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**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,** *Petitioners*, **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 – ISAGANI T. ZARATE, ET AL.,** *Petitioners*, **v. PRESIDENT RODRIGO DUTERTE, ET AL.,** *Respondents*;

**G.R. No. 252613 – RUDOLF PHILIP B. JURADO,** *Petitioners*, **v. THE ANTI-TERRORISM COUNCIL, ET AL.,** *Respondents*;

**G.R. No. 252623 – CENTER FOR TRADE UNION AND HUMAN RIGHTS, ET AL.,** *Petitioner* **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,** *Petitioner*, **v. RODRIGO R. DUTERTE, ET AL.,** *Respondents*;

**G.R. No. 252702 – FEDERATION OF FREE WORKERS, ET AL.,** *Petitioners*, **v. OFFICE OF THE PRESIDENT, 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, 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, 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, ET AL.,** *Petitioners*, **v. EXECUTIVE SECRETARY, ET AL.,** *Respondents*;

**G.R. No. 252759 – ALGAMAR A. LATIPH, ET AL.,** *Petitioners*, **v. SENATE, ET AL.,** *Respondents*;

**G.R. No. 252765 – THE ALTERNATIVE LAW GROUPS, INC.,** *Petitioners*, **v. EXECUTIVE SECRETARY, 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 - 16663 – LAWRENCE A. YERBO,** *Petitioner*, **v. OFFICES OF THE HONORABLE SENATE PRESIDENT, ET AL.,** *Respondents*;

**G.R. No. 252802 – HENRY 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, ET AL.,** *Petitioners*, **v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.,** *Respondents*;

**G.R. No. 252903 – CONCERNED LAWYERS FOR CIVIL LIBERTIES, 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, 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 CHAIRPERSON LEMUEL GIO FERNANDEZ CAYABYAB, ET AL.,** *Petitioners*, **v. RODRIGO R. DUTERTE, ET AL.,** *Respondents*;

**G.R. No. 252984 – ASSOCIATION OF MAJOR RELIGIOUS SUPERIORS IN THE PHILS., ET AL.,** *Petitioners*, **v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.,** *Respondents*;

**G.R. No. 253018 – UNIVERSITY OF THE PHILIPPINES 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. EXECUTIVE SECRETARY, ET AL.,** *Respondents*;

**G.R. No. 253118 – BALAY REHABILITATION CENTER, INC., 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., 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, ET AL.,** *Petitioners*, **v. ANTI-TERRORISM COUNCIL, ET AL.,** *Respondents*;

**G.R. No. 254191 – ANAK MINDANAO PARTY-LIST REPRESENTATIVE AMIHILDA SANGCOPAN, ET AL.,** *Petitioners*, **v. EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, ET AL.,** *Respondents*;

**G.R. No. 253420 – HAROUN ALRASHID ALONTO LUCMAN, JR., ET AL.,** *Petitioners*, **v. SALVADOR C. MEDIALDEA, ET AL.,** *Respondents*.

**Promulgated:**

December 7, 2021

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## CONCURRING AND DISSENTING OPINION

"The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert

> the constitutional Bill of Rights into a suicide pact."
>
> — Justice Robert Jackson,
> Dissenting Opinion in *Terminiello v City of Chicago*[1]

*"Iba't iba ang katuwiran ng tao sa lipunan*
*Ngunit ang kailangan lang tayo'y huwag magtulakan*
*O kayraming suliranin, oras-oras dumarating*
*Dahil di kayang lutasin hindi na rin pinapansin*
*Subalit kung tutuusin, iisa ang dahilan*
*Kaibigan, ayaw nilang umusog nang kahit konti"*

— Gary Granada, *Kahit Konti*

**LEONEN, *J.*:**

The tolerance, openness, and the quality of dissent in a society defines its democracy.

If we are true to this spirit, then we must acknowledge that the freedoms of speech, of expression, and of the press, along with their cognate rights, are skewed toward those who do not hold power and are not part of the hegemony of the status quo.

Yet, as in all life, that is not all. There are always other considerations that produce a continuing dialectical balance.

Those who sit on the high bench must acknowledge that while this Court jealously guards against the intolerance of some of those in power, unlike the political departments created by our Constitution, some cases brought before us may not equip us with the facts to give us the confidence to form a justified and true belief. This is especially true as governments around the world continue to grapple with the phenomenon of terrorism.

Terrorism is different from armed conflict or ordinary crimes. It may prey on the disenchantment felt by many, brought about by the dominant economic, cultural, ideological, and political systems that cause it. Its methods, too, can be more surreptitious. Recruitment can happen as easily as when one watches internet videos, magnified by the algorithms designed to amplify dopamine rush, and therefore maximize advertising for those who own these platforms. Execution can be aided and accelerated by the dark side of our digital spaces. We are witness to terrorism's dire consequences to innocent lives, which may happen with the act of one person, or incongruous

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[1] 337 U.S. 1 (1949).

or isolated groups and cells, all manifesting their allegiance to the nefarious prejudices of an organization they may have just encountered virtually.

Terrorism is a global phenomenon that cannot be addressed solely on the palliative end. States have to be proactive to prevent it, while being careful that in doing so, they do not infringe on the fundamental rights that empower the sovereign people. States will have to come to terms with how their own hegemonies have excluded others, encrusting hatred and blindness to humanity and propelling acts of terrorism.

To this end, there has not yet been one clear definitive and effective solution to terrorism. Deadly attacks continue. Intelligence agencies spend tremendous amounts of resources and energy to disrupt potential acts of terrorism. Innocent civilians continue to be maimed, to be killed.

In resolving these cases, this Court has to tread carefully with understanding, compassion, and reason. Constitutional text derives its most effective meaning when read within the context of the entire Constitution, together with contemporary circumstances, advised but not straightjacketed by judicial doctrines sufficient during their times and always with a view to achieving the ideals of social justice. We cannot make decisions based on some perceived notion of original intent, whether it is of those who sat to write the words in their historical context or some recreated notion of those who voted during the past plebiscites. These notions inform legal argument, but they do not always reveal a better construction for the present; they do not guarantee social justice and meaningful freedoms.

Thirty-seven Petitions were filed before this Court, questioning the constitutionality of Republic Act No. 11479, or the Anti-Terrorism Act of 2020. They mainly assail the law's validity for violating due process rights, claiming that several of its provisions are vague and overbroad.[2]

I join the majority in striking down some of the provisions on a facial challenge using the modality of overbreadth and strict scrutiny.

Section 4, which defines and identifies what comprises terrorism, is valid—except for the clause that qualifies its proviso. The proviso notably does not treat as terrorism the exercises of civil and political rights, such as "advocacy, protest, dissent, stoppage of work, industrial or mass action" so long as 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."

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2 *Ponencia*, p. 48.

This clause is overbroad, imposing prior restraint on the exercise of fundamental rights. It imposes a burden on the actors to prove that their expressions of advocacy and dissent are not terrorism. It chills the exercise of civil and political rights, all the while giving unbridled license to law enforcers to construe expressions of advocacy, protest, and dissent as acts of terrorism.

Section 25, which provides three modes of designating terrorist persons and groups, is unconstitutional for offending due process rights. Unlike the *ponencia*, I submit that all three modes are invalid and must be struck down.

Section 29, which grants authority to extend detention up to 14 days, is likewise unconstitutional. It gives the Anti-Terrorism Council full discretion to authorize law enforcement agents or military personnel to arrest and detain a suspect, without a limit on how this authority can be exercised. An attempt by an implementing rule to fill this gap cannot cure the law's defect. Worse, Section 29 encroaches on the judicial prerogative of issuing arrest warrants by authorizing an administrative agency to issue a written authorization to the same effect without any prior hearing.

The *carte blanche* provided under Section 29 becomes even more concerning since Sections 5 and 8 respectively punish a mere threat to commit terrorism and proposal to commit terrorist acts. The Anti-Terrorism Council possesses unilateral authority to interpret what constitutes dangerous speech. It may also authorize the immediate or prolonged detention of a citizen, or both. A person suspected of threatening or proposing to commit terrorism under Sections 5 and 8 may be detained based merely on an overzealous interpretation of a law enforcer.

I flag the vagueness of the crime of proposal to commit terrorism. But while it borders on the unconstitutional, like the other provisions challenged, we must await an actual case to fully understand the necessity of the reach of law enforcement, far into the preparatory phases of the fatal acts of terrorism balanced by its propensity to chill the legitimate exercise of free speech and other fundamental rights.

As an exception to the requirements of justiciability, a facial challenge allows a suit assailing a law's validity even if the litigant has not yet been directly injured by its application,[3] as the law is unconstitutional per se.[4] It deviates from the justiciability requirement of actual case and controversy because it allows judicial review even without actual, concrete facts.[5]

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3 *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].
4 *Disini v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].
5 *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

While generally disfavored, it is nonetheless an exceptional approach that can be used to strike down any curtailment of free speech. The exercise of free speech and expression, especially those that involve political participation and dissent, is essential in our democratic space. Even deviations from justiciability requirements are permitted if only to safeguard these fundamental rights.

However, mere allegation of a violation of these rights is not sufficient. Litigants must still clearly show the facts demonstrating the basis for a facial challenge.

## I

This Court's judicial power is inscribed in Article VIII, Section 1 of the Constitution, which states:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Inherent in this Court is the power of judicial review, that competence to declare a law, ordinance, or treaty as unconstitutional or invalid.[6] The general rule, however, is that the issue of a statute's constitutionality will be decided only if "it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[7]

The recent case of *Pangilinan v. Cayetano*[8] is instructive:

> Separation of powers is fundamental in our legal system. The Constitution delineated the powers among the legislative, executive, and judicial branches of the government, with each having autonomy and supremacy within its own sphere. This is moderated by a system of checks and balances "carefully calibrated by the Constitution to temper the official acts" of each branch."

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6 J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

7 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, En Banc].

8 G.R. No. 238875, March 16, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374> [Per J. Leonen, En Banc].

Among the three branches, the judiciary was designated as the arbiter in allocating constitutional boundaries. Judicial power is defined in Article VIII, Section 1 of the Constitution as:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

A plain reading of the Constitution identifies two instances when judicial power is exercised: (1) in *settling actual controversies* involving rights which are legally demandable and enforceable; and (2) in determining *whether or not there has been a grave abuse of discretion* amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

In justifying judicial review in its traditional sense, Justice Jose P. Laurel in *Angara v. Electoral Commission* underscored that when this Court allocates constitutional boundaries, it neither asserts supremacy nor annuls the legislature's acts. It simply carries out the obligations that the Constitution imposed upon it to determine conflicting claims and to establish the parties' rights in an actual controversy:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

The latter conception of judicial power that jurisprudence refers to as the "expanded certiorari jurisdiction" was an innovation of the 1987 Constitution:

> This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power[.]
>
> . . . .
>
> In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant "to

> ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded certiorari jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion.
>
> . . . .
>
> *Tañada v. Angara* characterized this not only as a power, but as a duty ordained by the Constitution:
>
> > It is an innovation in our political law. As explained by former Chief Justice Roberto Concepcion, "the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. *This is not only a judicial power but a duty to pass judgment on matters of this nature.*"
> >
> > As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government. (Emphasis supplied, citations omitted)
>
> ***Despite its expansion, judicial review has its limits. In deciding matters involving grave abuse of discretion, courts cannot brush aside the requisite of an actual case or controversy.*** The clause articulating expanded certiorari jurisdiction requires a *prima facie* showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy. Thus, "even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with."[9] (Emphasis supplied, citations omitted)

This Court's power of judicial review cannot be loosely invoked. Litigants must show that the following requisites of justiciability are met: (1) that there is an "actual case or controversy"; (2) that there is "standing or *locus standi*"; (3) that "the constitutionality was raised at the earliest opportunity"; and (4) that "the constitutionality is essential to the disposition of the case or its *lis mota*."[10]

**I (A)**

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9 Id.

10 *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

The most crucial among these requisites is the existence of an actual case or controversy.[11] Whether judicial power is exercised in a traditional or expanded sense, its existence is indispensable.[12]

An actual case or controversy is defined as "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[13] It is that which is "ripe for determination," and not conjectural or anticipatory such that this Court's decision "would amount to an advisory opinion."[14] A controversy is justiciable if the issues are concrete, including the legal relationships between opposing parties.[15] In *Information Technology Foundation of the Philippines v. Commission on Elections*:[16]

> It is well-established in this jurisdiction that ". . . for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. . . . Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging." The controversy must be justiciable — definite and concrete, touching on the legal relations of parties having adverse legal interests. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[17] (Citations omitted)

An actual case or controversy arises when there is a real conflict of rights or duties that arise from actual facts properly established in court through evidence or judicial notice.[18] Speculation and imagination cannot substitute for proof of actual facts in adjudication:

> Without the necessary findings of facts, this court is left to speculate leaving justices to grapple within the limitations of their own life experiences. This provides too much leeway for the imposition of political standpoints or personal predilections of the majority of this court. This is not what the Constitution contemplates. Rigor in determining whether

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11 *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

12 Id.

13 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 244 (2018) [Per J. Leonen, En Banc].

14 *Imbong v. Ochoa*, 732 Phil. 1, 123 (2014) [Per J. Mendoza, En Banc].

15 Information Technology Foundation of the Philippines v. Commission on Elections, 499 Phil. 281 (2005) [Per J. Panganiban, En Banc].

16 Id.

17 Id. at 304–305.

18 J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

> controversies brought before us are justiciable avoids the counter majoritarian difficulties attributed to the judiciary.
>
> Without the existence and proper proof of actual facts, any review of the statute or its implementing rules will be theoretical and abstract. Courts are not structured to predict facts, acts or events that will still happen. Unlike the legislature, we do not determine policy. We read law only when we are convinced that there is enough proof of the real acts or events that raise conflicts of legal rights or duties. Unlike the executive, our participation comes in after the law has been implemented. Verily, we also do not determine how laws are to be implemented.
>
> The existence of a law or its implementing orders or a budget for its implementation is far from the requirement that there are acts or events where concrete rights or duties arise. The existence of rules do[es] not substitute for real facts.[19]

The existence of actual facts must be clearly shown to determine if "there has been a breach of constitutional text."[20] Without an actual case or controversy, this Court's decision is reduced to a mere advisory opinion on a legislative or executive action. This academic exercise is inconsistent with this Court's constitutional role as the final arbiter.[21] As early as in *Angara v. Electoral Commission*,[22] this Court has limited the power of judicial review to actual cases and controversies:

> Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[23]

This requirement is grounded on the principle of separation of powers,[24] which precludes this Court from encroaching on the policy-making powers of the legislative and executive branches of government:

> Preliminarily, the whole gamut of legal concepts pertaining to the validity of legislation is predicated on the basic principle that a legislative measure is presumed to be in harmony with the Constitution. Courts

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19 Id.

20 Id. at 245–246.

21 *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

22 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

23 Id. at 158–159.

24 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

> invariably train their sights on this fundamental rule whenever a legislative act is under a constitutional attack, for it is the postulate of constitutional adjudication. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.
>
> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance. Every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.[25] (Citation omitted)

Consistently, this Court has refused to take cognizance of cases that do not involve actual cases and controversies.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[26] this Court declined to rule on the constitutionality of Republic Act No. 9372, or the Human Security Act of 2007, for lack of actual facts. It noted that the petitioners' claims of sporadic surveillance and red-tagging were not credible threats of prosecution. Thus, it held that a resolution of the petitions would only result in an advisory opinion, which is beyond its function. It explained:

> The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be *sufficient facts* to enable the Court to intelligently adjudicate the issues.
>
> . . . .
>
> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are *merely theorized*, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of

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25 *Estrada v. Sandiganbayan*, 421 Phil. 290, 342–343 (2001) [Per J. Bellosillo, En Banc].

26 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

> any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle ***actual controversies involving rights which are legally demandable and enforceable.***[27] (Emphasis in the original, citations omitted)

In *Republic v. Roque*,[28] this Court dismissed the declaratory relief petitions that again challenged the provisions of the Human Security Act for their failure to allege "facts indicating imminent and inevitable litigation":

> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.
>
> A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them.[29] (Citations omitted)

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[30] we held that there was no actual case since there were no actual facts from which we could determine the constitutionality of the assailed issuances. The petitioners merely alleged violations of workers' rights without establishing what laws were violated, and how the respondents' actions transgressed these rights.[31]

Similarly, in *Falcis v. Civil Registrar General*,[32] this Court also declined to resolve the petition for failing to present an actual case, among other grounds. Regardless of the case's novelty, we held that we cannot exercise judicial review if there is no conflict of rights presented:

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27 Id. at 481–483.

28 718 Phil. 294 (2013) [Per J. Perlas-Bernabe, En Banc].

29 Id. at 305–306.

30 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

31 Id.

32 G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

> This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."
>
> This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:
>
> . . . .
>
> As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.
>
> . . . .
>
> It is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. "It does not formulate public policy, which is the province of the legislative and executive branches of government." Thus, it does not — by the mere existence of a law or regulation — embark on an exercise that may render laws or regulations inefficacious.
>
> Lest the exercise of its power amount to a ruling on the wisdom of the policy imposed by Congress on the subject matter of the law, the judiciary does not arrogate unto itself the rule-making prerogative by a swift determination that a rule ought not exist. There must be an actual case, "a contrast of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."[33]

In *National Federation of Hog Farmers, Inc. v. Board of Investments*,[34] this Court refused to draw the constitutional line separating Filipino citizens' privileges from those of foreigners, absent an actual case. We reiterated:

> [A] conflict must be justiciable for this Court to take cognizance of it. Otherwise, our decision will be nothing more than an advisory opinion on a legislative or executive action, which "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."[35] (Citation omitted)

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33 Id.

34 G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

35 Id.

In *Pangilinan*, this Court emphasized the need to exercise restraint in cases without justiciable controversies:

> We reiterate that courts may only rule on an actual case. This Court has no jurisdiction to rule on matters that are abstract, hypothetical, or merely potential. Petitioners' fear that the President may unilaterally withdraw from other treaties has not transpired and cannot be taken cognizance of by this Court in this case. We have the duty to determine when we should stay our hand, and refuse to rule on cases where the issues are speculative and theoretical, and consequently, not justiciable.
>
> Legislative and executive powers impel the concerned branches of government into assuming a more proactive role in our constitutional order. Judicial power, on the other hand, limits this Court into taking a passive stance. Such is the consequence of separation of powers. Until an actual case is brought before us by the proper parties at the opportune time, where the constitutional question is the very *lis mota*, we cannot act on an issue, no matter how much it agonizes us.[36]

Litigants seeking judicial review from this Court must clearly prove an actual case or controversy.[37] The case cannot be merely imagined. There must be a real and substantial controversy resulting in concrete legal issues susceptible of judicial adjudication.[38]

Courts are not sanctioned to divine facts that have not yet transpired. We do not create policies. As a rule, this Court only steps in after a law has been implemented, real acts have been done, and events have occurred.[39]

**I (B)**

Another parameter of justiciability is legal standing or *locus standi*: one's "right of appearance in a court of justice on a given question."[40] This ensures that one seeks a concrete relief from the courts.[41]

To meet this requirement, a litigant must show "a personal and substantial interest in the case such that [they have] sustained or will sustain

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36 *Pangilinan v. Cayetano,* G.R. No. 238875, March 16, 2021, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67374> [Per J. Leonen, En Banc].

37 *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

38 Id.

39 J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

40 *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) [Per J. Sandoval-Gutierrez, En Banc].

41 *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

direct injury as a result of the governmental act that is being challenged."[42] "Interest" means material interest, and not mere incidental interest.[43]

*Provincial Bus Operators* discusses the import of *locus standi*:

> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
>
> > A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[44] (Citations omitted)

Without legal standing, this Court cannot assure that concrete adverseness "which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[45]

## II

Of course, while litigants must always strive to satisfy the requisites of judicial review, exceptional cases abound. This Court may still resolve the issue of a statute's constitutionality, despite not meeting all the requirements of justiciability, when the alleged violation is "demonstrably and urgently egregious" and the "facts constituting the violation are uncontested or established on trial."[46]

In *Parcon-Song v. Parcon*,[47] this Court held that a case may still be resolved when the statute being assailed is susceptible of a facial challenge, or when it involves violations of constitutional rights:

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42 Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

43 *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000) [Per J. Kapunan, En Banc].

44 Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, 836 Phil. 205 (2018) [Per J. Leonen, En Banc].

45 *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343> [Per J. Leonen, En Banc].

46 *Parcon-Song v. Parcon*, G.R. No. 199582, July 7, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66525> [Per J. Leonen, En Banc].

47 Id.

> There are exceptions, namely: (a) when a facial review of the statute is allowed, as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights; or (b) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. The violation must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance. The facts constituting that violation must either be uncontested or established on trial. The basis for ruling on the constitutional issue must also be clearly alleged and traversed by the parties. Otherwise, this Court will not take cognizance of the constitutional issue, let alone rule on it. [48]

A facial challenge involves "an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities."[49] Facial challenge or an "on its face"[50] invalidation of a law is a recognized exception to the requirement of actual case or controversy. In *Estrada v. Sandiganbayan*:[51]

> Indeed, *"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. It *constitutes a departure from the case and controversy requirement of the Constitution and permits decisions to be made without concrete factual settings and in sterile abstract contexts*.[52] (Emphasis supplied, citations omitted)

Though lacking an actual case, a facial challenge is allowed to prevent the possibility of the law from harming persons that did not come to court. It is distinguished from an "as-applied" challenge,[53] which only considers "extant facts affecting real litigants."[54]

Nonetheless, precisely due to its lack of an actual case, and it being a "manifestly strong medicine,"[55] a facial challenge is only used as a last resort, and only applicable to free speech cases.

Freedom of expression is one of the fundamental principles of a democratic government. It is an indispensable condition of nearly every other

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48 Id.

49 *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

50 *Estrada v. Sandiganbayan*, 421 Phil. 290, 305 (2001) [Per J. Bellosillo, En Banc].

51 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

52 Id. at 305–306.

53 400 Phil. 904 (2002) [Per Curiam, En Banc].

54 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 489 (2010) [Per J. Carpio Morales, En Banc].

55 *Estrada v. Sandiganbayan*, 421 Phil. 290, 356 (2001) [Per J. Bellosillo, En Banc].

form of freedom, thus standing on a higher level than substantive economic freedom and other liberties.[56] Article III, Section 4 of the Constitution states:

> SECTION 4. No 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.

The importance placed on free expression and its cognate rights is explained in *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Company, Inc.*:[57]

> (3) The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical aphorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas we cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen. And as Justice Douglas cogently stresses it, the liberties of one are the liberties of all; and the liberties of one are not safe unless the liberties of all are protected.
>
> (4) The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. Thru these freedoms the citizens can participate not merely in the periodic establishment of the government through their suffrage but also in the administration of public affairs as well as in the discipline of abusive public officers. The citizen is accorded these rights so that he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees.
>
> . . . .
>
> In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority "gives these liberties the sanctity and the sanction not permitting dubious intrusions."[58] (Citations omitted)

In *ABS-CBN Broadcasting Corporation v. Commission on Elections*,[59] this Court stated that free expression consists in "the liberty to discuss publicly and truthfully any matter of public interest without prior restraint."[60] It explained:

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[56] *Nicolas-Lewis v. Commission on Elections*, G.R. No. 223705, August 14, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65669> [Per J. Reyes, Jr., En Banc]; *ABS-CBN Broadcasting Corporation v. Commission on Elections*, 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[57] 151-A Phil. 656 (1973) [Per J. Makasiar, First Division].

[58] Id. at 675–676.

[59] 380 Phil. 780 (2000) [Per J. Panganiban, En Banc].

[60] Id. at 792.

> The freedom of expression is a means of assuring individual self-fulfillment, of attaining the truth, of securing participation by the people in social and political decision-making, and of maintaining the balance between stability and change. It represents a profound commitment to the principle that debates on public issues should be uninhibited, robust, and wide open. It means more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, or to take refuge in the existing climate of opinion on any matter of public consequence.[61] (Citations omitted)

Free expression means more than the right to manifest approval of existing political beliefs and economic arrangements. It includes the freedom to discuss "the thought we hate, no less than the thought we agree with."[62] It is a precondition for one to enjoy other rights, such as the right to vote, freedom to peaceably assemble, and freedom of association. Free expression is essential to ensure press freedom.[63] It protects minorities against majoritarian abuses perpetrated through the framework of democratic governance while simultaneously benefitting the majority that refuses to listen.[64] It would best serve its high purpose when it "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."[65]

Owing to the cherished status that free speech enjoys in the hierarchy of rights, any form of regulation deserves even more than a long, hard look.

One of the analytical tools to test whether a statute that regulates free speech can be invalidated is the overbreadth doctrine.[66] Under the overbreadth doctrine, a law is void when it unnecessarily sweeps broadly and invades on the area of protected freedoms to further a governmental purpose.[67] The law casts too wide a net in its looseness and imprecision such that it is susceptible to many interpretations, including sanctions on the legitimate exercise of one's fundamental rights.[68]

The overbreadth doctrine posits that any "possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the

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61 Id. at 792–793.

62 Id. at 793.

63 Emily Howie, *Protecting the human right to freedom of expression in international law*, 20 INTERNATIONAL JOURNAL OF SPEECH-LANGUAGE PATHOLOGY, 12–15 (2017) <https://www.tandfonline.com/doi/full/10.1080/17549507.2018.1392612> (last accessed on November 2, 2021).

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

65 *Chavez v. Gonzales*, 569 Phil. 155, 197 (2008) [Per C.J. Puno, En Banc].

66 *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006) [Per J. Sandoval-Gutierrez, En Banc].

67 *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc], citing *Zwickler v. Koota*, 19 L ed. 2d 444 (1967).

68 J. Puno, Concurring Opinion in *Social Weather Stations, v. Commission on Elections*, 409 Phil. 571 (2001) [Per J. Mendoza, En Banc], citing Redish, *The Warren Court, the Burger Court and the First Amendment Overbreadth Doctrine*, 78 Nw. U.L. Rev. 1035 (1983–4).

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."[69] In *Estrada*:

> 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. The theory is that "[w]hen statutes regulate or prescribe 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 stature drawn with narrow specificity."[70] (Citations omitted)

It is easy to see why overbroad laws should be struck down: They give off a "chilling effect" on free speech and expression. These fundamental rights sit at the core of our democracy, so delicate and protected, that the "threat of sanctions may deter their exercise almost as potently as the actual application of sanctions."[71]

Yet, as will be discussed later, the chilling effect cannot be invoked for mere convenience. As *David v. Macapagal-Arroyo*[72] teaches, a facial overbreadth challenge "is the most difficult challenge to mount successfully, since the challenger must establish that *there can be no instance when the assailed law may be valid.*"[73]

**II (A)**

The overbreadth doctrine is of American origin. In the early case of *Thornhill v. Alabama*,[74] a former employee had been convicted for being in a picket line so close to the business establishment of his former employer. On appeal, the United States Supreme Court invalidated the statute that criminalized loitering or picketing for its overbreadth and sweeping proscription against the freedom to discuss labor disputes.

As it was in *Thornhill*, a facial overbreadth challenge can only be applied in examining penal laws that touch on free speech. This Court has consistently refused to apply such challenges in any other penal statutes.

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69 *Estrada v. Sandiganbayan*, 421 Phil. 290, 353–354 (2001) [Per J. Bellosillo, En Banc].

70 Id. at 353.

71 J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc] citing *National Association for the Advancement of Colored People v. Button*, 371 U.S. 415, 431-433 (1963).

72 522 Phil. 705, 763 (2006) [Per J. Sandoval-Gutierrez, En Banc].

73 Id.

74 310 U.S. 88 (1940). *See* Richard Fallon, Jr., *Making Sense of Overbreadth*, 100 YALE L.J. 853 (1991).

In *Estrada*, this Court said that the overbreadth doctrine cannot be made to apply to the Anti-Plunder Law as it does not involve free speech. The rationale of the doctrine is absent in criminal laws, which generally have an *in terrorem* effect—that is, because of its very existence, a facial challenge may well prevent the State "from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech."[75]

This rule was reiterated in *Romualdez v. Sandiganbayan*,[76] where the overbreadth doctrine was not deemed appropriate to test the validity of the Anti-Graft and Corrupt Practices Act.[77] Since the object of a penal legislation is not speech, but conduct, the specific provision may only be assailed as applied to the context of the challenger.[78]

Likewise, in *Spouses Romualdez v. Commission on Elections*,[79] a facial challenge was not allowed in assailing the Omnibus Election Code and the Voter's Registration Act. In a subsequent Resolution, this Court seemingly expanded the scope of a facial challenge to statutes on religious freedom and other fundamental rights.[80]

In *David v. Macapagal-Arroyo*,[81] the overbreadth doctrine was not applied to Presidential Proclamation No. 1017 where a plain reading of which is not directed against speech or speech-related conduct, but against lawless violence, insurrection, and rebellion, all of which are not protected by the Constitution.

In *Southern Hemisphere*, this Court tightened the doctrine by categorically ruling that a penal law is not susceptible to a facial challenge because by its nature, it bears an *in terrorem* effect, to deter socially harmful conduct. This Court found that the Human Security Act, the predecessor of the Anti-Terrorism Act, penalizes conduct, not speech.[82] The incidental element of speech in the overt act that is penalized in Human Security Act does not change what the law prohibits:

> Almost every commission of a crime entails some mincing of words on the part of the offender like in declaring to launch overt criminal acts against a victim, in haggling on the amount of ransom or conditions, or in negotiating a deceitful transaction. An analogy in one U.S. case illustrated that the fact that the prohibition on discrimination in hiring on the basis of race will require an employer to take down a sign reading "White Applicants Only"

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75 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].
76 479 Phil. 265 (2004) [Per J. Panganiban, En Banc].
77 Republic Act No. 3019 (1960).
78 *Romualdez v. Sandiganbayan*, 479 Phil. 265 (2004) [Per J. Panganiban, En Banc].
79 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].
80 *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357 (2009) [Per J. Chico-Nazario, En Banc].
81 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].
82 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

hardly means that the law should be analyzed as one regulating speech rather than conduct.

Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true a fortiori in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.

> [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.

Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct. Since speech is not involved here, the Court cannot heed the call for a facial analysis.[83] (Citations omitted)

However, in *Disini v. Secretary of Justice*,[84] this Court allowed a pre-enforcement and facial review of the Cybercrime Prevention Act.[85] The majority partially invalidated portions of the law such as Section 5 in relation to Section 4(c)(3) on unsolicited commercial communications and Section 19 on restricting access to computer data for violating freedom of expression, among others. I added in my opinion that the pre-enforcement and facial review of a penal law is "not only allowed but essential: when the provision in question is so broad that there is a clear and imminent threat that actually operates or it can be used as a prior restraint of speech."[86]

Here, the 37 Petitions questioned the constitutionality of several provisions of the Anti-Terrorism Act based on the alleged violations of various rights, such as the right to privacy[87] and right to travel,[88] among others. However, petitioners were unable to present concrete facts that show these supposed violations to warrant a judicial review of the challenged provisions. Ruling on the entirety of the Anti-Terrorism Act without an actual case or controversy is an encroachment on the policy-making powers of the legislature and executive.

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83 Id. at 494–495.
84 727 Phil. 28 (2014) [Per J. Abad, En Banc].
85 Republic Act No. 10175 (2012).
86 J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 344 (2014) [Per J. Abad, En Banc].
87 Petitioners' Memorandum (Cluster IV), pp. 33–39.
88 Id. at 41–48.

With these in mind, I agree with the *ponencia* that the facial examination of the Anti-Terrorism Act should only be limited to the provisions that relate to the exercise of free expression and its cognate rights.

Parenthetically, with the decision of the majority in these cases, *Disini* has been revisited and accordingly modified. I concur with this direction as this has been my position ever since.

## II (B)

Notably, *Thornhill* allowed a facial overbreadth review of a penal law even if the defendant has a personal and direct standing in assailing the validity of his conviction.[89] The United States Supreme Court said:

> The section in question must be judged upon its face.
>
> The finding against petitioner was a general one. It did not specify the testimony upon which it rested. The charges were framed in the words of the statute and so must be given a like construction. The courts below expressed no intention of narrowing the construction put upon the statute by prior state decisions. In these circumstance[s], there is no occasion to go behind the face of the statute or of the complaint for the purpose of determining whether the evidence, together with the permissible inferences to be drawn from it, could ever support a conviction founded upon different and more precise charges. "Conviction upon a charge not made would be sheer denial of due process." The State urges that petitioner may not complain of the deprivation of any rights but his own. It would not follow that on this record petitioner could not complain of the sweeping regulations here challenged.
>
> There is a further reason for testing the section on its face. Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. The cases when interpreted in the light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing" is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. *It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion.* One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it. *A like threat is inherent in a penal statute, like that in question here, which does not aim*

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89 David M. Prentiss, *The First Amendment Overbreadth Doctrine and the Nature of the Judicial Review Power*, 25 NEW ENG. L. REV. 989 (1991).

> *specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press.* The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression.[90] (Emphasis supplied, citations omitted)

*Adiong v. Commission on Elections*[91] captured the framework in *Thornhill*. This Court struck down a portion of an overbroad Commission on Elections resolution prohibiting the posting of electoral materials in any place, including private vehicles. It examined the regulation's effect not only on the petitioner, who was a senatorial candidate, but also on an individual's freedom to express their preference through the use of their property and convince others to agree with them.[92]

However, the Philippine overbreadth doctrine appears to have departed from its origins in *Thornhill*. The doctrine has since evolved to become an exception to the *locus standi* requirement, as it allows individuals to appear before the court on a third-party standing. This function of the overbreadth doctrine was explained in this wise:

> Prof. Erwin Chemerinsky, a distinguished American textbook writer on Constitutional Law, explains clearly the exception of overbreadth to the rule prohibiting third-party standing in this manner:
>
> > The third exception to the prohibition against third-party standing is termed the "overbreadth doctrine." A person generally can argue that a statute is unconstitutional as it is applied to him or her; the individual cannot argue that a statute is unconstitutional as it is applied to third parties not before the court. For example, a defendant in a criminal trial can challenge the constitutionality of the law that is the basis for the prosecution solely on the claim that the statute unconstitutionally abridges his or her constitutional rights. *The overbreadth doctrine is an exception to the prohibition against third-party standing. It permits a person to*

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90 *Thornhill v. Alabama*, 310 U.S. 88, 96–98 (1940).

91 G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc], citing *Zwickler v. Koota*, 19 L ed. 2d 444 (1967).

92 Id.

> *challenge a statute on the ground that it violates the First Amendment (free speech) rights of third parties not before the court, even though the law is constitutional as applied to that defendant.* In other words, the overbreadth doctrine provides that: "Given a case or controversy, a litigant whose own activities are unprotected may nevertheless challenge a statute by showing that it substantially abridges the First Amendment rights of other parties not before the court."[93] (Emphasis supplied)

Thus, as I said in *Disini*, the current rule on the requirements to mount a facial overbreadth challenge of a penal statute that touches on free speech:

> While as a general rule penal statutes cannot be subjected to facial attacks, a provision in a statute can be struck down as unconstitutional when there is a clear showing that there is an imminent possibility that its broad language will allow ordinary law enforcement to cause prior restraints of speech and the value of that speech is such that its absence will be socially irreparable.
>
> This, therefore, requires the following:
>
> First, the ground for the challenge of the provision in the statute is that it violates freedom of expression or any of its cognates;
>
> Second, the language in the statute is impermissibly vague;
>
> Third, the vagueness in the text of the statute in question allows for an interpretation that will allow prior restraints;
>
> Fourth, the "chilling effect" is not simply because the provision is found in a penal statute but because there can be a clear showing that there are special circumstances which show the imminence that the provision will be invoked by law enforcers;
>
> Fifth, the application of the provision in question will entail prior restraints; and
>
> Sixth, the value of the speech that will be restrained is such that its absence will be socially irreparable. This will necessarily mean balancing between the state interests protected by the regulation and the value of the speech excluded from society.[94]

The overbreadth doctrine is currently designed to prevent a chilling effect, which deters persons not before the court from exercising fundamental freedoms. In invoking this doctrine, litigants may come to court on behalf of third parties who might have been cowered in silence by the overbroad scope

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93 J. Carpio, Dissenting Opinion in *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc] citing Erwin Chemerinsky, CONSTITUTIONAL LAW 86 (2nd ed., 2002).

94 J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 352 (2014) [Per J. Abad, En Banc].

of the law.[95] This mechanism would "remove that deterrent effect on the speech of those third parties."[96]

Nonetheless, our rule on third-party standing is clear:

> Standing *jus tertii* will be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim.[97]

In *Imbong v. Ochoa*,[98] I dissented from the majority that allowed the facial review of the Responsible Parenthood and Reproductive Health Act,[99] a social legislation without the requisite standing. The litigants failed to allege the basis of the violation of the free exercise of their religion. They also failed to show how the regulation is repugnant to the right allegedly violated, and that there is no other interpretation and application of the regulation that can be had to sustain its application. All of these must be established because judicial deference and restraint are integral to the rule of law:

> It is not the Supreme Court alone that can give the full substantive meaning of the provisions of the Constitution. The rules that aid in reshaping social reality as a result of the invocation and interpretation of constitutional provisions should be the product of the interrelationship of all constitutional organs.
>
> This case presents us with an opportunity to clearly define our role. We have the power to declare the meanings of constitutional text with finality. That does not necessarily mean that we do not build on the experience of the other departments and organs of government. We are part of the constitutional design that assures that the sovereign people's will is vetted in many ways. Deference to the outcome in legislative and executive forums when there is no "actual case or controversy" is also our constitutional duty.
>
> Judicial deference implies that we accept that constitutional role that assures democratic deliberation to happen in political forums. It proceeds from an understanding that even as we labor and strive for wisdom, we will never be the repository of all of it. Our status as members of this court is likewise no blanket license to impose our individual predilections and preferences. Contrary to an esteemed colleague, our privileges do not include such judicial license.
>
> The judicial temperament is one that accepts that wisdom is better achieved by the collective interaction of the constitutional bodies. We have

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95 Id. citing *Broadrick v. Oklahoma*, 413 U.S. 601 (1973).

96 *David v. Macapagal-Arroyo*, 522 Phil. 705, 777 (2006) [Per J. Sandoval-Gutierrez, En Banc].

97 *Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections*, 352 Phil. 153, 169 (1998) [Per J. Mendoza, En Banc].

98 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

99 Republic Act No. 10354 (2012).

> no unbounded license to simply act when we want to. That judicial temperament ensures the Rule of Law.[100]

In *Executive Secretary v. Court of Appeals*,[101] although this Court recognized the third-party standing of an association on behalf of its member recruitment agencies, it refused to grant its plea for injunction against the enforcement of the Migrant Workers and Overseas Filipinos Act,[102] specifically on the prohibition on illegal recruitment. This Court did not give credence to a mere invocation of fear of possible prosecution. There must be a showing of competent evidence of the perceived threat and irreparable injury it would suffer through the law's enforcement:

> The fear or chilling-effect of the assailed penal provisions of the law on the members of the respondent does not by itself justify prohibiting the State from enforcing them against those whom the State believes in good faith to be punishable under the laws:
>
> > . . . Just as the incidental "chilling effect" of such statutes does not automatically render them unconstitutional, so the chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the State from carrying out the important and necessary task of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution.
>
> . . . .
>
> The possibility that the officers and employees of the recruitment agencies, which are members of the respondent, and their relatives who are employed in the government agencies charged in the enforcement of the law, would be indicted for illegal recruitment and, if convicted sentenced to life imprisonment for large scale illegal recruitment, absent proof of irreparable injury, is not sufficient on which to base the issuance of a writ of preliminary injunction to suspend the enforcement of the penal provisions of Rep. Act No. 8042 and avert any indictments under the law. The normal course of criminal prosecutions cannot be blocked on the basis of allegations which amount to speculations about the future.
>
> There is no allegation in the amended petition or evidence adduced by the respondent that the officers and/or employees of its members had been threatened with any indictments for violations of the penal provisions of Rep. Act No. 8042. Neither is there any allegation therein that any of its members and/or their officers and employees committed any of the acts enumerated in Section 6(a) to (m) of the law for which they could be indicted. Neither did the respondent adduce any evidence in the RTC that any or all of its members or a great number of other duly licensed and registered recruitment agencies had to stop their business operations because of fear of indictments under Sections 6 and 7 of Rep. Act No. 8042. The respondent merely speculated and surmised that licensed and registered

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100 J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*, 732 Phil. 1, 662–663 (2014) [Per J. Mendoza, En Banc].

101 473 Phil. 27 (2004) [Per J. Callejo, Sr., Second Division].

102 Republic Act No. 8042 (1995).

> recruitment agencies would close shop and stop business operations because of the assailed penal provisions of the law. A writ of preliminary injunction to enjoin the enforcement of penal laws cannot be based on such conjectures or speculations. The Court cannot take judicial notice that the processing of deployment papers of overseas workers have come to a virtual standstill at the POEA because of the assailed provisions of Rep. Act No. 8042. The respondent must adduce evidence to prove its allegation, and the petitioners accorded a chance to adduce controverting evidence.[103] (Citations omitted)

In *Southern Hemisphere*, this Court held that a reasonable certainty of a perceived threat, by itself, is not sufficient to mount a constitutional challenge. Sufficient facts must be established. Purely hypothetical or anticipatory grounds will not allow this Court to intelligently rule on the controversy:

> The Court is not unaware that a reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge. This, however, is qualified by the requirement that there must be sufficient facts to enable the Court to intelligently adjudicate the issues.
>
> Very recently, the US Supreme Court, in *Holder v. Humanitarian* Law Project, allowed the pre-enforcement review of a criminal statute, challenged on vagueness grounds, since plaintiffs faced a "credible threat of prosecution" and "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." The plaintiffs therein filed an action before a federal court to assail the constitutionality of the material support statute, 18 U.S.C. Â§2339B (a) (1), proscribing the provision of material support to organizations declared by the Secretary of State as foreign terrorist organizations. They claimed that they intended to provide support for the humanitarian and political activities of two such organizations.
>
> Prevailing American jurisprudence allows an adjudication on the merits when an anticipatory petition clearly shows that the challenged prohibition forbids the conduct or activity that a petitioner seeks to do, as there would then be a justiciable controversy.
>
> Unlike the plaintiffs in Holder, however, herein petitioners have failed to show that the challenged provisions of RA 9372 forbid constitutionally protected conduct or activity that they seek to do. No demonstrable threat has been established, much less a real and existing one.[104] (Citations omitted)

The overbreadth doctrine is inseparable from chilling effect. It is an inherent assumption in the overbreadth doctrine that "[an individual] will

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[103] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 58–61 (2004) [Per J. Callejo, Sr., Second Division].

[104] Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 646 Phil. 452, 481–482 (2010) [Per J. Carpio Morales, En Banc].

understand what a statute prohibits and will accordingly refrain from that behavior, even though some of it is protected."[105]

Thus, to allow litigants on a third-party standing to raise a facial overbreadth challenge, they must demonstrably show the tendency of the law to produce a chilling effect; that "[t]he 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[.]"[106]

Chilling effect, however, must be qualified. It is not a convenient justification to allow a litigant to invoke third-party standing. It also involves a substantive aspect, as to how an overbroad law violates the litigant's personal rights. *The fact of chilling effect as an additional requirement for facial review is necessary*, since even the hegemonic sectors of the society can themselves invoke, if not feign, chilling effect to protect and entrench their interests and continue to exclude marginalized interests.

We must be vigilant in the foundations of our assumptions and clarify that it is not sufficient to merely invoke chilling effect. We have to examine the interests that a litigant represents, and whether they can demonstrate why they should be allowed to raise the interests of those not before this Court.

This is especially so since the State has a legitimate interest in prosecuting crimes and deterring socially harmful conduct. Thus, litigants who challenge laws by claiming a chilling effect on their speech must clearly show how the penal law deters them from the lawful exercise of their rights. They must show that they themselves are also chilled in exercising their rights.

I highlighted in *Disini* how the doctrine of chilling effect has been transplanted in our jurisprudence but remained abstract in its application. In determining chilling effect, the "totality of the injurious effects of the violation to private and public interest"[107] must be carefully calibrated:

> We rule that not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. Our laws are of different kinds and doubtless, some of them provide norms of conduct which even if violated have only an adverse effect on a person's private comfort but does not endanger national security. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. In fine, violation of law is just a factor, a vital one to be sure, which should be weighed in adjudging whether to restrain freedom

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105 Id. at 488 citing Andrew E. Goldsmith, *The Void-for-Vagueness Doctrine in the Supreme Court, Revisited*, 30 AM. J. CRIM. L. 279 (2003), note 39, citing Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 STAN. L. REV. 235, 261–262 (1994).

106 Id. at 486.

107 *Chavez v. Gonzales*, 569 Phil. 155, 219 (2008) [Per J. Puno, En Banc].

> of speech and of the press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press.[108]

Redefining chilling effect becomes more relevant in the context of the right to dissent. Almost 30 years since *Adiong* introduced the chilling effect, this Court has transplanted and accepted the underlying assumption of the overbreadth doctrine without examining its basis and rationale. It has so loosely, so abstractly applied the concept of chilling effect.

This Court should not only be wary of the limits of our functions vis-à-vis those of its co-equal branches. Under a strongman leadership and a culture of violence, this Court has to be more vigilant in protecting fundamental liberties at the core of democracy. In protecting marginalized and minority groups, a scrutiny of actual facts is more compelling. This Court has to understand their interests and filter the "unempirical and outmoded, even if sacrosanct, doctrines and biases."[109]

This Court cannot apply the overbreadth analysis without the litigant showing the law's demonstrably and urgently egregious tendency to produce a chilling effect. We cannot truly understand the interests of those we seek to protect and those who are not before this Court. Thus, I propose the following:

First, we require the litigant raising a chilling effect to establish the basis of its underlying assumption through demonstrable facts. In raising third-party standing, litigants are in a better position to inform this Court of the basis of the chilling effect on the interest that they seek to represent. Otherwise, we will be forced to guess on the extent of the chilling effect on those not before this Court, using only our personal convictions and biases, in carving out unconstitutional parts of the law. Again, this Court cannot do this without violating the constitutional order.

Second, we have to look at the interests of those who claim the existence of chilling effect. This Court has to be careful not to allow those who subscribe to the hegemony to invoke the chilling effect on the weak and marginalized who are not before us.

Finally, we should also look at the effect of the assailed statute on the litigant and examine their personal interest in the controversy. As discussed, the origins of the overbreadth doctrine in *Thornhill* do not preclude this Court from looking at the litigant's personal interests. After all, due process dictates that one has a right not to be governed by invalid laws. The injury-in-fact of

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[108] Id.

[109] *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

the challenger can strengthen the claims of chilling effect on the exercise of rights of third parties. This is a concession. In taking up the cudgels for those who cannot assail the regulation themselves, the litigant already shows a low propensity of being chilled in the exercise of one's rights.

Here, petitioners are members of civil society with diverse interests and from different backgrounds. They include former justices of this Court, incumbent legislators, journalists, lawyers, teachers, civil society organizations, influencers, student leaders, members of different religious communities, and individuals from marginalized sectors, such as women, youth, and indigenous peoples. Almost all 37 Petitions assail the constitutionality of the Anti-Terrorism Act, which, they claim, tramples on their public rights.[110]

Petitioners were able to demonstrably show the imminence of the threat in the Anti-Terrorism Act's enforcement against the exercise of their civil and political rights.

The following narratives of petitioners are relevant. They do not merely invoke the existence of chilling effect. They acknowledge, through their experiences, the imminence of the threat that the assailed law poses. These inconveniences may not be as readily felt by an ordinary citizen who, in the face of threats, may simply refrain from exercising their civil and political rights.

Before the Anti-Terrorism Act was enacted, an information for conspiracy to commit sedition was filed against petitioner Fr. Albert Alejo, who has been critical of the government.[111] He was not alone in this, as other petitioners were also subjected to relentless red-tagging sponsored by the government: members of the Anti-Terrorism Council, officials of the National Task Force to End Local Communist Armed Conflict, other state agents, and no less than the President himself.[112]

Subsequent developments after the filing of the Petitions demonstrate the imminent threats that petitioners will be subjected to under the regime of the Anti-Terrorism Act. The bank accounts of petitioner Rural Missionaries of the Philippines[113] had allegedly been frozen[114] by the Anti-Money Laundering Council for its supposed involvement in financing terrorism. The same is true for petitioner Gabriela, Inc.,[115] which has allegedly been the focus of a financial investigator initiated by the national security adviser in relation

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110 Petitioners' Memorandum (Cluster I), p. 49.
111 Petitioners' Memorandum, pp. 66–67.
112 Id. at 72–73.
113 Petitioner in G.R. No. 252767.
114 Petitioners' Memorandum (Cluster I), p. 65.
115 Petitioner in G.R. No. 252768.

to its supposed terrorism financing.[116] For petitioner Rey Claro C. Casambre, he already suffered direct injury after being designated by the Anti-Terrorism Council as a terrorist.[117] Further, petitioners Carlos Isagani T. Zarate,[118] Renato Reyes, Jr.,[119] Broderick S. Pabillo,[120] Gabriela, Inc., et al.,[121] Beverly Longid,[122] Ramon Guillermo, et al.,[123] and Philippine Misereor Partnership, Inc.,[124] alleged that they have been labeled as "terrorists" in various official government documents.

All these petitioners validly raise a facial overbreadth challenge of the provisions of the Anti-Terrorism Act.

## III

This Court is tasked with harmonizing the people's fundamental freedom of expression vis-à-vis the State's constitutional duty to preserve national security and protect life, liberty, and property from terrorism.[125]

The right to dissent and protest flows from free expression. In the face of a State policy that threatens the people's right to express their opinions, whether it is against the hegemony, this Court has the duty to protect this fundamental freedom and its cognate rights.[126]

Yet, as with all other freedoms, free expression and its corollary right to dissent are not absolute.[127] They "may be regulated to some extent to serve important public interests, [with] some forms of speech not being protected."[128] Even as these freedoms are integral to a free society, they must be limited when they go beyond mere expression of views and become acts that threaten society. This distinction is basic to understanding the democratic process.[129]

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116 Id. at 66.
117 Petitioners' Memorandum (Cluster I), p. 65.
118 Petition for Certiorari and Prohibition, G.R. No. 252585, pp. 8–9.
119 Petition for Certiorari and Prohibition, G.R. 252733, p. 38.
120 Petition for Certiorari and Prohibition, G.R. No. 252767, pp. 18–19.
121 Petition for Certiorari and Prohibition, G.R. No. 252768, pp. 18–26.
122 Petition for Certiorari and Prohibition, G.R. No. 252904, p. 3.
123 Petition for Certiorari and Prohibition, G.R. No. 253018, pp. 17–31.
124 Petition for Certiorari and Prohibition, G.R. No. 253252, pp. 11–12.
125 Republic Act No. 11479 (2020), sec. 2.
126 University of Chicago Law School - Global Human Rights Clinic and International Network of Civil Liberties Organizations, *Defending dissent: Towards state practices that protect and promote the right to promote the right to protest – Executive Summary*, 2018, available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1011&context=ihrc> 2 (last accessed on November 2, 2021).
127 *Soriano v. Laguardia*, 605 Phil. 43 (2009) [Per J. Velasco, Jr., En Banc].
128 Id. at 96.
129 Max M. Kampelman, *Dissent, Disobedience, and Defense in a Democracy*, 133 WORLD AFFAIRS 124–132 (1970).

Thus, regulations on free expression can be constitutionally permissible. In examining such regulation, it is important to distinguish whether it is content-based and content-neutral.

Content-neutral regulation is "merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards," regardless of the content of the speech.[130]

Meanwhile, a regulation is content-based if it restricts the speech or expression's subject matter.[131] It constitutes prior restraint, which curtails speech or expression in advance of its actual utterance, dissemination, or publication.[132] A content-based regulation bears a heavy presumption of unconstitutionality,[133] and to be valid, any form of prior restraint must be narrowly tailored and least restrictive to achieve a compelling State interest.[134]

Prior restraint tends to discourage the people to voice out their opinions, especially views that have social and political value. Thus, to uphold the validity of the regulation that imposes it, the State must prove that its interest outweighs the people's freedom of expression.[135] The governmental action will be upheld only if the speech sought to be restrained presents a clear and present danger of bringing a substantive evil that the State must prevent. The danger must be characterized as grave and imminent.

This Court generally exercises judicial restraint on issues of constitutionality, but a regulation that allegedly poses a threat to fundamental rights will warrant the highest level of scrutiny. In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*:[136]

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the

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130 *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

131 Id.

132 J. Leonen, Dissenting Opinion in *Nicolas-Lewis v. Commission on Elections*, 529 Phil. 642 (2006) citing *Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per J. Puno, En Banc].

133 *Chavez v. Gonzales*, 569 Phil. 155, 206 (2008) [Per J. Puno, En Banc].

134 Id.

135 J. Leonen, Separate Concurring Opinion in *Nicolas-Lewis v. Commission on Elections*, G.R. No. 223705, August 14, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65669> [Per J. Reyes, Jr., En Banc].

136 487 Phil. 531 (2004) [Per J. Puno, En Banc].

> Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[137] (Emphasis supplied, citations omitted)

As explained in *Samahan ng mga Progresibong Kabataan v. Quezon City*,[138] this Court has established the three tests of judicial scrutiny in reviewing assailed statutes:

> Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The **strict scrutiny test** applies when a classification either *(i)* interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or *(ii)* burdens suspect classes. The **intermediate scrutiny test** applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the **rational basis test** applies to all other subjects not covered by the first two tests.[139] (Emphasis in original, citations omitted)

Here, the Anti-Terrorism Act contains content-based regulations that penalize one's exercise of freedom of expression when it goes against the government. Some provisions tend to punish future actions or events based on preconceived notions, instead of punishing based on an act that has concretely transpired. They would effectively discourage protests, assemblies, and public gatherings, hindering public dialogue and interfering with the democratic rights of speech and expression.

Seeing as what is at stake here are fundamental freedoms, the strict scrutiny test applies. And, to withstand this test, it must be shown that the Anti-Terrorism Act advances compelling State interest and that it is narrowly tailored for that purpose.[140]

Even in the hierarchy of rights, free expression rests on a higher plane. Prior restraint on protected speech will only be valid if they pass the governing jurisprudential test. Two tests in determining the validity of restrictions in the exercise of free speech have been recognized:

> These are the 'clear and present danger' rule and the 'dangerous tendency' rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be 'extremely serious and the degree of imminence extremely high' before the utterance can be punished. The danger to be guarded against is the 'substantive evil' sought to be prevented. . .

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137 Id. at 599–600.
138 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].
139 Id. at 1113–1114.
140 *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J. Leonen, En Banc].

. . . .

> The 'dangerous tendency' rule, on the other hand, . . . may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.[141] (Citations omitted)

This Court had previously applied either test to resolve free speech challenges. Recently, however, we have generally adhered to the clear and present danger test,[142] under which speech may be restrained when there is "substantial danger that the speech will likely lead to an evil the government has a right to prevent."[143]

In the early case of *Cabansag v. Fernandez*,[144] this Court described the clear and present danger test:

> The question in every case, according to Justice Holmes, 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 and degree.[145] (Citations omitted)

As the test itself words it, the danger must not only be clear but also present. By clear, there must be "a causal connection with the danger of the substantive evil arising from utterance questioned." Meanwhile, "present" indicates the time element—imminent, immediate, not just possible "but very likely inevitable."[146]

The United States Supreme Court, in *Brandenburg v. Ohio*,[147] refined the applicability of the clear and present danger rule. There, the Ohio Supreme Court had convicted a leader of the infamous Ku Klux Klan under the Ohio Criminal Syndicalism Statute for, among others, advocating terrorism and violence to accomplish industrial or political reform and for "voluntarily assembl[ing]" to advocate for "criminal syndicalism."[148]

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141 *Cabansag v. Fernandez*, 102 Phil. 152, 161–163 (2000) [Per J. Panganiban, En Banc].
142 *Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].
143 Id. at 200.
144 102 Phil. 152 (1957) [Per J. Bautista Angelo, First Division].
145 Id. at 163.
146 *In re Gonzales*, 137 Phil. 471 (1969) [Per J. Fernando, En Banc].
147 395 U.S. 444 (1969).
148 Id.

On appeal, the United States Supreme Court overturned the judgment, holding that "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[149] It found that advocating illegal actions is not punishable unless such advocacy is aimed at "inciting or producing imminent lawless action and is likely to produce such action."[150]

In *Iglesia ni Cristo v. Court of Appeals*,[151] this Court traced the development of the test in the United States:

> It was Mr. Justice Holmes who formulated the test in Schenck v. US, as follows: ". . . 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." . . . In *Dennis* [*v. US*], the components of the test were altered as the High Court adopted Judge Learned Hand's formulation that ". . . in 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." *The imminence requirement of the test was thus diminished and to that extent, the protection of the rule was weakened. In 1969, however, the strength of the test was reinstated in Brandenburg v. Ohio, when the High Court restored in the test the imminence requirement, and even added an intent requirement which according to a noted commentator ensured that only speech directed at inciting lawlessness could be punished.* Presently in the United States, the clear and present danger test is not applied to protect low value speeches such as obscene speech, commercial speech and defamation.[152] (Emphasis supplied, citations omitted)

While the *Brandenburg* test is not commonly utilized in this jurisdiction, it is a dominant test used for free speech cases in the US. Its adoption in the case at hand may prove a useful as it "seeks to give special protection to politically relevant speech."[153] The *Brandenburg* test has been applied to "speech that advocates dangerous ideas" and to "speech that provokes a hostile audience reaction[.]"[154]

In applying the *Brandenburg* test, a speech or expression is not constitutionally protected if the following are present: (1) directed to inciting

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149 Id. at 447.
150 Id.
151 328 Phil. 893 (1996) [Per J. Puno, En Banc].
152 Id. at 932–933.
153 *MVRS Publications v. Islamic Da'wah Council of the Philippines*, 444 Phil. 230, 257 (2003) [Per J. Bellosillo, En Banc].
154 *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) [Per J. Puno, En Banc].

or producing imminent lawless action; and (2) is likely to incite or produce such action.

The *ponencia* integrated the *Brandenburg* test in determining whether the assailed provisions of the Anti-Terrorism Act are unconstitutional or are a valid exercise of police power.[155] By stating that free speech does not permit the State to proscribe advocacy of the use of force—except where such advocacy is aimed at inciting, and is likely to incite or produce, imminent lawless action[156]—it adapted an imminence and an intent requirement.[157]

For now, I agree.

Considering that some of the assailed provisions may effectively proscribe speech as an incident to its goal of combatting terrorism, and insofar as these cases concern speech that purportedly advocates imminent lawless action and may endanger national security, I submit that the *Brandenburg* test is the appropriate test here.

## IV

Out of the myriad of issues raised in the Petitions, this Court is constrained to rule on provisions of the Anti-Terrorism Act claimed to have violated the exercise of free expression and its cognate rights. These include the following provisions where the "chilling effect" on speech can be palpable, namely: (1) the definition of terrorism under Section 4; (2) proposal to commit terrorism under Section 8; (3) inciting to commit terrorism under Section 9; (4) recruitment to and membership in a terrorist organization under Section 10; (5) designation under Section 25; (6) proscription under Section 26; and (7) the power to issue a written authorization under Section 29. I will discuss these provisions in this order.

### IV (A)

I agree with the *ponencia* that Section 4, which defines terrorism, is only partly unconstitutional. It states:

> 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;

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155 *Ponencia*, p. 113.

156 *Salonga v. Paño*, 219 Phil. 402 (1985) [Per J. Gutierrez Jr., En Banc].

157 *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893 (1996) [Per J. Puno, En Banc]. *See Chavez v. Gonzales*, 569 Phil. 155 (2008) [Per J. Puno, En Banc].

> (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.

The *ponencia* deconstructs this provision into two parts.

The main part identifies the overt acts deemed as terrorism (*actus reus*), the intent of the overt acts (*mens rea*), and the imposable penalty.[158] These are the enumerated acts in Section 4(a) to (e), along with the first part of the last paragraph.

The second part is the proviso, which safeguards the exercise of civil and political rights, such as advocacy, protest, dissent, stoppage of work, or industrial or mass action, from being lumped together with the defined acts of terrorism—albeit with a catch. The proviso contains what the *ponencia* refers to as the "Not Intended Clause."

This "Not Intended Clause" qualifies the proviso—the exercise of civil and political rights is excluded from the scope of the law only if it is "*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."[159]

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158 *Ponencia*, p. 83.
159 Id.

For clarity, I adopt the *ponencia's* deconstruction of Section 4.

For petitioners, the main part of Section 4 grants law enforcers the widest discretion by intentionally making the definition ambiguous[160] and failing to provide parameters in its operation.[161] They add that the proviso makes mere advocacy, protest, dissent, and other similar exercises punishable even without an overt act so long as there is a supposed criminal intent.[162]

Petitioners submit that the imprecision of Section 4's language allows enforcers to decide whether an act was committed with intent to cause death or serious bodily injury regardless of the outcome or context. They claim that enforcers are effectively given free rein to pursue their personal predilections and charge people as terrorists.[163] Accordingly, they aver that Section 4 disingenuously prohibits any form of dissent, chilling protected speech or assemblies.[164] They claim that people will be restrained from organizing mass actions and protests intended to criticize and demand accountability from the government given the threat that certain expressions might be considered serious risk to public safety.[165]

Respondents counter that merely alleging violations of fundamental rights and barely invoking a chilling effect do not automatically trigger this Court's exercise of judicial review.[166] They add that the Anti-Terrorism Act is a legitimate exercise of police power, implying a limitation on the Bill of Rights.[167] They posit that the law complies with the strict scrutiny test because the State has a compelling interest in protecting its citizens from terrorism,[168] while adopting the least restrictive means in its implementation.[169]

Respondents add that the law only regulates conduct and not speech.[170] On this note, they argue that making a conduct illegal has never been deemed an abridgment of freedom of speech or the press merely because the conduct was in part carried out by means of spoken, written, or printed language.[171] They claim that when an act is committed through written or oral communication and intended to cause imminent lawless action or endanger the national security with a clear intent to incite people to support or commit terrorism, what is being penalized is the conduct, not the incidental speech.

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160 Petitioners' Memorandum (G.R. No. 252736), p. 99.
161 Id. at 109.
162 Id. at 115.
163 Id. at 100.
164 Id. at 109.
165 Id. at 105.
166 Respondents' Memorandum, p. 454.
167 Id. at 487.
168 Id. at 491 to 497.
169 Id. at 498, 502–503.
170 Id. at 498, 502–503, 527, and 534.
171 Id. at 468.

The *ponencia* upheld the main part of Section 4,[172] but struck down the "Not Intended Clause" for being vague and overbroad, as well as for failing the strict scrutiny test. I concur in this result, but I differ in the modes of inquiry through which the provision should be analyzed.

In upholding the validity of the main part of Section 4, the *ponencia* held that the first and second components of Section 4 provide a manifest link as to how or when the crime of terrorism is committed. It rejected any perceived vagueness in the definition of terrorism as a crime,[173] and held that the components of the main part of Section 4, taken together, create a definition of terrorism that is "general enough to adequately address the ever-evolving forms of terrorism, but neither too vague nor too broad as to violate due process or encroach upon the freedom of speech and expression and other fundamental liberties."[174]

To begin with, the main part of Section 4 does not even regulate speech, but conduct. *Southern Hemisphere* instructs that while a law punishes utterances incidental to a criminal conduct, this would not alter its intent to punish socially harmful conduct:

> Utterances not elemental but inevitably incidental to the doing of the criminal conduct alter neither the intent of the law to punish socially harmful conduct nor the essence of the whole act as conduct and not speech. This holds true *a fortiori* in the present case where the expression figures only as an inevitable incident of making the element of coercion perceptible.
>
> > [I]t is true that the agreements and course of conduct here were as in most instances brought about through speaking or writing. But it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was, in part, initiated, evidenced, or carried out by means of language, either spoken, written, or printed. Such an expansive interpretation of the constitutional guaranties of speech and press would make it practically impossible ever to enforce laws against agreements in restraint of trade as well as many other agreements and conspiracies deemed injurious to society.
>
> Certain kinds of speech have been treated as unprotected conduct, because they merely evidence a prohibited conduct. Since speech is not involved here, the Court cannot heed the call for a facial analysis.[175] (Citations omitted)

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[172] *Ponencia*, p. 89.
[173] Id. at 90.
[174] Id. at 91.
[175] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 494–495 (2010) [Per J. Carpio Morales, En Banc].

I thus concur with the *ponencia* that the main part cannot be assailed through a facial challenge:

> [T]he main part of Section 4 chiefly pertains to conduct. It is plain and evident from the language used therein that the enumeration refers to punishable acts, or those pertaining to bodily movements that tend to produce an effect in the external world, and not speech. The acts constitutive of the crime of terrorism under paragraphs (a) to (e) are clearly forms of conduct unrelated to speech, in contradistinction with the enumeration in the proviso, which are forms of speech or expression, or are manifestations thereof.[176]

Moreover, the main part of Section 4 does not suffer from any ambiguity. When the law is clear, free from doubt or ambiguity, there is no room for construction or interpretation. There can only be application, the words given a literal meaning. *Verba legis non est recedendum.* From the words of a statute, there should be no departure.[177]

It is easy to see why Congress cannot be too specific in its scope and definition of what it seeks to regulate. Flexibility in language is necessary for laws to withstand the test of time. In crafting laws, Congress is not required to define each word or to restrain its policy within the language of a law. Interpretating laws is part of judicial power. Thus, in *Estrada*, this Court held that it is not the inherent ambiguity of words that invalidates a statute:

> A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act.[178]

The main part of Section 4 likewise passes the strict scrutiny test. It carries with it a compelling State interest, and the means to achieve that purpose have been narrowly tailored.

Indeed, the increasing complexity of terrorism is a reality that Congress has to address. It is an existential threat to the country and the community of nations. It is a matter of self-preservation that the State need not wait for terrorist acts to be consummated before acting on this existential threat. The general wording of the main part of Section 4 is valid to give our law enforcers

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176 *Ponencia*, p. 88.

177 *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per J. J.C. Reyes, Jr., En Banc].

178 *Estrada v. Sandiganbayan*, 421 Phil. 290, 347 (2001) [Per J. Bellosillo, En Banc].

and intelligence agencies the flexibility and proper tools in detection, dispersion, and disruption of terrorist attacks.

However, the same cannot be said for the "Not Intended Clause" of Section 4. Its plain reading shows that Congress does not only regulate conduct, but also speech and other protected forms of expression.

The "Not Intended Clause" qualifies that exercises of civil and political rights are excluded from the coverage of terrorism only if 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."[179] Otherwise, the exercise of such rights will be deemed a terrorist act.

Thus, Congress imposed prior restraint on the exercise of one's civil and political rights. It requires one to prove the absence of intent 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.

Respondents justify the intrusion by highlighting the necessity of protecting the nation against terrorism. They explain that it has "a real and direct impact on human rights, with devastating consequences on the enjoyment of the right to life, liberty and physical integrity of victims."[180] They add that there are sufficient safeguards found in the operation of the Anti-Terrorism Council and the other remedies that can prevent possible abuse in its implementation.[181]

They are clearly mistaken. As the *ponencia* correctly characterized, respondents want an arrest-now-explain-later scheme.[182] In adding the "Not Intended Clause," Congress did not merely create a general *in terrorem* effect. It guaranteed prior restraint on the exercise of "advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights[.]" [183]

The lack of determinable standards to guide law enforcers in determining intent can easily be interpreted in a manner that infringes on freedom of expression. A person legitimately participating in a mass action can easily be arrested based on the law enforcer's subjective determination of their intent. Since intent can only be inferred from overt acts, they will only have to look at the manner in which the person exercises their freedom of expression. Any exercise of these civil and political rights will give any law enforcer probable cause to arrest those participating in these activities.

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[179] Republic Act No. 11479 (2020), sec. 4.
[180] Respondents' Memorandum, p. 497.
[181] Id. at 239–248, pars. 502–503.
[182] *Ponencia*, p. 110.
[183] Republic Act No. 11479 (2020), sec. 4.

Prior restraint is more apparent when Section 4 is read with the other provisions of the Anti-Terrorism Act. Aside from having to justify the legitimate exercise of their fundamental rights, a person arrested based on suspicion is already exposed to the consequences of the law, such as surveillance,[184] the effects of designation[185] and proscription,[186] arrest and detention,[187] restriction on the right to travel,[188] and investigation, inquiry, examination, and possible freezing of bank deposits.[189] The provision is clearly in the nature of prior restraint, and respondents have the burden to overcome the presumption of its unconstitutionality. I agree with the *ponencia* that respondents failed in this regard.

**IV (B)**

The chilling effect of the "Not Intended Clause" on the exercise of fundamental rights is likewise undeniable.

In the overbroad language of the clause, terrorist acts now cover all expressions of civil and political rights. It has unnecessarily expanded a law enforcer's reach into protected freedoms. This clause gives law enforcers the unbridled license to construe these exercises of civil and political rights as acts of terrorism punishable under the law. In adding the clause, the safeguard provision has become impermissibly vague.

I agree with the *ponencia's* observation that the "Not Intended Clause" makes an ordinary person doubt if, in speaking out against the government, they may be branded as a terrorist and suffer the consequences of the law.[190]

Dissent is crucial in any democracy. If our country is to grow in a holistic manner, where economic and civil rights of every citizen are protected, dissident opinions must be permitted and encouraged. It is only through meaningful dialogue that our society can arrive at better ways of governance.[191] It is in our society's interest that citizens are able to demand a full discussion of public affairs.[192] It is in this context that this Court should

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184 Republic Act No. 11479 (2020), sec. 16, par. 1.
185 Republic Act No. 11479 (2020), sec. 25, par. 3.
186 Republic Act No. 11479 (2020), sec. 26.
187 Republic Act No. 11479 (2020), sec. 29, par. 1.
188 Republic Act No. 11479 (2020), sec. 34, par. 1.
189 Republic Act No. 11479 (2020), secs. 35 and 36.
190 *Ponencia*, p. 111.
191 Deepak Gupta, *The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta*, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).
192 *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

guard against any curtailment of the people's right to participate in the free trade of ideas,[193] regardless of persuasion.

A person who does not break the law or encourage strife has a right "to differ from every other citizen and those in power and propagate what [they believe in]."[194] One theory behind this is that nonviolent manifestations of dissent may reduce the likelihood of violence. In *Diocese of Bacolod v. Commission on Elections*:[195]

> "[A] dam about to burst . . . resulting in the 'banking up of a menacing flood of sullen anger behind the walls of restriction'" has been used to describe the effect of repressing nonviolent outlets. In order to avoid this situation and prevent people from resorting to violence, there is a need for peaceful methods in making passionate dissent. This includes "free expression and political participation" in that they can "vote for candidates who share their views, petition their legislatures to [make or] change laws, . . . distribute literature alerting other citizens of their concerns[,]" and conduct peaceful rallies and other similar acts. Free speech must, thus, be protected as a peaceful means of achieving one's goal, considering the possibility that repression of nonviolent dissent may spill over to violent means just to drive a point.[196]

Dissent is not only essential to the full development of a person. It is the cornerstone of a democratic society.[197] After all, the majority may sometimes follow the wrong course. As Jean-Jacques Rosseau stated:

> [T]he general will is always in the right and always works for the public good; but it doesn't follow that the people's deliberations are always equally correct. Our will is always for our own good, but we don't always see what it is; the populace is never corrupted, but it is often deceived, and then—but only then—it seems to will something bad.[198]

This is relevant in any democratic system, which adheres to the rule of majority. While this system acknowledges every citizen's right to participate in the electoral process and in the ways our government is being run, it heavily favors conformity and discourages any contrary position.

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193 Id.

194 Deepak Gupta, *The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta*, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

195 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

196 Id. at 363–364.

197 Emily Howie, *Protecting the human right to freedom of expression in international law*, 20 20 INTERNATIONAL JOURNAL OF SPEECH-LANGUAGE Pathology 12 (2017), available at <https://www.tandfonline.com/doi/full/10.1080/17549507.2018.1392612> (last accessed on November 2, 2021).

198 JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT 14 (2017) <https://www.earlymoderntexts.com/assets/pdfs/rousseau1762.pdf> (last accessed on November 2, 2021).

In this context, majoritarianism is antithetical to—or at the very least preventive of the growth of—our democratic system[199] and the promise of due process and equality accorded by the law to all persons similarly situated.[200]

To equalize this unjust situation and advance social justice, the country sorely needs two things: *first*, a unified challenge to the domination of the rich and powerful; and *second*, a move toward empowering the marginalized sectors to exercise their right to express their opinions that may be contrary to the status quo. Among the vehicles through which these systemic reforms may be actualized is through safeguarding every citizen's exercise of their right to expression with political consequences, including dissents.[201]

Two scholars said it best: "If everybody follows the well-trodden path, no new paths will be created . . . and the horizons of the mind will not expand";[202] "if our cities are to become habitable, our schools educational, our economy workable, and our goals for peace achievable, [the best minds] need to be free to let their thoughts carry them to strange places and strange ideas."[203]

Dissent should not be stifled. On the contrary, all forms of speech and expression that do not violate the law or encourage strife should be encouraged. It is unfortunate that, due to the realities of our imperfect democratic and majoritarian system, not everyone is able to participate and fully and freely exercise their political and civil rights.[204]

Protecting dissent is particularly relevant here, because the "Not Intended Clause" tends to penalize conduct on the basis of a perceived intention. Advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights that are perceived to be intended to cause death or serious physical harm to a person, endanger a person's life, or create a serious risk to public safety will legally be considered as terrorism.

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199 Deepak Gupta, *The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta*, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

200 CONST., art. III, sec. 1.

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

202 Deepak Gupta, *The Right to Dissent is the Most Important Right Granted by the Constitution: Justice Gupta*, February 24, 2020, <https://thewire.in/law/right-to-dissent-constitution-justice-deepak-gupta> (last accessed on November 2, 2021).

203 Max M. Kampelman, *Dissent, Disobedience, and Defense in a Democracy*, 133 WORLD AFFAIRS 124, 132 (1970).

204 *See* Siân Herbert, *Conflict analysis of The Philippines*, 2019 <https://gsdrc.org/publications/conflict-analysis-of-the-philippines/ (last accessed on November 2, 2021); and Joseph Franco, *The Philippines: The Moro Islamic Liberation Front - A Pragmatic Power Structure?*, May 24, 2016, <https://cco.ndu.edu/news/article/780183/chapter-7-the-philippines-the-moro-islamic-liberation-front-a-pragmatic-power-s/> (last accessed on November 2, 2021).

Contrary to respondents' argument, the "Not Intended Clause" penalizes the exercise of speech and expression, particularly those that go against the interests of the government. Through this provision, law enforcers have unbridled authority to curtail the expression of civil and political rights. It is purely dependent on the subjective determination of the law enforcer. This intrudes upon a person's legitimate exercise of protected freedoms. The danger in implementing the "Not Intended Clause" is that, even in the absence of actual overt acts, law enforcers are given unbridled discretion to categorize speech and expression that appear to be "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."

As the Anti-Terrorism Act currently stands, law enforcers may conduct surveillance of suspects and intercept and record communications.[205] Depending on the outcome of this preliminary surveillance, an overeager law enforcer may readily and inaccurately conclude that a person, in the mere exercise of their right to free speech and expression, intended to cause death or serious physical harm to a person, endanger a person's life, or create a serious risk to public safety. Any legitimate dissent may already be perceived as amounting to terrorism. Effectively, a person is left with no safeguard.

Moreover, the "Not Intended Clause" ignores the inherent purpose of protests, mass demonstrations, and other forms of collective action. The minority and the marginalized engage in these exercises essentially to disrupt the status quo and cause some inconvenience to the ruling class to make their voices heard and their grievances addressed. These are legitimate exercises of the rights to expression and to peaceably assemble and petition the government for redress of grievances.

Mass demonstrations carry the collective struggles and realities of the poor and marginalized. In their plea for change, they may utter caustic words and speeches to unify their cause and empower their group. The possibility that "speech is likely to result in some violence or in destruction of property" is not enough to justify its suppression.[206]

It is only when such gathering stimulates a danger of such "character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest" that it loses its protection.[207] Absent such element, law enforcers are required to impose maximum tolerance during these events.[208]

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205 Republic Act No. 11479 (2020), sec. 16.
206 *Primicias v. Fugoso*, 80 Phil. 71 (1948) [Per J. Feria, En Banc].
207 *Reyes v. Bagatsing*, 210 Phil. 457, 467 (1983) [Per C.J. Fernando, En Banc].
208 *In re Ilagan*, 223 Phil. 561 (1985) [Per J. Melencio-Herrera, En Banc].

However, as the *ponencia* noted, the "Not Intended Clause" does not have sufficient parameters despite its intrusion on fundamental freedoms.[209] Instead, law enforcers are given wide latitude, resorting only to their subjective interpretation of a person's state of mind while in the exercise of a constitutionally protected expression. As the *ponencia* pointed out, the exercise of these protected freedoms becomes a matter of defense, where the person arrested will have the burden of justifying their conduct as legitimate, instead of the law enforcer satisfying the requirements of probable cause before arresting a person without a warrant.

As former Associate Justice Consuelo Ynares-Santiago stated in her concurrence in *David*:

> [I]t cannot be gainsaid that government action to stifle constitutional liberties guaranteed under the Bill of Rights cannot be preemptive in meeting any and all perceived or potential threats to the life of the nation. Such threats must be actual, or at least gravely imminent, to warrant government to take proper action. To allow government to preempt the happening of any event would be akin to "putting the cart before the horse," in a manner of speaking. State action is proper only if there is a clear and present danger of a substantive evil which the state has a right to prevent. We should bear in mind that in a democracy, constitutional liberties must always be accorded supreme importance in the conduct of daily life. At the heart of these liberties lies freedom of speech and thought — not merely in the propagation of ideas we love, but more importantly, in the advocacy of ideas we may oftentimes loathe. As succinctly articulated by Justice Louis D. Brandeis:
>
> > Fear of serious injury cannot alone justify suppression of free speech and assembly. . . . It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. . . . But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.[210]

Accordingly, the mere existence of the "Not Intended Clause" unnecessarily sweeps broadly and invades into the sacred ground of protected

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209 *Ponencia*, p. 108.

210 J. Ynares-Santiago, Concurring Opinion in *David v. Macapagal-Arroyo*, 522 Phil. 705, 817 (2006) [Per J. Sandoval-Gutierrez, En Banc].

freedoms as it grants an oversimplified justification to law enforcers to suppress free speech, even in the absence of overt acts violative of the law. This preempts the legitimate exercise of the freedoms of speech and expression and effectively creates a prior restraint that chills the exercise of freedoms of expression and assembly. No other interpretation can save the "Not Intended Clause." On its face, it is repugnant to the guarantees of freedom of expression and its cognate rights.

## IV (C)

Aside from Section 4, petitioners also assail other penal provisions that encroach on free speech and its cognate rights.

These provisions, dealing as they are with possible violations of fundamental rights, should be examined under the strict scrutiny test.

The first requirement, that there be a compelling State interest, is readily met by these assailed provisions. Surely, the preservation of national security is a purpose compelling enough to allow certain restrictions on particular privileges. However, the same cannot be said for the second requirement of narrowly tailored means.

Whether the penal provisions are the least restrictive means to effect the invoked State interest remains to be seen.[211] Such determination will vary per provision: Sections 8, 9, 10, 25, 26, and 29; accordingly, these penal provisions will be discussed below in succession.

The paramount importance of the right to dissent in a democratic society makes it necessary to ensure that government actions are founded on clear standards. Given that the ability to protest and publicly gather to express one's opinions are avenues to put forward political, social, or economic change, this Court must protect and uphold them.[212] The compelling State interest being protected in the Anti-Terrorism Act does not give unbridled authority to law enforcers to initiate criminal proceedings without satisfying the basic principles of law and due process.

The legislative intent found in Section 2 of the Anti-Terrorism Act clearly states that in defending national security and condemning terrorism, "the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution." It reads:

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211 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1120 (2017) [Per J. Perlas-Bernabe, En Banc].

212 *Defending dissent: Towards state practices that protect and promote the right to promote the right to protest,* 2018, available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1011&context=ihrc> (last accessed on November 2, 2021).

> SECTION 2. *Declaration of Policy.* — It is declared a policy of the State to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations.
>
> *In the implementation of the policy stated above, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution.*
>
> The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peacebuilding, addressing the roots of conflict by building state capacity and promoting equitable economic development.
>
> Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. *It is to be understood, however, that the exercise of the constitutionally recognized powers of the executive department of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.*[213] (Emphasis supplied)

The law was not intended to trample the people's fundamental rights, but only to ensure national security and protect the country from the real threat of terrorism. The first paragraph of Section 2 lays down the State policy to protect the country and its people from terrorism and its inimical effects to national security. This goes hand in hand with the State's commitment to uphold basic rights.

In implementing the law, law enforcers must find guidance from Section 2. Anything done in the context of the Anti-Terrorism Act must be based on the law; acts performed outside its intent, though disguised as one done under its authority, must be struck down as illegal.

Thus, in carrying out Sections 8, 9, 10, 25, 26, and 29 of the Anti-Terrorism Act, authorities must "uphold the basic rights and fundamental liberties of the people as enshrined in the Constitution."[214] Accordingly, law enforcers may only apprehend a person when it is clear from their *overt acts* that they suggested or tried to convince a third person to commit one of the punishable acts the law seeks to prevent.

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[213] Republic Act No. 11479 (2020), sec. 2.
[214] Id.

By overt acts, there must be a clear manifestation that the acts committed were made with the intent to propose or incite terrorism. *Actus non facit reum, nisi mens sit rea*—a crime cannot be committed if the actor's mind is without any criminal intent.[215] Without the criminal mind, there is no crime.[216] It is with the presence of both the *actus reus* or the criminal act, and *mens rea* or criminal intent, that a crime is born.[217] Accordingly, the mere act, without the intent to incite or produce lawless action, will not suffice. *Rait v. People* described the interplay between the two:[218]

> *Overt or external act has been defined as some physical activity or deed, indicating the intention to commit a particular crime*, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[219] (Emphasis supplied, citations omitted)

Sections 8 and 9 of the Anti-Terrorism Act criminalize the proposal to commit or inciting to commit terrorism. They state:

> 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.

These provisions prohibit speech or expression that aims to produce one of the enumerated acts of terrorism under Section 4, by either proposing such act or inciting one to participate in it. Under the *Brandenburg* test, a speech to be validly regulated must: (1) tend to incite or produce imminent lawless action; and (2) is likely to produce such action.[220] The lawless actions must be imminent or immediate; if it is for a future indefinite time, the speech will not be prohibited.[221]

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215 *People v. Moreno*, 356 Phil. 231 (1998) [Per J. Panganiban, First Division]; *Manahan, Jr. v. Court of Appeals*, 325 Phil. 484 (1996) [Per J. Vitug, First Division]; *Manzanaris v. People*, 212 Phil. 190 (1984) [Per J. Escolin, En Banc].

216 *Valenzuela v. People*, 552 Phil. 381 (2007) [Per J. Tinga, En Banc].

217 Id.

218 582 Phil. 747 (2008) [Per J. Nachura, Third Division].

219 Id.

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

221 Id.

In light of this standard, the law should not punish those that merely advocate a belief distinct or contrary to that of the government. A speech so offensive or coercive remains to be protected speech unless it can be identified that the intent behind it is truly to incite or produce one of the punishable acts of terrorism.[222] The determination of intent is made more significant by the nature of the acts of terrorism. They would seem like mundane tasks but are, in truth, preparatory acts aimed at setting in motion a larger terrorist attack. If it is made clear from one's actions that the intention is to cause another to commit an act that spreads widespread and extraordinary fear and panic,[223] then the actor must be apprehended.

It is not enough to penalize mere dissent against the government, no matter how impassioned. Instead, one's overt acts must clearly establish the intent to commence the criminal act, which must be discernible from the acts themselves.[224] In *Rimando v. People*,[225] this Court said that through an overt act, the act is removed from the realm of the equivocal and can be determined as an action committed to commence a criminal act. It held:

> The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.[226] (Citation omitted)

On the other hand, when actions are vague, investigating past acts and background is needed to determine the actor's true intent. If one has an established criminal record or a record of participating in terrorist activities, it is but logical to associate their actions with such background and be more suspicious of their actions and the intentions behind them. The intent accompanying observable physical acts will determine whether the person's objective is merely to voice out opinions or to evoke emotion and a call of action to bear arms. Ultimately, a person cannot be apprehended under the Anti-Terrorism Act unless there is clear basis for their arrest.

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222 137 Phil. 471 (1969) [Per J. Fernando, En Banc].
223 Republic Act No. 9372 (2006), sec. 17.
224 Id.
225 821 Phil. 1086 (2017) [Per J. Velasco, Jr., Third Division].
226 Id. at 1099–1100.

Similarly, Section 10, which punishes the recruitment to and membership in a terrorist organization, must again be implemented in deference to the intent of the law as provided in Section 2, paragraph 2. Section 10 states:

> 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;
>
> (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.

Sections 8 and 9 only touch on the fundamental right of expression, but Section 10 involves a right so intertwined with it: the fundamental right to

peaceably assemble.[227] Together with the freedoms of speech, of expression, and of the press, this right enjoys primacy for being the very basis of a democratic society.[228]

However, like any right, it may be limited to prevent a "danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest."[229]

Section 10 penalizes a person for committing any of these three acts: (1) recruiting another to an organization proscribed under Section 26, or designated by the United Nations Security Council as a terrorist organization, or organized for the purpose of engaging in terrorism; (2) organizing or facilitating the travel of individuals to a state other than their state of residence or nationality for the purpose of recruitment; and (3) voluntarily and knowingly joining an organization while knowing that the organization has been proscribed or designated.

Petitioners assail Section 10 for allegedly being vague and overbroad, and for tending to punish mere membership in an organization.

The *ponencia* only focused on the third paragraph, subjecting it to a facial challenge.[230] While I agree in the finding that the third paragraph—the prohibition against voluntarily and knowingly joining terrorist organizations—is a permissible restriction on the freedom of association,[231] this is not without exception, as will be discussed in the analysis under Sections 25 and 26. Moreover, I find it necessary to discuss the first two paragraphs of Section 10 as well.

Given that the right to peaceably assemble is a fundamental right, the same tests previously used will also apply here: the overbreadth doctrine and the strict scrutiny test.

In using the word "support" to regulate the freedom to peaceably assemble, Section 10 unnecessarily sweeps broadly and invades protected freedoms.[232] The act of supporting terrorism or a terrorist is not defined, making it susceptible to arbitrary execution by the authorities. More, the phrase "organized for the purpose of engaging in terrorism" is open to interpretation, which may lead to arbitrary arrests. Like Sections 8 and 9, the law enforcers must ensure that Section 10's implementation is within the bounds of basic human rights. Accordingly, for one to be apprehended, they must have done

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227 CONST., art. III, sec. 4.
228 *Bayan v. Ermita*, 522 Phil. 201 (2006) [Per J. Azcuna, En Banc].
229 Id.
230 *Ponencia*, p. 129.
231 Id. at 131.
232 *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992 [Per J. Gutierrez, Jr., En Banc], citing *Zwickler v. Koota*, 19 L ed. 2d 444 (1967).

an overt act displaying their intent to support a terrorist or terrorist organization. The conclusion that a group is organized for the purpose of engaging in terrorism must be clear from these overt acts. An arrest based on mere suspicion or perception cannot be tolerated.

Applying the strict scrutiny test will show that while the first requirement of a compelling State interest is fulfilled, the second requirement—that the effects of the provision are narrowly tailored for that purpose—has not been met. As shown above, the overbroad terms used leave the provision to more than one interpretation.

Thus, while Sections 8, 9 and 10 may survive the current constitutional challenge, in implementing it, the State must uphold basic rights and not overstep its authority. In my view, both border strongly upon a case for unconstitutionality in the proper case but not yet demonstrably so in this facial challenges as argued.

Section 10 is closely tied with Sections 25 and 26, which respectively provide rules on the designation and proscription of terrorist individuals or groups. Section 25 states:

> SECTION 25. *Designation of Terrorist Individual, Groups of Persons, Organizations or Associations.* — Pursuant to our obligations under United Nations Security Council Resolution (UNSCR) No. 1373, the ATC shall automatically adopt the United Nations Security Council Consolidated List of designated individuals, group of persons, organizations, or associations designated and/or identified as a terrorist, one who finances terrorism, or a terrorist organization or group.
>
> Request for designations by other jurisdictions or supranational jurisdictions may be adopted by the ATC after determination that the proposed designee meets the criteria for designation of UNSCR No. 1373.
>
> The ATC may designate an individual, group of persons, organization, or association, whether domestic or foreign, upon a finding of probable cause that the individual, groups of persons, organization, or association commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act.
>
> The assets of the designated individual, groups of persons, organization or association above-mentioned shall be subject to the authority of the Anti-Money Laundering Council (AMLC) to freeze pursuant to Section 11 of Republic Act No. 10168.
>
> The designation shall be without prejudice to the proscription of terrorist organizations, associations, or groups of persons under Section 26 of this Act.

Section 25 provides three modes of designating terrorist individuals, groups of persons, organizations, or associations.

The first mode is through the automatic adoption by the Anti-Terrorism Council of the designation in the United Nations Security Council Consolidated List. The second is through the Anti-Terrorism Council's adoption of requests for designations made by other jurisdictions or supranational jurisdictions should the criteria under United Nations Security Council Resolution No. 1373 be met. The third is through designation by the Anti-Terrorism Council itself, upon its finding of probable cause that one commits, or is attempting, or conspires to commit the acts defined and penalized under Sections 4 to 12 of the Anti-Terrorism Act.

The *ponencia* declared only the second and third modes to be unconstitutional, but I go beyond it: *all three modes* should have been declared unconstitutional.

Designation carries substantial consequences: surveillance, bank inquiry, investigation, and freeze orders—all of which will be imposed before the entity tagged as terrorist could even exercise their freedom of expression and its cognate rights. This is tantamount to prior restraint to expression, including dissent. By its nature, dissent is already excluded from the hegemony of the majority. Subjecting it to prior restraint will only further silence those in the margins.

Thus, applying the strict scrutiny test and the overbreadth doctrine,[233] all three modes of designation must fail.

As identified in Section 2, the purpose of the Anti-Terrorism Act is "to protect life, liberty, and property from terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against The Law of Nations." It is not disputed that the prevention and punishment of terrorism are compelling State interests.

However, since fundamental rights are at stake, the means employed by the State to achieve such interest must be shown to be "narrowly tailored, *actually* — not only conceptually — being the least restrictive means for effecting the invoked interest."[234]

None of the three modes meet this requirement.

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

[234] J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1147–1148 (2017) [Per J. Perlas-Bernabe, En Banc].

The first mode indiscriminately adopts designations made in the United Nations Security Council Consolidated List. Per Section 10, voluntary membership in a group so designated by the United Nations Security Council as a terrorist group is punishable by a 12-year imprisonment. Thus, one may be imprisoned even for mere association with such groups. This is tantamount to the punishment of a status, claim, or expression.

While the second mode does not automatically adopt requests for designations made by other jurisdictions or supranational jurisdictions, but only does so if the criteria under United Nations Security Council Resolution No. 1373 are met, the *ponencia* aptly pointed out that "unbridled discretion is given to the [Anti-Terrorism Council] in granting requests for designation based on its own determination."[235]

The third mode, despite mentioning the finding of probable cause, does not provide standards in determining it. In both the second and third modes, the Anti-Terrorism Council is empowered to ultimately interpret the law and wield its power to stifle dissent.

Moreover, across all three modes of designation, Section 25 does not provide overt acts that may be clearly attributed to the members of designated groups who will be made to immediately suffer the consequences of the designation. Mere suspicion is not enough; overt acts must be specified. Without overt acts of terrorism, the law may be interpreted to punish mere dissenters.

Exposing dissenters to the immediate consequences of designation despite the absence of overt acts and without an opportunity to first contest the designation violates due process. For example, under Section 10 of the Anti-Terrorism Act, voluntary membership in a group so designated by the United Nations Security Council as a terrorist organization is punishable by imprisonment for 12 years. As the United Nations Security Council Consolidated List is automatically adopted, one may be deprived of liberty without being given an opportunity to confront evidence taken against them.

No less than our Constitution provides the clear and unmistakable rights to be protected in criminal prosecutions: the right to due process and the right to be presumed innocent. Article III, Section 14 provides:

> SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the

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[235] *Ponencia*, p. 169.

> accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

The designation of terrorist individuals, groups of persons, organizations, or associations—regardless of the mode—substantially invades the designated person's rights to be presumed innocent and to due process of law. Yet, the law would punish one for their status, claim, or expression.

Specific to the second and third modes, the Anti-Terrorism Council can arrogate upon itself judicial power. Section 25 allows an encroachment on the courts' power to determine the designated person's guilt or innocence, violating the doctrine of separation of powers. Under Section 45 of the Anti-Terrorism Act, the Anti-Terrorism Council is composed of: (1) the Executive Secretary, as Chairperson; (2) the National Security Adviser, as Vice Chairperson; (3) Secretary of Foreign Affairs; (4) Secretary of National Defense; (5) Secretary of the Interior and Local Government; (6) Secretary of Finance; (7) Secretary of Justice; (8) Secretary of Information and Communications Technology; and (9) Executive Director of the Anti-Money Laundering Council Secretariat as its other members. The Anti-Terrorism Council, which will exercise a judicial function, is primarily composed of the executive officials.

These flaws in Section 25 are contrary to the commitment of the State to uphold basic rights and fundamental liberties in Section 2.

On the matter of proscription, I concur with the *ponencia* in upholding its constitutionality. Section 26 states:

> SECTION 26. *Proscription of Terrorist Organizations, Associations, or Group of Persons.* — Any group of persons, organization, or association, which commits any of the acts defined and penalized under Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 of this Act, or organized for the purpose of engaging in terrorism shall, upon application of the DOJ before the authorizing division of the Court of Appeals with due notice and opportunity to be heard given to the group of persons, organization or association, be declared as a terrorist and outlawed group of persons, organization or association, by the said Court.
>
> The application shall be filed with an urgent prayer for the issuance of a preliminary order of proscription. No application for proscription shall be filed without the authority of the ATC upon the recommendation of the National Intelligence Coordinating Agency (NICA).

Section 26 passes the strict scrutiny test. A compelling State interest of preventing terrorism exists, meriting the regulation of freedom of association; the means used to achieve that purpose, moreover, is the least restrictive.

Section 26 identifies two grounds to be declared "a terrorist and outlawed group of persons, and organization or association": first, for the commission of acts penalized under Sections 4 to 12; and second, for being organized for the purpose of engaging in terrorism.

As with the other provisions of the law, the provisions pertaining to proscription must be interpreted and enforced in keeping with Section 2 of the Anti-Terrorism Act. Before being made to suffer the consequences of proscription, the person or group of persons must be shown to have committed overt acts punishable by law.

This requirement of overt acts is met in the first ground for proscription, as it requires the commission of acts punished under Sections 4 to 12. The second ground involves a preparatory act: organizing for the purpose of engaging in terrorism. Here, law enforcers and courts must take care in ascertaining the intent to engage in terrorism. Association alone is not sufficient; other acts must clearly establish the intention to engage in terrorism. Where overt acts are inconclusive, the Department of Justice and the Court of Appeals must consider the history of the organization to aid in determining its true intent. For example, it is reasonable to associate with terrorism overt acts that are potentially terroristic if performed by a person or group of persons with a background of participating in terrorist activities.

The requirement of overt acts is necessary so as not to proscribe based on mere suspicion. Otherwise, proscription would risk curtailing dissent.

Section 26 does not violate due process rights either. Unlike designation, the process of proscription involves a judicial determination of probable cause before one is made to suffer the consequences attached to proscription. Unlike the probable cause under the third mode of designation, it is the Court of Appeals that will make the determination under Section 26. Thus, the probable cause here is recognized in the Constitution, rules of procedure, and jurisprudence. The judicial determination of probable cause is key to affording due process, and must necessarily rest on whether overt acts that indicate an intent to commit terrorism exist.

Finally, Section 29 states:

> SECTION 29. Detention without Judicial Warrant of Arrest. — The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, *any law enforcement agent or military personnel, who, having been duly authorized in writing by the ATC has taken custody of 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 this Act, shall, without incurring any criminal liability for delay in the delivery of detained persons to the

> proper judicial authorities, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (1) further detention of the person/s is necessary to preserve evidence related to terrorism or complete the investigation; (2) further detention of the person/s is necessary to prevent the commission of another terrorism; and (3) the investigation is being conducted properly and without delay.
>
> Immediately after taking custody of a person suspected of committing terrorism or any member of a group of persons, organization or association proscribed under Section 26 hereof, the law enforcement agent or military personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest of the following facts: (a) the time, date, and manner of arrest; (b) the location or locations of the detained suspect/s and (c) the physical and mental condition of the detained suspect/s. The law enforcement agent or military personnel shall likewise furnish the ATC and the Commission on Human Rights (CHR) of the written notice given to the judge.
>
> The head of the detaining facility shall ensure that the detained suspect is informed of his/her rights as a detainee and shall ensure access to the detainee by his/her counsel or agencies and entities authorized by law to exercise visitorial powers over detention facilities.
>
> The penalty of imprisonment of ten (10) years shall be imposed upon the police or law enforcement agent or military personnel who fails to notify any judge as provided in the preceding paragraph. (Emphasis supplied)

The first paragraph of Section 29 provides the following: (a) the warrantless arrest and detention of persons suspected of committing acts of terrorism under Sections 4 to 12; and (b) the Anti-Terrorism Council's power to issue a written authorization to extend the periods of detention for such a suspect. Petitioners thus assail Section 29 for violating the principle of separation of powers and the constitutional right against unreasonable searches and seizures.

Warrantless arrests should be read in conjunction with Article 125 of the Revised Penal Code, which provides the period within which a person must be delivered to the proper judicial authorities.[236] It penalizes public officers or employees who detain a person for a legal ground but fail to deliver them to the proper judicial authorities. This provision safeguards against abuses arising from confining one without letting them know of the nature and cause of the accusation against them and without letting them post bail.[237]

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[236] In re Integrated Bar of The Philippines Pangasinan Legal Aid, 814 Phil. 440 (2017) [Per J. Mendoza, En Banc].

[237] Id.

In upholding Section 29, the *ponencia* held that the provision does not grant power to the Anti-Terrorism Council to issue a warrant of arrest.[238] Because Section 29 assumes that an officer has "probable cause to believe that Sections 4 to 12 [were] violated"[239] and had already effected a warrantless arrest based on it,[240] it merely gives the Anti-Terrorism Council authority to extend the detention period, upon the lapse of which the filing of charges is rendered mandatory.[241] To the *ponencia*, Section 29 does not provide the grounds for warrantless arrest, which remain to be those instances provided by Rule 113, Section 5 of the Rules of Court.[242]

In other words, the *ponencia* ruled that the written authorization contemplated under Section 29 merely determines the period within which an enforcement officer may delay the delivery of a suspect.[243] If the Anti-Terrorism Council does not issue this written authorization, "the person arrested should be delivered to the proper judicial authority within 36 hours as provided under Article 125 [of the Revised Penal Code.]"[244] As such, the written authorization is only needed to justify a detention for a period longer than 36 hours.[245]

The *ponencia* upheld Section 29 based on the standards provided by Rule 9.1 of the law's Implementing Rules and Regulations[246] and on the law's own provisions that reiterate the rights of a person under custody.[247] It held:

> [W]hen Section 29 is harmonized with the provisions of the [Implementing Rules and Regulations], it is clear that the contested written authority to be issued by the [Anti-Terrorism Council] is not in any way akin to a warrant of arrest. To be operative, there must have been a prior valid warrantless arrest of an alleged terrorist that was effected pursuant to Section 5, Rule 113 of the Rules of Court by the arresting officer applying for the written authority under Section 29.[248]

Based on these safeguards, the *ponencia* concluded that Section 29 is narrowly tailored and thus passes the strict scrutiny test.[249]

I disagree.

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238 *Ponencia*, p. 203.
239 Id. at 204.
240 Id. at 204–206.
241 Id.
242 Id. at 205–206.
243 Id.
244 Id. at 205.
245 Id.
246 Id. at 203–204.
247 Id.
248 Id.
249 Id. In their respective separate opinions, Chief Justice Alexander Gesmundo, Senior Associate Justice Estela Perlas-Bernabe, as well as Associate Justices Amy Lazaro-Javier, Rodil Zalameda, and Henri Inting, concurred in the foregoing stance.

The Implementing Rules and Regulations cannot be used to supplement and fill the gaps in Section 29. "A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application."[250] To recall, Section 29 provides in part:

> [A]ny law enforcement agent or military personnel, *who, having been duly authorized in writing by the [Anti-Terrorism Council,] has taken custody of a person suspected of committing any of the acts defined and penalized under Sections 4 [to 12] of this Act,* shall, . . . deliver said suspected person to the proper judicial authority[.][251] (Emphasis supplied)

Section 29 provides an instance when an enforcement officer does not incur liability in delaying the delivery of suspects; that is, when the Anti-Terrorism Council provides a written authorization. In other words, Section 29 gives the Anti-Terrorism Council leeway to extend the period within which the suspected terrorist must be charged before a law enforcer may be held criminally liable for delay in delivery of detained persons. While Congress can designate a period different from that provided in Article 125 of the Revised Penal Code, the problem with Section 29 is that the arrest is left to the discretion of the Anti-Terrorism Council.

In *Abakada Guro Party List v. Secretary of Finance*:[252]

> Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[253] (Citations omitted)

Section 29 fails to provide sufficient standards for its implementation. In effect, it gives the Anti-Terrorism Council full discretion in authorizing law enforcement agents or military personnel to take a suspected terrorist into custody. Contrary to the *ponencia's* conclusion that the authority only applies to warrantless arrests, Section 29 did not provide guidelines limiting how and when this authority may be exercised. This is precisely why the Implementing Rules and Regulations was needed to fill this gap in the law.

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[250] *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010) [Per J. Carpio Morales, En Banc].

[251] Republic Act No. 11479 (2020), sec. 29.

[252] 584 Phil. 246 (2008) [Per J. Corona, En Banc].

[253] Id. at 272.

Rule 9.1 of the Implementing Rules and Regulations states:

> Rule 9.1. Authority from ATC in relation to Article 125 of the Revised Penal Code
>
> Any law enforcement agent or military personnel who, having been duly authorized in writing by the ATC under the circumstances provided for under paragraphs (a) to (c) of Rule 9.2, has taken custody of 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 Act shall, without incurring any criminal liability for delay in the delivery of detained persons under Article 125 of the Revised Penal Code, deliver said suspected person to the proper judicial authority within a period of fourteen (14) calendar days counted from the moment the said suspected person has been apprehended or arrested, detained, and taken into custody by the law enforcement agent or military personnel. The period of detention may be extended to a maximum period of ten (10) calendar days if it is established that (a) further detention of the person/s is necessary to preserve the evidence related to terrorism or complete the investigation, (b) further detention of the person is necessary to prevent the commission of another terrorism, and (c) the investigation is being conducted properly and without delay.
>
> The ATC shall issue a written authority in favor of the law enforcement officer or military personnel upon submission 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.
>
> If the law enforcement agent or military personnel is not duly authorized in writing by the ATC, he/she shall deliver the suspected person to the proper judicial authority within the periods specified under Article 125 of the Revised Penal Code, provided that if the law enforcement agent or military personnel is able to secure a written authority from the ATC prior to the lapse of the periods specified under Article 125 of the Revised Penal Code, the period provided under paragraph (1) of this Rule shall apply.[254]

Rule 9.1 cannot cure the defect of Section 29.

I join Associate Justice Alfredo Benjamin Caguioa in his view that the last two paragraphs of Rule 9.1 introduced substantial amendments to Section 29 and are, therefore, *ultra vires*.[255] Rule 9.1 is an undue delegation of legislative power to the Anti-Terrorism Council since Section 29 is not complete in itself. Consequently, Section 29 is void, and it cannot be cured by the rules laid out seeking to enforce it. The attempted reconciliation of Section 29 with Rule 9.1 of the Implementing Rules and Regulations is improper. By seeking to supplant Section 29 with Rule 9.1, the executive department, through the Anti-Terrorism Council and the Department of Justice, encroached on Congress's lawmaking power.

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254 Id.

255 J. Caguioa, Concurring and Dissenting Opinion, p. 97.

Further, Section 29 encroaches on the judicial prerogative of issuing warrants of arrests, violating Article III, Section 2 of the Constitution. It authorizes an administrative agency to issue a written authority by which law enforcers will be allowed to detain persons suspected of committing offenses penalized under the Anti-Terrorism Act.[256]

Because one may be arrested under Section 29 without prior hearing and upon the Anti-Terrorism Council's sole discretion, the threshold typically required in obtaining an arrest warrant, probable cause, is conspicuously absent. An arrest may be based on a law enforcer or military personnel's mere suspicion that a person committed a terrorist act. Thus, a reading of Section 29 reveals that it deprives one's liberty without due process of law and tends to have a chilling effect.

After an arrest, Section 29 also empowers the Anti-Terrorism Council to extend the detention period without any hearing, so long as further detention is necessary to preserve terrorism-related evidence or complete the investigation and prevent the commission of another terrorism. Thus, the law enforcer's suspicion that a person has committed terrorist acts, or is threatening or inciting to commit terrorist acts, can directly result not only in an arrest, but also in a prolonged detention. These grounds to extend the detention period are too broad and can be arbitrarily invoked in all cases intended to prevent the commission of offenses penalized under the Anti-Terrorism Act.

The *carte blanche* under Section 29 becomes more concerning as Sections 5 and 8 respectively punish one who merely threatens to commit terrorism and proposes to commit terrorist acts. Because threatening and proposing to commit terrorism do not involve direct participation in committing terrorism, the grounds on which a suspect may be immediately deprived of liberty becomes even broader because these offenses involve dangerous speech.

A person belonging to the marginalized sectors of society does not stand on an equal footing with a law enforcer. Because of Section 29, the Anti-Terrorism Council possesses unilateral authority to interpret what constitutes dangerous speech and to authorize a person's immediate detention, or prolong it if deemed fit. A person suspected of threatening or inciting to commit terrorism under Sections 5 and 8 may be detained simply based on an overzealous law enforcer's interpretation. This Court must be more vigilant in protecting the marginalized against the imminent threats of abuse of power that permeate the ranks of government—in stark contrast with the meager threshold of imminence and an intent requirement under the clear and present danger test, under which Section 29 may arguably pass constitutionality.

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[256] Id. at 102.

When a law is overbroad or vague such that one does not know whether their speech constitutes a crime, the law chills them into silence: altogether refusing to speak for fear for prosecution.[257]

The "Not Intended Clause" of Section 4, the entirety of Section 25, and Section 29 must be struck down. Through these provisions, law enforcers can freely apprehend persons based on mere perception. One may be labeled as a terrorist simply by voicing out contrarian opinions. The law becomes dependent on the individual mindsets of those executing it. This opens the doors to arbitrary implementation by overzealous law enforcers. Legitimate dissent may easily be perceived as an act of terrorism just because it opposes those in power. This is a clear threat to the exercise of fundamental rights.

V

The provisions of our Bill of Rights carry text that have survived for decades, but none of these rights are absolute and independent of a necessary dialectic interaction with reality. The meanings and categories implicit in their understanding should always be guided by their purpose in light of contemporary circumstances. After all, the Constitution is designed to enable, empower, and achieve social justice. It is not an instrument to recreate an imagined society of the past with its unexamined prejudices and misunderstandings of principle. The Constitution is not a suicide pact; it should not be construed to become anachronistic.

We live in a society where we have discovered that this Court's neutrality to allow all speech to be uninhibited, robust, and wide open could entrench the prejudice of the powerful. We live in a society where our digital platforms have shown that reckless, irrational words hurt and injure. We live in a society where philosophy has long understood that words in themselves not only perform, but could perform violently.

Words, kept isolated in the epistemic bubbles of our social media, can evolve into inhumane acts of sheer prejudice and terrorism.

The phenomenon of terrorism will interrogate our commitment to enhance and enable the best of human beings in a society. It will be fought in cases such as these, properly brought before this Court with sufficient epistemological confidence for us to decide where to draw the line that defines rationale and effective law enforcement and protection.

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257 *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357 (2008) [Per J. Chico-Nazario, En Banc].

We expect that petitioners and others will act with no less than the same vigilance they have shown in these cases. Perhaps, with seasoned litigators assisting them, they will file the proper cases before the proper courts and, later with the right remedy, these cases will be properly laid before this same forum.

Until then, I concur with this Court's approach—a blend of action and caution. My dissent lies in the majority's application of this approach and some of the specific results reached by our voting.

**ACCORDINGLY,** I vote to **PARTIALLY GRANT** the Petitions. The following provisions of Republic Act No. 11479 are **UNCONSTITUTIONAL**:

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

(2) Section 25, which provides the three modes of designation; and

(3) Section 29, which provides for: (a) the warrantless arrest and detention of persons suspected of committing acts of terrorism under Sections 4 to 12; and (b) the authority of the Anti-Terrorism Council to issue written authorizations to extend the periods of detention for a person suspected of committing any of the acts under Sections 4 to 12.

I underscore, however, that the constitutionality of the other challenged provisions of Republic Act No. 11479 should await an actual case. The disposition of these present cases is without prejudice to the filing of a proper action by petitioners in the proper court based on some of their allegations of fact in their respective Petitions.

**MARVIC M.V.F. LEONEN**
Associate Justice