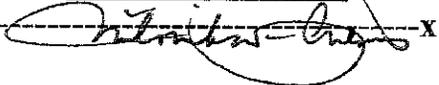


EN BANC

G.R. No. 246126 – PATRICIA MARIE I. RANADA, MARA ALYSSABEL D. CEPEDA, RAYMON G. DULLANA, FRANKLIN Y. CIMATU, MAURICIO E. VICTA, CAMILLE KRISTINA S. ELEMIA, RALPH MARTIN S. RIVAS, BALTAZAR ESPINOSA LAGSA, and RAPPLER INC., Petitioners; DR. FLORANGEL BRAID, MELINDA QUINTOS DE JESUS, CERES DOYO, JOHN NERY, SOLITA MONSOD, MA. SALVACION “INDAY” VARONA, MARLON RAMOS, VERGEL SANTOS, LOURD ERNEST DE VEYRA, JOSELITO DELOS REYES, MURIEL “TWINK” MACARAIG, NIKOLETTE KRISTINE NONNA “NIKKO” DIZON, and OTHER JOURNALISTS AND MEDIA PRACTITIONERS LISTED IN ANNEX A, Petitioners-in-Intervention; BARTHOLOME T. GUINGONA, ANA THERESA P. SANTOS, MICHELLE D.L. ABAD, JOSE FRANCISCO M. LUNA, MIKAELA ANDREA R. GARCIA, MERINETE A. RETONA, JENNINA MARIE M. MORA, RANEZA E. PINLAC, ANDREW DANIEL H. MENCILAS, GILLIAN N. VILLANUEVA, PHOEBE C. SALVADOR, SHERWIN G. DE VERA, ANGELO A.M. SILVA, ARMIN REY P. ADINA, ODINA E. BATNAG, MA. ANNA MARGARITA V. BUENO, ANGEL S. AVERIA, JR., MARIA LOURDES M. JIMENEZ, EDNA O. AQUINO, ANTONIO TIAMSON, NOEMI L. DADO, MARIA LORETO P. ROCES, and MARLON ANTHONY TONSON, Petitioners-in-Intervention; PAGBABAGO@PILIPINAS FOUNDATION, INC., Petitioners-in-Intervention v. OFFICE OF THE PRESIDENT, OFFICE OF THE EXECUTIVE SECRETARY, PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE, MEDIA ACCREDITATION REGISTRATION OFFICE, and PRESIDENTIAL SECURITY GROUP, Respondents.

Promulgated:

June 27, 2023

X----------X

DISSENTING OPINION

LEONEN, J.:

While this case has been rendered moot by the end of the term of former President Rodrigo Duterte and the inclusion of the petitioners in the list of media entities allowed to access presidential events, I urge that we continue to rule to emphasize our doctrines on a free press and to avoid repetition in the future.

The implication of the ban and regulation of the media in covering the events of a government institution raises questions on the exercise of a free press *vis-à-vis* the State and the condition of our democracy.

The task of a free press in a deliberative democracy is paramount. Journalists are the watchdogs over the government and its officials. The press empowers the citizens by keeping them informed about public affairs, allowing them to hold the government accountable.

Government interference in exercising free press is always treated as suspect, and the government must prove the validity and constitutionality of its regulation.

I

The Constitution guarantees freedom of expression, of speech, and of the press. Article III, Section 4 of the 1987 Constitution provides:

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.

Freedom of expression and its cognate rights enjoy precedence and primacy in the scheme of our constitutional values.¹ This Court in *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*:²

. . . While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are “delicate and vulnerable, as well as supremely precious in our society” and the “threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,” they “need breathing space to survive,” permitting government regulation only “with narrow specificity.”

Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs - political, economic or otherwise.

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

¹ *Reyes v. Bagatsing*, 210 Phil. 457-482 (1983) [Per C.J. Fernando, *En Banc*].

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

priority “gives these liberties the sanctity and the sanction not permitting dubious intrusions.”³ (Citations omitted)

Freedom of expression is critical and indispensable in a democracy. To ensure a meaningful and deliberative democracy, there must be an uninhibited discourse on public issues.⁴ This enables the people to hold the government accountable.⁵ *Chavez v. Gonzales*⁶ elucidated:

. . . [T]he vital need of a constitutional democracy for freedom of expression is undeniable, whether as a means of assuring individual self-fulfillment; of attaining the truth; of assuring participation by the people in social, including political, decision-making; and of maintaining the balance between stability and change. As early as the 1920s, the trend as reflected in Philippine and American decisions was to recognize the broadest scope and assure the widest latitude for this constitutional guarantee. The trend represents a profound commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open.⁷ (Citations omitted)

As we explained further in *The Diocese of Bacolod v. Commission on Elections*,⁸

Proponents of the political theory on “deliberative democracy” submit that “substantial, open, [and] ethical dialogue is a critical, and indeed defining, feature of a good polity.” This theory may be considered broad, but it definitely “includes [a] collective decision making with the participation of all who will be affected by the decision.” It anchors on the principle that the cornerstone of every democracy is that sovereignty resides in the people. To ensure order in running the state’s affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people. On this note, the theory on deliberative democracy may evolve to the right of the people to make government accountable. Necessarily, this includes the right of the people to criticize acts made pursuant to governmental functions.

Speech that promotes dialogue on public affairs, or airs out grievances and political discontent, should thus be protected and encouraged.⁹ (Citations omitted)

The freedom of the press is a fundamental complement to the freedom of expression. These freedoms equip the public with vital information on government affairs and empower them to scrutinize and correct any abuses. In *Tulfo v. People*,¹⁰

³ *Id.* at 676.

⁴ *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 310, 359–360 (2015) [Per J. Leonen, *En Banc*].

⁵ *Id.*

⁶ 569 Phil. 155 (2008) [Per C.J. Puno, *En Banc*].

⁷ *Id.* at 197.

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

⁹ *Id.* at 359–360

¹⁰ G.R. Nos. 187113 & 187230, January 11, 2021 [Per J. Leonen, Third Division].

The need to protect freedom of speech and of the press cannot be understated. These freedoms are the most pervasive and powerful vehicles of informing the government of the opinions, needs, and grievances of the public. It is through these guarantees that the people are kept abreast of government affairs. Without these rights, no vigilant press would flourish. And without a vigilant press, the government's mistakes would go unnoticed, their abuses unexposed, and their wrongdoings uncorrected.

In this regard, journalists and the media enjoy a wide latitude of discretion in investigating, gathering, and reporting news pertinent to public affairs. Public affairs encompass a wide array of matters, including information on public officials' exercise of their official functions.¹¹ (Citation omitted)

Thus, the role of the press in a democracy is crucial as it empowers citizens to participate in public deliberations. The journalists' degree of freedom in delivering news and providing commentary on the government and the nation reflects the state of a country's democracy. In *Guy v. Tulfo*:¹²

The degree of freedom by which journalists operate to uncover and write the news is an indication of the current state of our country's democracy. By freely obtaining vital information on matters of public concern, citizens become socially aware and well-equipped to participate in different political processes to exercise their rights enshrined in the fundamental law. Journalists are the sentinels who keep watch over the actions of the government. They are the eyes and ears of the citizenry.¹³

Among the ranks of speeches, the work of the press is conferred a higher degree of protection because it is a form of political speech.¹⁴ There is a greater degree of protection to political speech compared to other types of speech, such as commercial speech, because they are "intended and received as a contribution to public deliberation about some issue, fostering informed and civic-minded deliberation."¹⁵

To be effective instruments of democracy, free expression, free speech, and free press must be exercised without censorship and fear of subsequent reprisal.¹⁶ Considering their primacy, government regulations affecting these freedoms are treated as suspect.¹⁷

¹¹ *Id.*

¹² G.R. No. 213023, April 10, 2019 [Per J. Leonen, Third Division].

¹³ *Id.*

¹⁴ *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 343 (2015) [Per J. Leonen, *En Banc*].

¹⁵ *Id.* at 368.

¹⁶ J. Kapunan, Concurring and Dissenting Opinion in *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 953-954. (1996) [Per J. Puno, *En Banc*].

¹⁷ *Id.*

There are two forms of governmental restrictions on free expression: (1) prior restraint and (2) subsequent punishment.

Prior restraint is a governmental restriction applied on any form of expression before its actual publication or dissemination.¹⁸ Any branch of the government may enforce it, and it may take on different forms.¹⁹ It can be a requirement of the license of a permit for publication or closure of institutions resulting in discontinuation of their operations.²⁰ Any governmental act which mandates any form of permission before publication can be made is a prior restraint on speech. *Chavez* succinctly explained:

... Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.²¹ (Citation omitted)

On the other hand, subsequent punishment is a form of liability imposed on the person who has already exercised their right to free expression. The liability may be criminal, civil, or administrative.²²

Between these two restrictions, the effect of prior restraint is more severe as it completely prevents the dissemination of ideas.²³ When a governmental act is a form of prior restraint on expression, it bears a heavy presumption of invalidity.²⁴

Given our Constitution's preferred status of free expression and free press, governmental acts which amount to prior restraint are presumed invalid and unconstitutional.²⁵ The government has the burden to prove the

¹⁸ *I-United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 84 (2015) [Per J. Reyes, *En Banc*].

¹⁹ *Chavez v. Gonzales*, 569 Phil. 155, 203 (2008) [Per C.J. Puno, *En Banc*].

²⁰ *Id.*

²¹ *Id.* at 203–204.

²² J. Sandoval-Gutierrez, Concurring Opinion in *Chavez v. Gonzales*, 569 Phil. 155, 224 (2008) [Per C.J. Puno, *En Banc*].

²³ *Id.* at 223.

²⁴ *I-United Transport Koalisyon v. Commission on Elections*, 758 Phil. 67, 84 (2015) [Per J. Reyes, *En Banc*].

²⁵ *ABS-CBN Broadcasting Corp. v. Commission on Elections*, 380 Phil. 780, 795 (2000) [Per J. Panganiban, *En Banc*].

validity and constitutionality of its actions.²⁶ In *Calleja v. Executive Secretary*:²⁷

The Constitution, however, abhors prior restraints on speech. Thus, a law does not enjoy the presumption of constitutionality if it restrains speech. Instead, a presumption of unconstitutionality arises. This presumption proceeds from the constitutional command under Section 4, Article III that no law shall be passed abridging free speech, expression, and their cognate rights. And this mandate, in turn, is actualized by the Court through the many iterations of the dictum that said rights are accorded preference or a high place in the constitutional scheme that any alleged infringement manifest in the language of the statute cannot be allowed to pass unnoticed. In such cases, therefore, it becomes the burden of government to establish the law's constitutionality. Instructive on this rule is the separate opinion of Associate Justice Marvic Mario Victor F. Leonen in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*:

Fundamental rights which give rise to Strict Scrutiny include the right of procreation, the right to marry, the right to exercise First Amendment freedoms such as free speech, political expression, press, assembly, and so forth, the right to travel, and the right to vote.

Because Strict Scrutiny involves statutes which either classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored.

The Court has thus declared that any restriction to the freedom of speech or expression should be treated as an exemption — any act that chills or restrains speech is presumed invalid and any act that chills or restrains speech is hobbled by the presumption of invalidity and should be greeted with furrowed brows.²⁸ (Citations omitted)

In assaying governmental acts, it is necessary to characterize whether it is a content-neutral or content-based regulation. The nature of the governmental act determines the test by which to test the act.

An act is content-neutral if it 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

²⁶ *Id.*

²⁷ G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021 [Per J. Carandang, *En Banc*].

²⁸ *Id.*

expression.²⁹ Meanwhile, it is content-based if the restriction touches upon the speech's content.³⁰

To prove a content-neutral regulation's validity, a substantial governmental interest must be established.³¹ Judicial scrutiny only takes an intermediate approach because content-neutral regulations are not intended to repress any message.³² Nevertheless, the government must still prove that the restrictions are "narrowly-tailored to promote an important or significant governmental interest unrelated to the suppression of expression."³³ The restriction must be "no greater than is essential to the furtherance of that interest."³⁴

On the other hand, a content-based regulation is given the strictest scrutiny given its inherent and invasive impact on speech. The act must pass the clear and present danger rule to overcome the presumption of unconstitutionality.³⁵ The government must show the harm the restrained speech will cause and the gravity and imminence of the harm.³⁶ In *Chavez*,

Prior restraint on speech based on its content cannot be justified by hypothetical fears, "but only by showing a substantive and imminent evil that has taken the life of a reality already on ground." As formulated, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The regulation which restricts the speech content must also serve an important or substantial government interest, which is unrelated to the suppression of free expression.³⁷ (Citations omitted)

While restrictions on the exercise of free expression and speech may be had, the government must still prove that it is crafted and applied with precision. It cannot "sweep unnecessarily broadly and thereby invade the area of protected freedoms."³⁸

II

Here, respondents mainly contend that Rappler Inc.'s (Rappler) prohibition from attending presidential events is not a form of prior restraint

²⁹ *Newsounds Broadcasting Network, Inc. v. Dy*, 602 Phil. 255, 271 (2009) [Per J. Tinga, Second Division].

³⁰ *Id.*

³¹ *Chavez v. Gonzales*, 569 Phil. 155, 205 (2008) [Per C.J. Puno, *En Banc*].

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 207.

³⁵ *Id.* at 206.

³⁶ *Id.*

³⁷ *Id.* at 206–207.

³⁸ *In re Gonzales v. Commission on Elections*, 137 Phil. 471, 507 (1969) [Per J. Fernando, *En Banc*].

and that the documentary requirements for accreditation do not restrict the publication of news articles. Rappler could still report and publish articles, and the prohibition only affected their physical access to the events.³⁹

Respondents argue that the accreditation, which necessitates a Securities and Exchange Commission registration, is enforced to ensure that only legitimate mass media entities and journalists can access presidential events.⁴⁰

I disagree with the respondents. Accreditation of the press constitutes prior restraint. It is a governmental regulation that burdens and touches upon the work of the free press in their production and publication of news. A license or permit is required before the press can effectively do its work. It touches upon the exercise of free press.

If a press entity cannot comply with the documentary requirements for accreditation, its access to the source of news is hampered. This is regardless of the fact that the press can, due to its ingenuity, still produce and publish news.

Accordingly, the order is presumed unconstitutional, and the government has to prove its constitutionality. It failed to overcome this burden.

The requirement of registration is a content-neutral regulation that regulates the time, place, and manner of the press's coverage of the events and gathering of information. Thus, it must pass the intermediate approach test to be declared constitutional.

The government must show that the regulation advances a substantial government interest, the interest is not related to the suppression of the speech, and the restriction is not greater than what is essential to facilitate the interest.⁴¹ It must be "reasonable and narrowly drawn to fit the regulatory purpose, with the least restrictive means undertaken[.]"⁴²

Here, the restriction is greater than what is necessary to achieve the government's interest. The guidelines are not reasonably and narrowly drawn.

³⁹ *Ponencia*, pp. 11–12

⁴⁰ *Id.*

⁴¹ *ABS-CBN Broadcasting Corp. v. Commission on Elections*, 380 Phil. 780, 795 (2000) [Per J. Panganiban, *En Banc*].

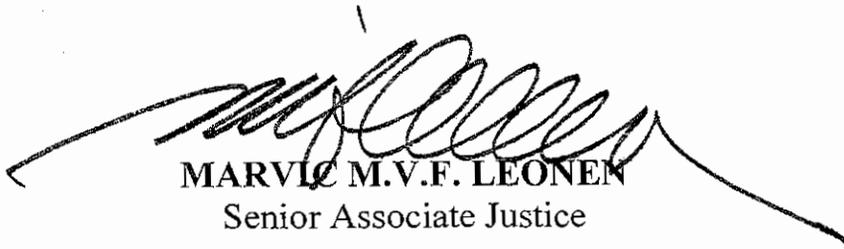
⁴² *Chavez v. Gonzales*, 569 Phil. 155, 207 (2008) [Per C.J. Puno, *En Banc*].

The legitimacy of the press and journalists is a matter which the State cannot regulate. A statutory body does not regulate the press in the Philippines. Presidential Decree No. 576 expressed the policy of the State "to allow mass media to operate without government intervention or supervision in policy determination and news dissemination activities."⁴³ The media is intended to operate through self-regulation; thus, the State cannot interfere and regulate the press by attempting to determine which media outlets are legitimate or not. The Presidential Communications Operations Office, through the Media Accreditation Registration Office, does not have the power to be a media regulatory body.

Further, respondents failed to prove that the Securities and Exchange Commission registration requirement is the least restrictive rule in regulating which journalists may be allowed to cover presidential events. There is no explanation of how their current requirements are reasonable and narrowly drawn to fit their purpose. On the other hand, the consequence of banning petitioners from covering presidential events has invasive effects on the exercise of the free press.

Covering government events and information gathering are indispensable for the press to deliver the news. When the government restricts these activities, it hampers the work of the press and harms and stifles the function of the media in a democracy. Government interference in the form of prior restraint, especially affecting the media, bears the heavy burden of invalidity.

ACCORDINGLY, I vote to GRANT the Petitions.



MARVIC M.V.F. LEONEN
Senior Associate Justice

⁴³ Presidential Decree No. 576 (1974), sec. 1 provides:

SECTION 1. It is hereby declared to be the policy of the State to allow mass media to operate without government intervention or supervision in policy determination and news dissemination activities. For accomplishment of this purpose, the Media Advisory Council created under Presidential Decree No. 191 and the Bureau of Standards for Mass Media authorized to be created under Letter of Implementation No. 12 and dated November 1, 1972, are hereby abolished.