SECOND DIVISION

G.R. No. 276682 – RENATO GUEVARRA *y* ROBLES, Petitioner, **v. HONORABLE COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** Respondents.

Promulgated:

FEB 10 2025

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CONCURRING OPINION

LEONEN, *J.*:

Freedom of speech is often called a primordial right.[1] In a way, all other freedoms rest on the freedom of speech. As a United States Supreme Court Justice said, speech is the beginning of thought and the right to think is the beginning of freedom.[2] Thus, speech is the beginning of freedom itself.

I concur with the affirmation of the accused's conviction for violation of Section 34 of Commission on Elections Resolution No. 10049, in relation to Sections 6.6 and 13 of Republic Act No. 9006 and Section 264 of Batas Pambansa Blg. 881.

The prohibition against any mass media columnist, commentator, announcer, report, on-air correspondent or personality who is a candidate for any elective public office from practicing their media related profession during campaign period[3] may, at the first impression, appear to be a curtailment of free speech. On the contrary, the provision is designed to protect free speech to the benefit of candidates, media practitioners, and, above all, the electorate.

The Court has long affirmed the validity of legislation setting limitations on candidates' right to free speech and access to mass media.[4] It is congruous to the express constitutional mandate of the Commission on Elections to regulate the enjoyment or utilization of franchises or permits for the operation of media of communication or information.[5] Any exercise of such supervisory or regulatory powers must be for the purpose of ensuring

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1 *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 403 (2015) [Per J. Leonen, *En Banc*].

2 *Id.* at 355, *citing Freedom of Speech and Expression*, 116 HARV. L. REV. 272, 277 (2002), *quoting* Justice Kennedy in *Ashcroft v. Free Speech Coalition*, 122 S. Ct. 1389, 1403 (2002).

3 Republic Act No. 9006, sec. 6.6.

4 *See National Press Club v. Commission on Elections*, 283 Phil 795, 809–810 (1992) [Per J. Feliciano, *En Banc*].

5 CONST., art. IX (C), sec. 4.

equal opportunity, time, and space for public information campaigns and forums among candidates.[6]

Requiring commentator-candidates to take a leave of absence from their work during campaign period will better ensure equal opportunity, time, and space to exercise free speech.

If commentator-candidates were allowed to carry on their media related professions during the campaign period, opponents are left at an undue disadvantage. The rule prevents a monopoly by commentator-candidates over channels of expression.

National Press Club v. Commission on Elections[7] involved a law prohibiting mass media from selling or donating print space or airtime for campaign or other political purposes. Instead, the Commission on Elections was to procure print space to be divided equally without charge among all candidates. Representatives of mass media, candidates, and taxpayers assailed the constitutionality of the provision.[8] On reading the freedoms of speech, of expression, and of the press with the imperatives of equal opportunity, time, and space, the Court said:

> It is difficult to overemphasize the special importance of the rights of freedom of speech and freedom of the press in a democratic polity, in particular when they relate to the purity and integrity of the electoral process itself, the process by which the people identify those who shall have governance over them. Thus, it is frequently said that these rights are accorded a preferred status in our constitutional hierarchy. Withal, the rights of free speech and free press are not unlimited rights for they are not the only important and relevant values even in the most democratic of polities. In our own society, equality of opportunity to proffer oneself for public office, without regard to the level of financial resources that one may have at one's disposal, is clearly an important value. One of the basic state policies given constitutional rank by Article II, Section 26 of the Constitution is the egalitarian demand that "the State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law."[9]

In the same way that airtime may be limited by law or the Commission on Elections, so, too, can commentator-candidates be prevented momentarily from practicing their media related profession. Otherwise, commentator-candidates will effectively be able to enjoy airtime in circumvention of airtime limits by claiming they were merely practicing their profession and not advertising themselves. The mandatory leave of absence on commentator-candidates is not an absolute ban on media reporting, opinion or commentary about candidates, their qualifications, platforms, and promises. Quite the

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6 CONST., art. IX (C), sec. 4.
7 283 Phil 795 (1992) [Per J. Feliciano, *En Banc*].
8 *Id.* at 807.
9 *Id.* at 810.

opposite, it is to ensure that mass media remain free of undue influence to carry out their regular and normal information and communication operations.[10]

The measure not only levels the electoral race to the benefit of all candidates, but more importantly favors the electorate as well. A domination by commentator-candidates of airtime impairs the speech of other candidates and of the public. The very candidates who should be the subject of political speech ought not to be given control of the available fora. Freedom of speech and of expression are rendered meaningless if avenues for speech and expression are deprived from dissenters.

Preventing commentator-candidates from practicing their media related professions encourages the right of people to participate in public affairs, including the right to criticize candidates seeking public office.[11] The marketplace of ideas is democratized rather than skewed in favor of a few. After all, the marketplace of ideas works by "exposure to the ideas of others [allowing] one to 'consider, test, and develop their own conclusions.'"[12] "[F]ree speech may '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.'"[13]

The audience-electorate looks to a mass media columnist, commentator, announcer, report, on-air correspondent or personality for credible and reliable information. It is hard enough for the audience-electorate to sort through misinformation and disinformation. If commentator-candidates are permitted to muddle the practice of their profession with campaigning for themselves or their parties, the marketplace of ideas is contaminated with self-interest. The mandatory leave of absence imposed on commentator-candidates during the campaign period is more accurately depicted as a limitation on self-promotion harmful to the audience-electorate, not of free speech.

On a final note, the warning issued by the Court in *National Press Club* seems even more relevant today with the advent of the internet and smartphones:

> [T]he nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded. Realistically, the only limitation upon the free speech of candidates imposed is on the right of candidates to

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10 *See Id.*, at 812–813 (1992) [Per J. Feliciano, *En Banc*].

11 *See Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 351 (2015) [Per J. Leonen, *En Banc*].

12 *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 361 (2015) [Per J. Leonen, *En Banc*] *citing The Impermeable Life: Unsolicited Communications in the Marketplace of Ideas*, 118 HARV. L. REV. 1314 (2005), *citing Abrams v. United States*, 250 U.S. 616, 630 (1919).

13 *Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 332 (2015) [Per J. Leonen, *En Banc*] *citing Gonzales, et al. v. Commission on Elections*, 137 Phil. 471, 493 (1969) [Per J. Fernando, *En Banc*], *citing further Terminiello v. City of Chicago*, 337 US 1, 4 (1949)

> bombard the helpless electorate with paid advertisements commonly repeated in the mass media *ad nauseam*. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. It might be supposed that it is easy enough for a person at home simply to flick off his radio or television set. But it is rarely that simple. For the candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels. Or they may directly or indirectly own or control the stations or channels themselves. The contemporary reality in the Philippines is that, in a very real sense, listeners and viewers constitute a "captive audience."
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> The paid political advertisements introjected into the electronic media and repeated with mind-deadening frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.[14] (Citations omitted)

Free speech may be liberating when all are afforded meaningful opportunity to participate. Mass media can be utilized to amplify voices that would otherwise go unheard. Without supervision and regulation, it is also susceptible to becoming propaganda reserved for and weaponized by the political elite. It descends into a tool to perpetuate inequality. The ruling of the Court here affirms the transcendence of free speech and ensures that the perfectly equal enjoyment of this right is approximated.

ACCORDINGLY, I concur. The Petition should be **DISMISSED**.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[14] 283 Phil 795, 816–817 (1992) [Per J. Feliciano, *En Banc*].