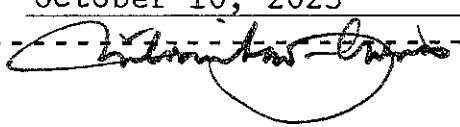


EN BANC

G.R. No. 258805 (ST. ANTHONY COLLEGE OF ROXAS CITY, INC., ET AL., Petitioners, v. COMMISSION ON ELECTIONS, ET AL., Respondents)

Promulgated:

October 10, 2023

X ----- X


CONCURRENCE

LAZARO-JAVIER, J.:

In his erudite *ponencia*, our esteemed colleague Associate Justice Jose Midas Marquez (Associate Justice Marquez) declares as unconstitutional the Commission on Elections (COMELEC) implementation of “Oplan Baklas” for a) encroaching upon petitioners’ right to freedom of speech and expression,¹ as well as b) their property rights.

I agree that the COMELEC’s “Oplan Baklas” or the removal, defacement, destruction of “oversized” tarpaulins, posters, and murals owned by petitioners St. Anthony, et al., posted or installed within their respective private properties, and endorsing the Presidency of Maria Leonor Robredo, amounted to an arbitrary exercise of power.

Section 3 in relation to Section 9 of Republic Act No. 9006 or the Fair Election Act, which is the enabling law of COMELEC Resolution No. 10730, specifically decrees that the regulation on posting of campaign materials or lawful election propaganda covers **only** registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all *bona fide* candidates seeking national and local elective positions, **not** individuals who are non-candidates, *viz.*:

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

¹ Draft *ponencia*, p. 16.

N

XXX XXX XXX

Section 9. Posting of Campaign Materials. – The COMELEC may authorize **political parties and party-list groups to erect common poster areas for their candidates** in not more than ten (1) public places such as plazas, markets, barangay centers and the like, wherein candidates can post, display or exhibit election propaganda: *Provided*, That the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.

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

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

Sections 6 and 20 of COMELEC Resolution No. 10730 bear similar wording, thus:

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

XXX XXX XXX

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

- a. Authorized common poster areas in public places, subject to the requirements and/or limitations set forth in the next following section; and
- b. Private property, provided that the posting has the consent of the owner thereof and that the applicable provisions of Section 6 herein are complied with.

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

A

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

When the language of the law is clear, there is no room for interpretation, only application.²

Here, there is no dispute that petitioners are non-candidates expressing their support for Leni Robredo’s Presidency in the 2022 National Elections. The size proscriptions under COMELEC Resolution No. 10730 in connection with Republic Act No. 9006, therefore, do not apply to them. The COMELEC, thus, misapplied the subject Resolution and acted in an arbitrary and oppressive manner beyond what the law allows it to do. In the same vein, the expenses for the subject posters, tarpaulins, and murals came from petitioners’ own pockets; they were posted, installed, or drawn on petitioners’ private properties on their own volition and without the prodding or instruction of any candidate. The COMELEC’s arbitrary regulation in its “Oplan Baklas” campaign is therefore void for overbreadth as it offends petitioners’ protected freedom of expression to choose their candidate and property rights.

I thank my good friend Associate Justice Marquez for his clarification that the constitutional infirmity does not refer to Sections 21(o), 24, and 26 of COMELEC Resolution No. 10730³ which in fact resonate Section 3 of the enabling law Republic Act No. 9006 as shown in the following matrix:

COMELEC Resolution No. 10730	Republic Act No. 9006
<p>SECTION 21. Common Poster Areas. – Parties and independent candidates may, upon authority of the COMELEC, through the City or Municipal Election Officer concerned, construct common poster areas, at their expense, wherein they can post, display, or exhibit their election propaganda to announce or further their candidacy subject to the following requirements and/or limitations:</p> <p style="text-align: center;">xxx</p> <p>o. No lawful election propaganda materials shall be allowed outside the common poster areas except on private property with the consent of the owner or in such other places mentioned in these Rules and must comply with the allowable size (2ft x 3ft) requirements</p>	<p>Section 3. Lawful Election Propaganda. – Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).</p> <p>For the purpose of this Act, lawful election propaganda shall include:</p>

² *Power Sector Assets and Liabilities Management (PSALM) Corp. v. Commission on Audit*, G.R. No. 247924, November 16, 2021 [Per J. Lazaro-Javier, *En Banc*].

³ Cover Letter by the Ponente dated August 11, 2023.

<p>for posters. Any violation hereof shall be punishable as an election offense;</p> <p>SECTION 24. Headquarters Signboard. - Before the start of the campaign period, only one (1) signboard, not exceeding three (3) feet by eight (8) feet in size, identifying the place as the headquarters of the party or candidates is allowed to be displayed. Parties may put up the signboard announcing their headquarters not earlier than five (5) days before the start of the campaign period. Individual candidates may put up the signboard announcing their headquarters not earlier than the start of the campaign period. Only lawful election propaganda material may be displayed or posted therein and only during the campaign period.</p>	<p>3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;</p> <p>3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;</p> <p>3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: <i>Provided,</i> That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;</p> <p>3.4. Paid advertisements in print or broadcast media: <i>Provided,</i> That the advertisements shall follow the requirements set forth in Section 4 of this Act; and</p> <p>3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.</p>
---	--

Admittedly, Section 24 of COMELEC Resolution No. 10730 imposes the three feet by eight feet size restriction on signboards displayed in the headquarters of the political party or candidate, while in Section 3 of Republic Act No. 9006, the same size limitation is imposed on streamers at a public meeting or rally. The fixed-size impositions under Section 3 of Republic Act 9006 are nonetheless **exactly replicated** in Section 6 of COMELEC Resolution No. 10730, thus:

<p>Republic Act No. 9006</p>	<p>COMELEC Resolution No. 10730</p>
<p>Section 3. <i>Lawful Election Propaganda.</i> - Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or</p>	<p>SECTION 6. <i>Lawful Election Propaganda.</i> - Election propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates</p>

<p>organizations participating under the party list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).</p> <p>For the purpose of this Act, lawful election propaganda shall include:</p> <p>3.1. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one half inches in width and fourteen inches in length;</p> <p>3.2. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;</p> <p>3.3. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: <i>Provided</i>, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;</p> <p>3.4. Paid advertisements in print or broadcast media: <i>Provided</i>, That the advertisements shall follow the requirements set forth in Section 4 of this Act; and</p> <p>3.5. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.</p>	<p>seeking national and local elective positions, subject to the limitation on authorized expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.</p> <p>Lawful election propaganda shall include:</p> <p>a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one-half inches (8 ½”) in width and fourteen inches (14”) in length;</p> <p>b. Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;</p> <p>c. Cloth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: <i>Provided</i>, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;</p> <p>d. Paid advertisements in print or broadcast media: <i>Provided</i>, That the advertisements shall allow the requirements set forth in Section 9 hereof;</p> <p>e. All other forms of election propaganda not prohibited by the Omnibus Election Code or these rules xxx</p>
---	--

On the other hand, Section 26 of COMELEC Resolution No. 10730 on the “Removal, Confiscation, or Destruction of **Prohibited** Propaganda Materials” conforms with the COMELEC’s wide latitude and authority to

protect the integrity of elections,⁴ ensuring that only permissible propaganda materials shall be posted and displayed. Section 26 is likewise incidental to achieving the purpose of preventing illegal campaigning, minimizing election overspending, and promoting equality of opportunities for public information among all candidates and the electorate. No less than the Constitution authorizes the COMELEC to regulate communication and information with the objective of holding free, orderly, honest, and credible elections.⁵

In fine, there is nothing in Sections 21(o), 24, and 26 of COMELEC Resolution No. 10730 which departed from the spirit and intent of the law. What departed therefrom was COMELEC's arbitrary and erroneous implementation of the aforesaid provisions of COMELEC Resolution No. 10730. It is this action of the Comelec which ought to be voided, as correctly pronounced in the *ponencia*.


AMY C. LAZARO-JAVIER
Associate Justice

⁴ *Dumarpa v. Commission on Elections*, 707 Phil. 382 (2013 [Per J. Perez, *En Banc*]).

⁵ Article IX (C) of the 1987 Constitution :

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