerate the reprehensible acts connected to

---

[173] *Ponencia*, p. 155.

[174] See for example the "Immigration & Nationality Act," "Antiterrorism and Effective Death Penalty Act of 1996", "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism", and the "International Emergency Powers Act." Meanwhile, an analogous mode of proscription may similarly be found in the United Kingdom's (UK) "Terrorism Act of 2000" and Singapore's "Terrorism (Suppression of Financing) Act of 2003."

[175] Dated September 8, 2001. See <https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf> (last visited November 14, 2021).

[176] Dated July 29, 2004. See <http://unscr.com/en/resolutions/doc/1555> (last visited November 14, 2021).

terrorism; the *Guidelines of the Committee for the Conduct of its Work*[177] of the UN Sanctions Committee, which is tasked with the maintenance and updating of the list, and which Guidelines contain the procedure for delisting; and UNSCR No. 2368 (2017),[178] which established a procedure for the review of delisting requests. Other similar resolutions have been passed by the UNSC further refining the corpus of authorities governing the maintenance, updating, and implementation of the consolidated list.

Moreover, the adoption of the Consolidated List is ***enjoined by our binding obligations*** **under UNSCR No. 1373 which the UNSC issued pursuant to its powers under the UN Charter.**[179] While this resolution does not explicitly mandate States to automatically adopt the said List of terrorists and terrorist groups, the **consolidated list may be taken as a form of an implementing measure adopted and enforced by the UNSC to maintain and restore international peace and security against terrorist threats which states are obligated to undertake under UNSCR No. 1373 and subsequent UNSC resolutions.**[180] Considering that the measures for the implementation of these obligations are left for each state to determine and depend on their respective legal regimes, the determination of the appropriate mechanisms to comply with our international obligations under said Resolutions remains in the discretion of the political branches of our government. Evidently, Congress, as the seat of police power in our system of government, considered the automatic adoption of the UNSC Consolidated List as an effective means of protecting the state from foreign terrorists. Indeed, as made clear in this case, terrorism has become a global threat and, as such, involves international terrorist groups who are known to operate across territorial borders. Thus, regardless of the wisdom of this decision, it cannot be denied that the adoption of the UNSC Consolidated List is bolstered by practical considerations especially given the country's limited resources and logistical intelligence.

Meanwhile, with respect to proscription, it is observed that **the ATA, in fact, provides extensive and rigorous requirements and procedures that afford the respondent due process prior to proscription.** As outlined in the *ponencia,* proscription passes a thorough screening process that requires the coordinated action and consensus of the Department of Justice, the ATC, and the National Intelligence Coordinating Agency even prior to its initiation which thus, maximizes the verification of relevant information and draws

---

177 Dated September 5, 2018. See < https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/guidelines_of_the_committee_for_the_conduct_of_its_work.pdf> (last visited November 14, 2021).
Note that based on these Guidelines, an inclusion in the consolidated list involves a rigorous screening process which feature, among others: *(i) multilateral consensus; (ii) written and detailed reports; (iii) narrative summaries; (iv) consultations with member states and recognized law enforcement agencies; (v) consideration of objections from member states; (vi) the need for supporting evidence*; and *(vii) accurate and positive identification.*

178 Dated July 20, 2017. See <http://unscr.com/en/resolutions/doc/2368> (last visited November 14, 2021).

179 See Articles 24 and 25, and Chapter VII of the UN Charter.

180 See also UNSCR No. 1989 dated June 17, 2011. <https://www.undocs.org/S/RES/1989%20(2011)> (last visited November 14, 2021); and UNSCR No. 1268 <https://www.un.org/securitycouncil/sanctions/1267> (last visited November 14, 2021).

from the particular and peculiar expertise of these executive agencies. More significantly, the proceedings are also commenced before the higher-level collegiate court (*i.e.*, the Court of Appeals), and are circumscribed by the Rules of Court and prevailing jurisprudence, as well as the relevant procedural rules to be promulgated that will specifically govern proscription proceedings.

Further, in allowing the issuance of a preliminary order of proscription, the ATA requires that the order be supported by an application which is **duly verified and sufficient in form and substance**, and be based on a judicial finding of **probable cause that the issuance of said order is necessary to prevent the commission of terrorism.** Finally, Section 26 of the ATA explicitly requires that the respondent be **given due notice and the opportunity to be heard** which thus, ensures that the potential proscriptee is given the chance to air its side and present countervailing evidence. In fine, all these requisites and rigorous procedures, including the heightened level of scrutiny on the part of the court which squares with the explanations made by the law's sponsor,[181] should preclude possible abuse by State authorities and exclude flimsy evidence in the proscription of organizations, associations, or groups of persons as terrorists.

In contrast, designation under the second and third modes are constitutionally problematic, considering that it: (1) is broadly tailored; (2) lacks reasonable safeguards against misuse and abuse; and (3) is not the least restrictive means to accomplish the compelling State purposes behind them.

To elucidate, the designation under the second and third modes grants the ATC wide and unbridled discretion in determining whether a suspected person or group may be designated as terrorists or organized for the purpose of terrorism within the law's contemplation. It also fails to provide reasonable safeguards, including speedy remedies, against erroneous designations. Moreover, it does not indicate the quantum of evidence upon which a valid designation under these modes may rest. The probable cause standard also appears to be foreign to the concept of designation because executive determination of probable cause is generally associated with the filing of an Information in court. Thus, it cannot be simply construed to apply to the designation process.

Further, these modes do not afford the potential designee the opportunity to be heard and present countervailing evidence in their favor. Together, these generalized parameters under the law may lead to weak and baseless findings based on mere suspicion and questionable evidence, thereby ***virtually granting the ATC unbridled discretion in designating any suspected person or organization as terrorists***. They not only make the foregoing police power measures offensive to the constitutional requirement of substantive due process under a strict scrutiny analysis, but they also

---

[181] See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, pp. 13-14.

unduly invade the sensitive spheres of protected liberties including the freedom of expression.

Finally, there are other suitable alternatives which may equally aid law enforcement agencies in the apprehension of suspected terrorists and terrorist groups that are far less intrusive and potentially injurious to protected rights. These include the adoption of an internal watchlist by law enforcement agencies or the maintenance of an agency database to monitor potential terrorist threats, as well as proscription. All told, the designation measures under the second and third modes are arbitrarily and broadly tailored, and fail the strict scrutiny test. As such, I vote to strike them down as unconstitutional.

Notably, while the *ponencia* appropriately struck down the second mode of designation (to which I concur), the majority of the Court, through Chief Justice Gesmundo's opinion, regrettably arrived at a different conclusion with respect to the third mode of designation under Section 25 of the ATA. As postulated by the majority, the third mode of designation under Section 25, when read with the law's IRR, allegedly provides sufficient substantive, procedural, and evidentiary criteria to inform any person or entity of the basis of designation. Thus, the majority held that the third mode of designation is a valid means of preventing or cutting off financial and logistical support to a terrorist act and enable the detection and prevention of any impending terrorist attack and hence, constitutional.

Nonetheless, as I already extensively discussed above, and even by the *ponente,* the third mode of designation is not narrowly tailored to achieve its compelling State interest. It is also plagued with the absence of reasonable safeguards against misuse and abuse due to its failure to specify the proper evidentiary standard upon which a valid designation under this mode may rest. There are likewise no proper remedies available to curb the ATC's unbridled discretion in its application. Truth be told, there are really no appreciable substantial disparities between the second and third modes of designation insofar as their constitutional infirmities are concerned; hence, it is quite perplexing how a different ruling was reached with respect to the third mode of designation despite the striking down of the second mode. Therefore, I dissent against the majority's disposition relative to the third mode of designation.

IV. Detention: Section 29.

In similar fashion, Section 29 of the ATA is susceptible to a facial challenge. Indeed, the threat of arrest without a judicial warrant and prolonged detention may undoubtedly chill and stifle the free exercise of expression and its cognate rights which the Court must promptly address. Under this lens, I further find that Section 29 of the ATA must be sustained, but subject, however, to the Court's clarifying and narrowing construction, as expressed in the pertinent discussions of the *ponencia*.

Controversially, Section 29 of the ATA is one of the counterterrorism measures which the State introduced in the exercise of its police power to respond to the ever-evolving problem of terrorism and to prevent and disrupt future terrorist acts.[182] As will be highlighted in the subsequent discussions, one of the major premises of petitioners' arguments rests on their interpretation that Section 29 unlawfully carves out additional exceptions to Section 5, Rule 113 of the Rules of Court,[183] and thus, unduly expands the permissible exceptions to the guarantee against unreasonable seizures.[184] As such, they argue that it unavoidably stifles the exercise of free speech rights. Given these allegations, I find it appropriate that the validity of Section 29 is tested under the most exacting standards of strict scrutiny and overbreadth, similar to the ATA's provisions on designation and proscription.[185]

Once more, pursuant to the strict scrutiny standard, Section 29 of the ATA would pass constitutional muster only if it is: (1) necessary to achieve a compelling State interest; and (2) the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.[186] On the other hand, the provision would be struck down as unconstitutional for overbreadth if it achieves a governmental purpose by means that are unnecessarily broad and thereby invade the area of protected freedoms.[187] In determining overreach, the Court must necessarily assess the limits of the provision's constitutional application. The alleged unconstitutional expansion of the permissible exceptions to the guarantee against unreasonable seizures which will thereby chill expression evidently raises overbreadth concerns that must be addressed by the Court.[188]

Ultimately, however, the Court is not precluded from employing the various aids to statutory construction to properly interpret the provisions of Section 29 so that the legislative will may accurately be reflected in its enforcement and implementation. And, if found susceptible to a construction that would separate its constitutional from unconstitutional applications, then the same cannot be rendered invalid.

At the onset, it is imperative to point out that Section 29 of the ATA contemplates a valid warrantless situation. As can be gleaned from its

---

182 *Ponencia*, p. 212.

183 See Petitioner's Memorandum for Cluster II Issues, pp. 50-51.

184 Petitioners' Memorandum for Cluster V Issues, pp. 19-20.

185 Designation and proscription: Sections 25, 26, 27, and 28 of the ATA. See *Ponencia*, p. 155.

186 *Samahan ng mga Progresibong Kabataan v. Quezon City*, supra note 0, at 1116; citing *Disini, Jr. v. Secretary of Justice*, supra note 11, at 97-98.

187 *Romualdez v. Sandiganbayan*, supra note 26, at 281; citing the Separate Opinion of Mr. Justice Vicente V. Mendoza in *Estrada v. Sandiganbayan*, supra note 19, at 430 which cited *NAACP v. Alabama*, supra note 6, and *Shelton v. Tucker*, supra note 5.

188 Associate Justice Japar B. Dimaampao, however, submits that the void-for-vagueness doctrine should have been applied, "considering that petitioners have impugned Section 29 for transgressing the right to due process." He notes that "due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." Accordingly, Section 29 should be struck down for being patently vague. (See Justice Dimaampao's Opinions, pp. 4 and 5).

provisions, Section 29 requires two (2) actions before a person can be detained **for a period of fourteen (14) calendar days** from the arrest: *first*, the ATC issues an authority in writing; and *second,* the law enforcement agent or military personnel has **lawfully** taken into custody a person suspected of committing any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the ATA. Applying the basic statutory construction rule that statutes should be construed in a way that "gives it the greater chance of surviving the test of constitutionality,"[189] there is no justifiable reason to suppose that Section 29 provides for an "executive warrant of arrest" or a warrantless arrests based on mere suspicion of the ATC. **Rather, the proper reading is that a person may be arrested without a warrant pursuant to Section 29 but only under any of the instances contemplated in Rule 9.2. of the IRR, which mirrors Section 5, Rule 113 of the Rules of Court.**

Additionally, it must be emphasized that Section 29 begins with the phrase "*The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding* x x x" **This is significant as it immediately establishes that Section 29 — at its core — is not an arrest provision that prescribes a new standard for warrantless arrests but rather, only seeks to carve out an exception to the periods provided in Article 125 of the RPC, which punishes the delay in the delivery to the proper judicial authorities of persons who have been detained *for some legal ground* beyond the period specifically provided therein**. Thus, in the words of the *ponencia*, "the subject matter of Section 29 is really the extended detention period, and not the grounds for warrantless arrest, which remains as those instances provided by Section 5, Rule 113."[190]

Perceptibly, the law's IRR reflects the foregoing interpretation as it fills in the details for its proper implementation in harmony with prevailing standards. Particularly, Rule 9.1. requires the submission by the arresting officer of a sworn statement "stating the details of the person suspected of committing acts of terrorism, and *the relevant circumstances as basis for taking custody of said person*"[191] before the ATC can issue a written authorization. It also requires the ATC to state in the written authorization said relevant circumstances that justified the arrest. In both, the circumstances relate to the instances of valid warrantless arrests enumerated under Section 5 of Rule 113, as reflected in Rule 9.2. of the law's IRR.

For the same reasons, I am also not convinced that Section 29 of the ATA authorizes warrantless arrests based on mere suspicion. Under prevailing rules and jurisprudence, *probable cause* remains the applicable standard in valid warrantless arrests situations.[192] As case law holds, it is the

---

189 *Ponencia* p. 199; citing *San Miguel Corp. v. Avelino*, 178 Phil. 47 (1979).

190 *Ponencia* p. 200.

191 Italics supplied.

192 See *Pestilos v. Generoso*, 746 Phil. 301, 311 (2014), which held that even as early as the Philippine Bill of 1902, "probable cause" has been the threshold for the issuance of an arrest warrant as in its Section 5, to wit: "[t]hat no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."

existence of probable cause that "objectifies the reasonableness of the warrantless arrest, in compliance with the constitutional mandate against unreasonable arrests."[193] Parenthetically, this Court has, in some cases, also referred to the person arrested as a "**suspect**" even when the warrantless arrest was validly made pursuant to probable cause.[194] Thus, the use of the term "suspect" in Section 29 does not in any way downgrade said standard to mere suspicion, but rather, merely describes the person arrested as one who has not yet been charged in court.[195]

Probable cause is defined as "an actual belief or **reasonable grounds of suspicion.**"[196] The grounds of suspicion are said to be reasonable when "the suspicion that the person to be arrested is probably guilty of committing the offense, is based on **actual facts**, *i.e.*, **supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested.**"[197] The instances of valid warrantless arrests include those found under Section 5, Rule 113 of the Rules of Court; as earlier intimated, these have been substantially mirrored under Rule 9.2. of the IRR of the ATA.[198]

Pertinently, Section 5 (a) of Rule 113, otherwise known as an arrest of a suspect *in flagrante delicto*, requires the concurrence of two (2) elements, namely: (*a*) the **person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime**; and (*b*) such overt act is **done in the presence or within the view of the arresting officer.**[199] The requirement that the officer is "present" signifies that the overt acts of the crime must take place within the sensory perception, especially sight or hearing, of the arresting officer.[200] Thus, under the situations covered by Section 5 (a), immediate action is required "to suppress the breach of public order and to prevent further breaches then and there."[201]

On the other hand, Section 5 (b), Rule 113 of the Rules of Court, also known as hot pursuit arrests, requires for its application that at the time of the arrest, **an offense had in fact just been committed** and the **arresting officer has personal knowledge of facts or circumstances indicating that the accused had committed it.**[202] The phrase "has just been committed" connotes that the time interval between the actual commission of the crime

---

193 Id. at 332.

194 See for example: *People v. Muleta*, 368 Phil. 451 (1999); *Miguel v. People*, 814 Phil. 1037 (2017); and *People v. Goyena*, G.R. No. 229680, June 6, 2019.

195 *Ponencia*, p. 205.

196 *People v. Doria*, 361 Phil. 595, 632 (1999); *People v. Tudtud*, 458 Phil. 752, 773 (2003); *Pestilos v. Generoso*, id. at 317; *Aparente v. People*, 818 Phil. 935, 944 (2017); emphasis supplied.

197 *People v. Doria*, id.; *People v. Tudtud*, id.; *Pestilos v. Generoso*, id.; *Aparente v. People*, id.

198 *Ponencia*, p. 195.

199 *Sindac v. People*, 794 Phil. 421, 429-430 (2016).

200 See Justice Florentino P. Feliciano's (Justice Feliciano) Dissenting Opinion in *In the Matter of the Petition for Habeas Corpus of Umil v. Ramos*, 279 Phil. 266, 324-325 (1991).

201 See id.

202 *Sindac v. People*, supra at 430.

and the arrival of the arresting officer must be brief,[203] such that the effects or *corpus* of the crime which has just been committed are still visible. Meanwhile, the phrase "**personal knowledge of facts and circumstances**" on the part of the arresting officer refers to "***events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime.***"[204]

Under both situations covered by Section 5 (a) and 5 (b), Rule 113 of the Rules of Court, **the officer's personal knowledge of *(i)* the *fact of the commission of an offense*, and *(ii) facts or circumstances indicating that the person to be arrested has committed the offense* is essential**. Under Section 5 (a), the officer himself/herself witnesses the crime and the commission thereof by the person to be arrested; while in Section 5 (b), the officer knows for a fact that a crime has just been committed[205] and perceives actions or events at the scene that connects the person to be arrested to the visible effects or *corpus* of the crime.[206] In both situations, **it is the officer's personal knowledge, drawn from overt acts constitutive of a crime, that becomes the basis of the probable cause requirement for warrantless arrests**. This personal knowledge carries with it a sense of immediacy that "acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame" and not from a subsequent exhaustive investigation.[207]

Given the arresting officer's limited timeframe in the determination of probable cause when operating on the ground, inherent limitations certainly inure in said determination in warrantless arrests situations.[208] This is especially so when it comes to the ascertainment of the complex crime of terrorism, which is a situation of utmost exigency given its potential grave consequences and wide-scale disastrous nature. Officers on the ground do not always possess classified information or intelligence and yet are called to immediately act upon a suspect's unlawful activities. Thus, based on the standards for warrantless arrests, the officer may apprehend the suspect and later on, detain him or her for a longer period upon the determination of the ATC that the act committed is actually an act of terrorism under the ATA. This determination and the consequent license to prolong detention is embodied in the written authorization of the ATC. As intended, **the authority of the ATC under Section 29 of the ATA is confined to the determination of whether or not the period of detention should be extended to fourteen (14) days** – and not to the determination of whether an arrest should be made. At the risk of belaboring the point, if the written authority is issued, *the ATC confirms that the person was arrested for the commission of a terrorist act which thus calls for the longer 14-day detention period.* If it does not, then the

---

203 See Justice Feliciano's Dissenting Opinion in *In the Matter of the Petition for Habeas Corpus of Umil v. Ramos*, supra at 326.

204 *Pestilos v. Generoso*, supra at 330-331.

205 *Sindac v. People*, supra at 430.

206 See J. Feliciano's Dissenting Opinion in *In the Matter of the Petition for Habeas Corpus of Umil v. Ramos*, supra at 325-326.

207 *Pestilos v. Generoso*, supra at 330-331.

208 See *Pestilos v. Generoso*, id. at 208.

arresting officer shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the RPC — the prevailing general rule.[209] Since terrorists have "become more clandestine and sophisticated in executing their attacks," the ATC certainly would be in a better position to make such determination as it is mandated to "[e]stablish and maintain comprehensive database information systems on terrorism, [terroristic] activities, and counterterrorism operations." In every instance, however, law enforcement agents must ensure the proper observance of the rights of detainees and endeavor to secure them against possible abuses.

Furthermore, I reckon that Section 29 of the ATA does not run afoul of Section 18, Article VII of the Constitution,[210] which provides that a person apprehended shall be judicially charged within three (3) days during the suspension of the privilege of the writ of *habeas corpus*. ***Aside from the fact that the said constitutional provision specifically applies in cases of invasion or rebellion when the public safety requires it, the same also does not contain any express prohibition on Congress with respect to the possibility of imposing longer periods of detention in a situation where the privilege of the writ of habeas corpus is not suspended, which is a matter of legislative wisdom and policy***. It is therefore error to use Article VII, Section 18 as legal basis to clip the power of Congress to formulate novel policies that would respond to other threats on national security, as it has done in the enactment of the ATA.

Significantly, Section 29 also does not render inutile the inherent Commander-in-Chief powers of the President, considering that it does not

---

209 See *ponencia*, pp. 207-208.

210 Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, The President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (emphases supplied)

affect, much less limit, the President's exercise of discretion in determining whether the privilege of the writ of *habeas corpus* must be suspended. Section 29 neither negates any of the President's residual powers to address terroristic threats or attacks as Commander-in-Chief. Even with the passage of the ATA, the standards for the suspension of the said privilege remains to be the presence of circumstances provided under paragraph 1, Section 18, Article VII of the Constitution. Again, Section 29 of the ATA only pertains to the extended detention period relative to Article 125 of the RPC.

Notably, the constitutional deliberations show that the situation covered by Article 125 of the RPC and Section 18, Article VII of the Constitution are different, to wit:

> MR. PADILLA: Madam President, I have no particular conviction on the number of days or number of hours. That was suggested by a few Commissioners in conference yesterday. It is true that under Article 125 of the Revised Penal Code which penalizes the [delay] of the transmittal or delivery of the person arrested to the judicial authorities, the period is based on the gravity of the offense and this is punishable by the same penalties as those for arbitrary detention in Article 124 of the Code and the delay in the release under Article 126. **But this provision is made to apply when there is a suspension by the President of the privilege of the writ of *habeas corpus*. So it covers a different situation from that contemplated in the Revised Penal Code.** The Rules of Court, Rule 113, Section 6 thereof, also allows arrest without warrant under three situations. However, that is also subject to the period for delivery of the arrested person to the judicial authorities, which means to the courts through the fiscal.[211] (emphasis and underscoring supplied)

Since Section 29 serves only as an exception to the periods provided under Article 125 of the RPC, it should be understood to operate in the ordinary context where the privilege of the writ of *habeas corpus* is not suspended. When the privilege of the writ is suspended under the parameters of Section 18, Article VII of the Constitution, the three-day period operates.

As well, I recognize that the extended detention period provided under Section 29 of the ATA constitutes reasonable and narrowly-tailored counterterrorism measures designed to protect public safety and national security from the ever-evolving problem of terrorism. Indeed, as the provision itself explicitly provides, Section 29 only operates when a person has been lawfully arrested without a judicial warrant for violating Sections 4 to 12 of the ATA; and, considering the Court's ruling that Section 4 excludes protests, advocacies, dissents, and other exercises of political and civil rights, this provision should no longer result in an impermissible chilling effect on expression.[212] Besides, the enactment of the fourteen-day period of detention was borne from the experience of our law enforcement agencies and was

---

[211] See Records of the Constitutional Commission, No. 44 dated July 31,1986 <https://www.officialgazette.gov.ph/1986/07/31/r-c-c-no-44-thursday-july-31-1986/> (last visited December 16, 2021).

[212] *Ponencia*, pp. 211-215.

agreed to be the reasonable time needed for the gathering of evidence for the purpose of the inquest proceedings for terror crimes.[213] Absent any showing of grave abuse of discretion, the Court should respect the wisdom of Congress in this crucial matter.

Moreover, it is apparent that the law itself, as well as its IRR, provides numerous safeguards to protect the detainee's right during the period of detention.[214] These include the requirement that other relevant agencies be informed of the arrestee's detention, including the Commission on Human Rights as well as the judge of the trial court nearest the place of apprehension or arrest within forty-eight (48) hours therefrom. They also provide punishment for any failure to comply with these requirements. In addition, Section 29 does not preclude the detainee from availing of the remedies against warrantless arrests under Section 5, Rule 113 of the Rules of Court, as well as the other remedies available under our law and rules, including the remedy of the writ of *habeas corpus* – which must still be adjudged based on the facts surrounding the warrantless arrest itself, and not on the basis merely of the ATC's written authority.

Meanwhile, with respect to the miscellaneous issues discussed in the *ponencia* that were not featured in this Opinion,[215] allow me to express my full concurrence in support of its reasons, to which I find no impelling need to add more. Overall, I take this opportunity to laud the *ponente* for eruditely, prudently, and competently handling this sensationally complex case constituting 37 petitions, which – despite some divergence in views - nonetheless reflects the Court's holistic effort to strike a deft balance between all the institutional and societal values involved.

A Final Word.

The issue of terrorism is both critical and complicated. It requires a multi-sectoral and balanced approach to address and combat its ever-growing threat to lives, property, freedoms, and our way of life. Law enforcement measures are just one of the means to address this problem. While several of its provisions are upheld, subject to the Court's judicious construction, it is hoped that in the implementation of the ATA, the rule of law prevails. Indeed, at all times, respect for human rights must be upheld;[216] otherwise, the courts, in the exercise of the judicial branch's constitutional mandate, will not hesitate to wield the heavy hand of justice against any abusive enforcement. Further, upon the proper cases that are ripe for adjudication, courts are also not

---

213 See Senate Deliberations, Records, Vol. I, Session No. 45, January 22, 2020, p. 22 and Senate Deliberations, Records, Vol. I, Session No. 47, January 28, 2020, p. 29.

214 See Sections 30, 31, 32, and 33 of the ATA, as well as Rules 9.3. to 9.5. of the IRR.

215 *Ponencia*, pp. 218-219.

216 According to the United Nations Development Programme Report on "Journey to Extremism in Africa Drivers, Incentives and the Tipping for Recruitment," misconduct of security forces has been identified as a "*direct trigger for recruitment in the final stages of the journey to extremism.*" Therefore, security forces must respect human rights and must operate within the rule of law in order to counter terrorism effectively and achieve sustainable and lasting peace. See <https://unitar.org/sustainable-development-goals/peace/our-portfolio/counter-terrorism> (last visited November 14, 2021).

precluded from assessing the application of the ATA to arrive at the statute's proper interpretation against concrete facts and circumstances that were not included herein. In this regard, the jury is still out there against the possible applications of the ATA as jurisprudence evolves in the course of its existence.

IN VIEW OF THE FOREGOING, I vote to **PARTIALLY GRANT** the petitions. For the reasons herein discussed, the following provisions of the ATA are unconstitutional:

(1) the clause "*which are not intended to cause death or serious physical harm to a person, to endanger a person's life, or to create a serious risk to public safety*" found in the *proviso* of Section 4;

(2) the phrase "*organized for the purpose of engaging in terrorism*" found in the third paragraph of Section 10; and

(3) the second and third paragraphs of Section 25 on designation.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice