EN BANC

G.R. No. 258805 – ST. ANTHONY COLLEGE OF ROXAS CITY, INC., represented by SISTER GERALDINE J. DENOGA, D.C., DR. PILITA DE JESUS LICERALDE, and DR. ANTON MARI HAO LIM, Petitioners, **v. COMMISSION ON ELECTIONS [COMELEC], represented by the Acting Chairperson COMMISSIONER SOCORRO B. INTING,** and **COMELEC DIRECTOR JAMES ARTHUR B. JIMENEZ, in his official capacity as Spokesperson of the COMELEC and as Director IV of the COMELEC DEPARTMENT FOR EDUCATION AND INFORMATION [EID],** Respondents.

Promulgated:
October 10, 2023

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DISSENTING OPINION

M. LOPEZ, *J.*:

On November 17, 2021, the Commission on Elections (COMELEC) promulgated Resolution No. 10730 or the "*Rules and Regulations Implementing Republic Act No. 9006, otherwise known as the Fair Elections Act in connection with the May 9, 2022 National and Local Elections.*" Specifically, the Resolution echoed Section 3 of Republic Act (RA) No. 9006 and defined "*lawful election propaganda*" to include "*[p]amphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one-half inches (8 1/2") in width and fourteen inches (14") in length*"[1] and "*[c]loth, paper or cardboard posters, whether framed or posted, with an area not exceeding two (2) feet by three (3) feet xxx.*"[2] Moreover, the Resolution authorized the removal, confiscation, or destruction of prohibited propaganda materials.[3] The COMELEC then launched *Oplan Baklas* which seeks to abate unlawful election propaganda or campaign materials.

The petitioners, who are non-candidates, publicly displayed oversized election paraphernalia in the form of posters and tarpaulins, among others,

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1 Resolution No. 10730, sec. 6(a).

2 Resolution No. 10730, sec. 6(c).

3 Resolution No. 10730, sec. 26.

within their private properties during the campaign period for national elective positions.[4] The COMELEC removed the election propaganda due to non-conformity with the size restrictions. Aggrieved, the petitioners assailed the constitutionality of *Oplan Baklas* for violating their constitutional freedom of speech and expression, and the right to use their private properties. The petitioners also argued that no law prohibits them from posting oversized election paraphernalia on their private properties.

The majority ruled that *Oplan Baklas* is unconstitutional and explained that Section 3 of RA No. 9006 on lawful election propaganda only covers candidates and political parties and not private individuals. The size restrictions are likewise inapplicable because the oversized election paraphernalia were not displayed on behalf of or in coordination with the endorsed candidates and political parties. In other words, the COMELEC cannot prohibit private individuals from displaying oversized election propaganda on private properties lest they infringe the rights to property, free speech, and expression.[5]

I respectfully differ.

I submit that the petitioners are not exempted from the application of the law. All persons, including non-candidates, must comply with the size restrictions of election propaganda. Section 3 of RA No. 9006 did not limit its coverage to candidates and political parties. More importantly, the COMELEC has the authority to enforce the size restrictions against the petitioners as part of its constitutional duty to enforce and administer all laws and regulations relative to the conduct of election.[6] In examining the validity of *Oplan Baklas*, this opinion will discuss whether the seized posters and tarpaulins are considered election propaganda; and whether the size restrictions of election propaganda are applicable to private individuals.

RA No. 9006 defined the term "*lawful election propaganda*" as "*[e]lection propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to*

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4 Decision, pp. 2 & 15.

5 *Id.* at 17.

6 CONST., art. IX-C, sec. 2(1).

the supervision and regulation by the Commission on Elections."[7] Similarly, Resolution No. 10730 adopted this definition and included the "*internet or any other medium*," to wit: "*[e]lection propaganda, whether on television or cable television, radio, newspaper, the internet or any other medium, is hereby allowed for all bona fide candidates seeking national and local elective positions, subject to the limitation on authorized expenses of candidates and parties, observation of truth in advertising, and to the supervision and regulation by the COMELEC.*"[8]

Verily, the term "*election propaganda*" has a specific meaning under election laws and must be understood in the context of Batas Pambansa Blg. 881 or the Omnibus Election Code of the Philippines[9] (OEC) which defined "*election campaign*" or "*partisan political activity*" as an "*act designed to promote the election or defeat of a particular candidate or candidates to a public office x x x,*"[10] which shall include "*[p]ublishing or distributing campaign literature or materials designed to support or oppose the election of any candidate*" or "*[d]irectly or indirectly soliciting votes, pledges or support for or against a candidate.*"[11] The proponents of RA No. 9006 were careful not to use another term to avoid any unintentional repeal of existing election laws. Senator Miriam Palma Defensor Santiago clarified during the legislative interpellation that the use of the term "*election propaganda*" was deliberate and should be understood as a general term that includes political advertisement, *viz.*:

> Senator Santiago[.]
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> x x x x
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> I would like to deal first with the title which uses the term "Election Propaganda" and then go to Section 1 which has the subtitle also using the term "election propaganda." However, after the subtitle of Section 1, the first sentence uses another term. It uses "political advertisements[.]" However, the term "political advertisements" is used in the main body or in the main text of the bill found in Section 1.
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> On this point, please allow me to explain as follows: **Our Election Code, by which I refer to BP Blg. 881, uses the term "election propaganda" as a general term, instead of "political**

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7 Republic Act No. 9006, sec. 3.

8 Resolution No. 10730, sec. 6.

9 Approved on December 3, 1985.

10 Batas Pambansa Blg. 881 (1985), sec. 79(b).

11 Batas Pambansa Blg. 881 (1985), sec. 79(b)(4) and (5).

advertisement." The term "political advertisement" as in political advertisement or propaganda is used only once in the penultimate sentence of the Election Code, Section 86.

Political advertisement, therefore, is only one of the methods in the whole arsenal of election propaganda. This should be understood very well in our Hall because in the process of amending election propaganda through mass media, which is actually political advertisement, Congress might unintentionally amend or repeal existing provisions of other forms of election propaganda classified under the law as lawful or prohibited.

What is election propaganda? **Election propaganda should also be understood in the manner that it is defined by law. Election propaganda is designed to promote the election or defeat of a particular candidate or candidates to a public office[.]**

Under the present Election Code, this prohibition, violation of which is an election offense, applies to a candidate, a voter, a political party or an association of persons. There are types of election propaganda. **Under our existing law, election propaganda is of two types: (1) election propaganda advertisement; and (2) election propaganda gadget.**

Election propaganda advertisements, in turn, are classified into: (1) printed materials; (2) audiovisual by cinematography, audiovisual units or other screen projections; (3) through print media, meaning the newspapers; or (4) through broadcast media, meaning radio or television.

And so, at the end of this lengthy explanation, may I please raise the question: Would the distinguished sponsor clarify whether the term of choice for this Chamber is election propaganda or political advertisement, election propaganda being, I believe, a broader term?

Senator Roco. Yes. The election propaganda is used precisely because it is broader, Mr. President. Then the other sections of existing law, Batas Pambansa Blg. 881, are not modified, and therefore, the definition or the use of the term "election propaganda" under Section 82 of Batas Pambansa Blg. 881, for instance, will remain as defining lawful election propaganda.

The use of political advertisements was intended to distinguish only the first line referring to national elective positions and to the access of local elective officials to political advertisements[.]

> Senator Santiago. **Would the gentleman have any objection if, during amendment stage, I propose that in the first two lines of Section 1, the term used should be "election propaganda" to make this second line consistent with the title and with the subtitle of that same Section 1?**
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> Senator Roco. In fact, Mr. President, if we can further improve it, I think we got snagged with the term "advertising" only because of reference to the Truth in Advertising Act[.][12] (Emphasis supplied)

In the Bicameral Conference, Senator Sergio R. Osmeña III confirmed that the word "*propaganda*" is a broad term covering software, advertising, and campaign material and that the proponents do not want to deviate from the concept of "*election propaganda*" under the OEC, thus:

> SEN. OSMENA (S). May I just put on record my continuing confusion over the use of the word "propaganda?" Because in the Philippine context it refers to both, **the software and the advertising and campaign materials.** Actually, this bill is a bill that will amend the use of -- allow political advertising. That was the original bill when they say election ad ban that's why he says ad. And yet, of course, on an election code, he uses propaganda as advertising and vice-versa when propaganda, actually is "Vote Syjuco." That is propaganda. "He's a good man." And what [we're] really talking about here is campaign materials and advertising.
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> **So with that in mind, Mr. Chairman, I wanted to put that on record that we do tend to use the word "propaganda" interchangeably with the campaign materials and advertising.**
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> THE CHAIRMAN. (REP SYJUCO). Mr. Chairman.
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> THE CHAIRMAN (SEN. ROCO). Yes.
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> THE CHAIRMAN (REP. SYJUCO). I believe the point of Senator Osmeña is well-taken. What would Senator Osmeña suggest then that we use?
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> SEN. OSMENA (S). **Well, Mr. Chairman, I had wanted to use "lawful election campaign materials and advertising." But, unfortunately, if you look at the BP 881 it uses also propaganda so it tends to mix the two.** As a matter of fact, if you look at the House version, Section 82 is "lawfule election propaganda" and then

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[12] Senate TSP 102, No. 92, August 21, 2000, BILL ON SECOND READING, (S. No. 1742 – Lifting of the Policial Ad Ban (Continuation), pp. 99–101.

the first line says "all political advertisements." So, it really refers to advertising rather than the software, the idea which is propaganda. Because if you say we will allow propaganda, propaganda is always allowed in any election. "Vote Congressman Padilla because he's an excellent Congressman," that is a propaganda. Now, how you communicate that to the people, whether it's through television, radio, print, is the advertising or the campaign material part of it.

THE CHAIRMAN. (SEN ROCO). Yeah, Mr. Chairman. Actually both our versions talk of propaganda so I don't think that is worth debating. Because your House version, House Bill 9000 seeks to amend 82 – Lawful Election Propaganda, and we use Lawful Election Propaganda. And to modify the words now we will have to modify all the other election rules.

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SEN. LEGARDE-LEVISTE. **Mr. Chairman. I think that we should refer to the [COMELEC] Code, no, or Election Code and find out how they use propaganda and make ours consistent with the code.**

THE CHAIRMAN (SEN. ROCO). **That's correct. What we have now is consistent[.]**

SEN. OSMENA. x x x What we are really saying is election advertising is now--paid advertising is now going to be allowed[.]

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THE CHAIRMAN (REP SYJUCO). **I understand, Mr. Chairman, that the word "propaganda" is consistent with the established use thereof.**

THE CHAIRMAN (SEN. ROCO). Yes.

THE CHAIRMAN (REP. SYJUCO). And I understand the concern to maintain such consistency and not create confusion. So, I personally have no objection to use of the word "propaganda." We were trying to seek out a better word but considering the effects of the use of a new terminology and the confusion that may result from there, **let us maintain the word "propaganda".**[13] (Emphasis supplied)

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13 Senate TCM 10, Bicameral Conference Committee Meeting on the Disagreeing Provisions of S. No. 1742 and H. No. 9000 (Fair Election Practices Act) [Committee on Electoral Reforms, Suffrage and People's Participation], November 23, 2000, pp. 19–23.

It must be emphasized that the controlling test is whether the campaign material and paraphernalia were designed to promote the election or defeat of a particular candidate or candidates. Corollarily, election campaign materials and paraphernalia cannot be considered as election propaganda absent a candidate. On this score, the OEC provided that a "*candidate*" is "*any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties.*"[14] RA No. 9369[15] later clarified that "*[a]ny person who files his certificate of candidacy x x x shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy.*"[16] Cognizant of these requisites, Resolution No. 10730 defined the terms "*candidate*" and "*election propaganda*" as follow:

> **SECTION 1.** *Definitions* - As used in this Resolution:
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> 2. "***Candidate***" refers to **any person** seeking an elective public office, **who has filed his or her certificate of candidacy,** and who has not died, withdrawn his or her certificate of candidacy, had his or her certificate of candidacy denied due course or cancelled, or has been otherwise disqualified before the start of the campaign period for which he or she filed his certificate of candidacy. ***Provided*, that, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period.**
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> **It also refers to any registered national, regional, or sectoral party, organization or coalition thereof that has filed a manifestation of intent to participate under the party-list system,** which has not withdrawn the said manifestation, or which has not been disqualified before the start of the campaign period.
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> 16. "Political advertisement" or "election propaganda" refers to **any matter** broadcasted, published, **printed, displayed or exhibited,** in any medium, which contains the name, image, logo,

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14 Batas Pambansa Blg. 881 (1985), sec. 79(a).

15 AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTIONS LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES", Republic Act No. 9369, Approved on January 23, 2007.

16 Republic Act No. 9369, sec. 13.

> brand, insignia, initials, and other symbol or graphic representation **that is capable of being associated with a candidate, and is exclusively intended to draw the attention of the public or a segment thereof to promote or oppose, directly or indirectly, the election of the said candidate or candidates to a public office.** In broadcast media, political advertisements may take the form of spots, appearances on television shows and radio programs, live or taped announcements, teasers, and other forms of advertising messages or announcements used by commercial advertisers.
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> Political advertising includes endorsements, statements, declarations, or information graphics, appearing on any internet website, social network, blogging site, and micro-blogging site, which – **when taken as a whole – has for its principal object the endorsement of a candidate only,** or which were posted in return for consideration or are otherwise capable of pecuniary estimation. (Emphasis supplied)

On this point, election campaign materials and paraphernalia will be considered as election propaganda if the following requisites concur: (1) there must be a candidate for public office; (2) the materials and paraphernalia were designed to promote the election or defeat of a particular candidate; and (3) the materials and paraphernalia were published or distributed. Here, it is undisputed that Vice-President Ma. Leonor Robredo is a presidential candidate, and the posters and tarpaulins were removed during the campaign period.[17] The petitioners also admitted that the campaign materials are "*election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency.*"[18] Lastly, the posters and tarpaulins were displayed in public view. Taken together, the seized campaign materials are clearly election propaganda within the framework of existing election laws. This opinion will now discuss whether the size restrictions of election propaganda are applicable to private individuals.

Notably, both RA No. 9006 and Resolution No. 10730 provided identical size restrictions of election propaganda. Yet, the majority employed descriptive phrases like "*election paraphernalia plainly and primarily intended to endorse the candidacy of Robredo and cause her election to the presidency*";[19] "*declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only*"; and "*privately-owned election*

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17 Decision, p. 5.

18 *Id.* at 15.

19 *Id.*

paraphernalia"[20] to exclude the seized campaign materials from the ambit of election propaganda. The majority also held that Section 3 of RA No. 9006 only covers candidates and political parties and not private individuals.[21] As justification, the majority applied the statement in *Diocese of Bacolod v. COMELEC*[22] that "*election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties.*"[23] However, this statement must be limited to materials containing social advocacy during the campaign period. The Decision in *Diocese of Bacolod* examined the validity of measures regulating materials that primarily advanced social advocacies. The ruling concerns "*regular*" speech and not election propaganda. The majority defended the application of the *Diocese of Bacolod* by citing the case of *Social Weather Stations, Inc. v. COMELEC*[24] which involved election surveys.[25] However, the Court was categorical in *Social Weather Stations, Inc.* that an election survey is not considered as election propaganda. The Court in that case explicitly stated that "*what is involved here is not election propaganda per se. Election surveys, on their face, do not state or allude to preferred candidates. As a means, election surveys are ambivalent. x x x.*" Hence, the cited case law is not authoritative. Besides, Section 5 of RA No. 9006, not Section 3, governs election survey.

At any rate, Section 3 of RA No. 9006 did not limit its application to candidates and political parties. Thus, it is irrelevant whether the person who used the campaign materials and paraphernalia or caused their publication or distribution, is a political party, candidate, or non-candidate. There should be

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20 *Id.* at 17.

21 *Id.* at 15. "The COMELEC's argument that the election paraphernalia owned by St. Anthony College et al. fall within the definition of "political advertisement" or "election propaganda" under sec. 1 (16), COMELEC Resolution No. 10730, are thus subject to regulation ignores the Court's express ruling in *Diocese of Bacolod* on the scope of the COMELEC's regulatory powers under RA 9006. *As held in that case, Sections 3 and 9, RA 9006, as well as the implementing rules and regulations issued by the COMELEC, apply only to candidates and political parties:* x x x" (Emphasis supplied)

22 751 Phil. 301, 349 (2015) [Per J. Leonen, *En Banc*].

23 The majority refers to the following observations in the *Diocese of Bacolod*: "*These provisions show that election propaganda refers to matter done by or on behalf of and in coordination with candidates and political parties.* Some level of coordination with the candidates and political parties for whom the election propaganda are released would ensure that these candidates and political parties maintain within the authorized expenses limitation." (Emphasis supplied)

24 757 Phil. 483 (2015) [Per J. Leonen, *En Banc*].

25 Decision, p. 13. The majority ruled that "*[w]hile Diocese of Bacolod may not be on all fours with the instant case, considering that it involved social advocacy and not election paraphernalia, the Court has also cited the Diocese of Bacolod test in a case involving election surveys, which "partake the nature of election propaganda." In Social Weather Stations, Inc. v. COMELEC, the Court cited Diocese of Bacolod, and articulated the above test as the "required judicial temperament in appraising speech in the context of electoral campaigns which is principally designed to endorse a candidate. The Court then applied the Diocese of Bacolod test to published election surveys, which have "the tendency to shape voter preferences," and are thus "declarative speech in the context of an electoral campaign properly subject to regulation.*"

no distinction in the application of the law where none is indicated.[26] A contrary interpretation would force the Court to dip its foot in the forbidden waters of judicial legislation and to veer away from the concept of election propaganda as discussed above. Indeed, the exclusion of private individuals from the coverage of size restrictions of election propaganda has no textual support, undermines the objective of election laws, and opens a constitutional challenge on whether a valid distinction exists between candidates and non-candidates in the exercise of their rights to property, free speech, and expression. To be sure, Section 3 of RA No. 9006 may be analyzed and dissected in three parts referring to the medium, content, and limitations, *viz.*:

Section 3 of R.A. No. 9006

"Whether on television, cable television, radio, newspapers or any other medium is **hereby allowed**"	Medium
"**For** all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all *bona fide* candidates seeking national and local elective office"	Content
"Subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC)"	Limitations

As regards the medium of election propaganda, the phrase "*is hereby allowed*" only marks the end of the total political advertisement ban. There is nothing in the provision that qualifies between a political party, candidate, or non-candidate. In his sponsorship speech, Senator Raul S. Roco expounded why the political advertisement ban should be lifted, thus:

> Under the 1973 Constitution, President Marcos promulgated Presidential Decree No. 1296, "The 1978 Election Code" which provided what constituted lawful election propaganda (sec. 37) and the prohibited forms of election propaganda (sec. 39).
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> **The Decree did not prohibit election propaganda through mass media but merely regulated the sale of air time for political**

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[26] RUBEN E. AGPALO, STATUTORY CONSTRUCTION 290 (2009).

purposes (sec. 41). Again, there were provisions for "COMELEC Space" (sec. 45) and "COMELEC Time" (sec. 46).

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The present law is found in Batas Pambansa Blg. 881, the "Omnibus Election Code of the Philippines[.]" [I]ts regulatory features are found chiefly in the following sections:

SECTION 85. Prohibited forms of election propaganda;

SECTION 86. Regulation of election propaganda through mass media;

SECTION 90. COMELEC space; and

SECTION 92. COMELEC time.

On 5 January 1988, President Aquino signed into law Republic Act No. 6646, otherwise known as "The Electoral Reforms Law of 1987."

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Departing radically from the preceding statutes, the law does not only regulate political advertisements but prohibits "any newspaper, radio broadcasting or television station or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881." (sec. 11 (b), RA 6646).

The Constitutional Challenge to RA 6646

The constitutionality of the political ad ban law was challenged in the case of *National Press Club vs. Commission on Elections*, 207 SCRA 1, 5 March 1992.

The Supreme Court sustained the validity of the statute. It characterized the political ad ban as "equalizing" the situations of rich and poor candidates. Section 11 (b) of Republic Act No. 6646 prohibits the sale or donation of print space and air time "for campaign or other political purposes" except to the Comelec[.]

Citing Article IX C, Section 9 of the Constitution, the Court ruled that the Comelec has thus been expressly authorized by the Constitution to supervise and regulate the enjoyment and utilization of the franchises or permits for the operation of media and

> communication and information. It also cited Article II, Section 26 of the Constitution which provides that, "The State shall guarantee *equal access to opportunities for public service*, and prohibit political dynasties as may be defined by law[.]"
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> Justice Isagani A. Cruz filed a strong dissent. Regardless of the financial disparity among the candidates, the law is unconstitutional as it constitutes censorship.
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> "But the most serious objection to Section 11 (b) is that it constitutes prior restraint on the dissemination of ideas. In a word it is *censorship*[."]
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> x x x x
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> As Justice Hugo Gutierrez, who also cast a dissenting vote, bluntly put it: "Section 11 (b) of R.A. 6646 will certainly achieve one result--keep the voters ignorant of who the candidates are and what they stand for." (at p. 28).[27]

Anent the contents of election propaganda, a plain reading of Section 3 of RA No. 9006 does not provide a distinction between a political party, candidate, or non-candidate. The provision focuses on the election propaganda and not the person who used or caused their publication or distribution. The phraseology of law does not even support the ruling that election propaganda refers to "*matter done by or on behalf of and in coordination with candidates and political parties.*"[28] Section 3 of RA No. 9006 used the preposition "*for*" which served as "*a function word to indicate the object or recipient of a perception, desire, or activity.*"[29] As such, the substance of the election propaganda must pertain to the political parties and candidates. This is because election propaganda must promote the election or defeat of candidates or a particular candidate. Again, campaign materials and paraphernalia can hardly fall as election propaganda if their contents pertain to non-candidates. The majority's interpretation as to the distinction between political parties, candidates, and non-candidates would probably be correct if the law uses the preposition "by" which is often used in a passive sentence to

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27 Senate TSP 102, No. 92, May 22, 2000, BILL ON SECOND READING, (S. No. 1742 – Lifting the Political ad Ban), Sponsorship Speech of Senator Raul S. Roco, pp. 97–100.

28 *COMELEC*, supra note 22.

29 MERRIAM WEBSTER DICTIONARY, "for," *available at* <https://www.merriawebster.com/dictionary/for> (last accesed on October 25, 2023).

signify an actor or the doer of an action. However, this is not the case. A restrictive reading of the law to exclude non-candidates is arbitrary.

Worse, non-candidates may circumvent the size restrictions and simply argue that the campaign materials and paraphernalia were not displayed on behalf of or in coordination with the endorsed candidates and political parties. For instance, traditional political parties that do not participate in the elections may exploit this loophole and promote candidates without worrying about the limitations prescribed in the law. These traditional political parties will just claim that they do not officially nominate the endorsed candidates. Another example is candidates who opted to run independently after they refused to accept the official nominations of their political parties. This begs the question of whether the political parties are exempted from the size restrictions of election propaganda since they were not published or distributed on behalf of or in coordination with the promoted candidates. A scenario also comes to mind whether the husband of an independent mayoralty candidate may post oversized election propaganda on his private property to promote the candidacy of a gubernatorial candidate. The husband of the mayoralty candidate may prove that the posting of election propaganda is voluntary and without coordination from the gubernatorial candidate. The husband is a non-candidate who is exempted from the size restriction in so far as the gubernatorial candidate is concerned. However, the husband cannot do so for his wife who is a mayoralty candidate and must comply with the size restrictions of election propaganda.

The above situations undermine the objectives why RA No. 9006 was enacted in the first place, *i.e.*, to assure free, orderly, honest, peaceful, and credible elections and to ensure equal opportunity to public service. The construction of the law offered by the majority would provide a backdoor for unscrupulous candidates and political parties to evade campaign speech regulations. I reiterate the observations of former Senior Associate Justice Antonio T. Carpio in his Separate Concurring Opinion in the *Diocese of Bacolod* that treating private campaign speech as absolutely protected would defeat the noble goals of the law, to wit:

> To hold the COMELEC without authority to enforce Section 3.3 of RA 9006 against non-candidates and non-political parties, despite the absence of any prohibition under that law, is not only to defeat the constitutional intent behind the regulation of "minimiz[ing] election spending" but also to open a backdoor through which candidates and political parties can indirectly circumvent the myriad campaign speech regulations the government adopted to ensure fair and orderly elections.

> **"Election spending" refers not only to expenses of political parties and candidates but also to expenses of their supporters. (Otherwise, all the limitations on election spending and on what constitutes lawful election propaganda would be meaningless).** Freeing non-candidates and non-parties from the coverage of RA 9006 allows them to (1) print campaign ad banners and posters of *any size* and in any quantity, (2) place TV and radio ads in national and local stations *for any length of time*, and (3) place *full-page* print ads in broadsheets, tabloids [,]and related media. Obviously, printing posters of *any size*, placing full-page print ads, and running extended broadcast ads all entail gargantuan costs. **Yet, under the *ponencia*'s holding, so long as these are done by non-candidates and non-political parties, the state is powerless to regulate them.**
>
> **The second evil which results [*sic*] from treating private campaign speech as absolutely protected (aud thus beyond the power of the state to regulate) is that candidates and political parties, faced with the limitations on the size of print ads and maximum air time for TV and radio ads under RA 9006, will have a ready means of circumventing these limitations by simply channeling their campaign propaganda activities to supporters who do not happen to be candidates or political parties.** Thus, voters during an election season can one day wake up to find print media and broadcast airwaves blanketed with political ads, running full-page and airing night and day, respectively, to promote certain candidates, all paid for by a non-candidate billionaire supporter. Such bifurcated application of RA 9006's limitations on the sizes of print ads (Section 6.1) and maximum broadcast time for TV and radio campaign ads (Section 6.2) defeats the purpose of regulating campaign speech.[30] (Emphasis supplied)

Finally, I share the COMELEC's view that Section 82 of the OEC is applicable to the petitioners. Section 82 of the OEC does not contain the phrase "*is hereby allowed for*" which, as the majority interpreted, served to restrict the application of Section 3 of RA No. 9006 to political parties and candidates. Moreover, Section 82 of the OEC neither distinguish between candidates and non-candidates nor qualify that campaign materials and paraphernalia must be distributed or published by political parties or candidates before they may be considered as election propaganda, thus:

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

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[30] *COMELEC*, *supra* note 22, at 406-407.

> a. Pamphlets, leaflets, cards, decals, stickers or other written or printed materials of a size not more than eight and one-half inches in width and fourteen inches in length;
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> x x x x
>
> c. Cloth, paper or cardboard posters, whether framed or posted, with an area exceeding two feet by three feet, x x x.

Nevertheless, the majority concluded that Section 3 of RA No. 9006 impliedly repealed Section 82 of the OEC due to irreconcilable inconsistency. Contrary to the majority view, the difference between the two laws only pertain to the description of lawful election propaganda. The apparent repugnancy may be harmonized. The majority construed Section 3 of RA No. 9006 as applicable only to candidates and political parties. In contrast, Section 82 of the OEC subsists as a good law with respect to non-candidates. Hence, the petitioners who are non-candidates must at the very least comply with the size restrictions under Section 82 of the OEC.

In sum, the *Oplan Baklas* is consistent with the COMELEC's constitutional duty to enforce and administer all laws and regulations relative to the conduct of election. The COMELEC did not exceed its authority in removing the oversized election propaganda. Thus, I vote to dismiss the Petition.

MARIO V. LOPEZ
Associate Justice