

# The Limits of Power: The COMELEC’s Contemporary Regulatory Power over Electoral Campaign and Expenditure

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## I. PRÉCIS

The theory of elections stems from social contract<sup>1</sup> — that the government is elected to serve with the end-in-view of providing its constituency with programs that promote the common good.<sup>2</sup> Imperative in ensuring compliance with the terms of this social contract is to ensure that the means by which this contract is entered into — elections — are conducted in a

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1. See James Kanyip, Social or Political Contract: The Difference Between Vote and Mandate, available at <http://www.ce-dra.org/social-or-political-contract-the-difference-between-vote-and-mandate/> (last accessed July 29, 2015).
2. *Id.*

free, orderly, honest, peaceful, and credible manner.<sup>3</sup> The Filipino people, when it ratified the Constitution, ordained the Commission on Elections (COMELEC) as the keeper of the sanctity of the ballot.<sup>4</sup> The powers granted unto COMELEC are so vast — powers that need either suppression when it has overstepped its mandate, or defense when its mandate is being trampled upon without sound ground.

## II. BACKGROUND

In less than a year, the Filipino electorate will, again, troop to the polling precincts to elect their leaders.<sup>5</sup> What makes the 2016 national elections more exciting is the fact that it will be the second automated *presidential* elections in Philippine history, the first being in 2010.<sup>6</sup> Perhaps, the increased interest in automated elections lies with the fact that it shunned the tedious and lengthy process that plagued the manual system of elections.<sup>7</sup>

In just three weeks after the close of the 2010 national elections, President Benigno Simeon C. Aquino III and Vice President Jejomar C. Binay were proclaimed leaders-elect by Congress.<sup>8</sup> That was, by far, the shortest period between an election day and a proclamation of a President- and a Vice President-elect.<sup>9</sup> In 2004, in stark contrast from what happened in 2010, former President Gloria Macapagal-Arroyo and former Vice President Noli C. De Castro were proclaimed at midnight nearly six weeks after the election day.<sup>10</sup> The accelerated process associated with the automated election system does away with the once all-too-familiar

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3. See PHIL. CONST. art. IX-C, § 4.

4. See PHIL. CONST. art. IX-C, §§ 2 & 4.

5. See generally Commission on Elections (COMELEC), Regular Elections, available at <http://www.comelec.gov.ph/?r=Archives/RegularElections> (last accessed July 29, 2015).

6. *Id.* & Kristine L. Alave & Michael Lim Ubac, *All go for automated elections in 2010*, PHIL. DAILY INQ., Mar. 6, 2009, available at <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20090306-192592/All-go-for-automated-elections-in-2010> (last accessed July 29, 2015).

7. Ronald Meinardus, Elections Philippine Style: A Foreigner's Comments, available at <http://www.fnf.org.ph/liberalopinon/elections-philippines-style-2.htm> (last accessed July 29, 2015).

8. Jam Sisante & Amita Legaspi, Congress proclaims Aquino as president, Binay as VP, available at <http://www.gmanetwork.com/news/story/193035/news/nation/congress-proclaims-aquino-as-president-binay-as-vp> (last accessed July 29, 2015).

9. *Id.*

10. See generally *Poe v. Macapagal-Arroyo*, 454 SCRA 142, 145 (2005).

allegations of “*dagdag-bawas*.”<sup>11</sup> For the first time in recent memory, the candidate who placed second, re-electionist candidate and former President Joseph Ejercito-Estrada, accepted his defeat graciously and did not claim that he was cheated of the Presidency.<sup>12</sup>

What also makes the run up to the 2016 national elections more interesting is the fact that the Supreme Court has promulgated a line of cases that has threshed out the power of the COMELEC to regulate the conduct of elections.<sup>13</sup> The first straw was drawn against the COMELEC in *GMA Network, Inc. v. Commission on Elections*,<sup>14</sup> where the Supreme Court nullified the new interpretation of the COMELEC that the limits granted each candidate to advertise his or her political advertisements by television or radio is based on the aggregate total of minutes and not on a per station basis.<sup>15</sup> Another straw was drawn, however, in favor of the COMELEC when the Supreme Court, in *Ejercito v. Commission on Elections*,<sup>16</sup> ruled that it was vested with the power to disqualify candidates who exceeded the campaign expenditure limits.<sup>17</sup>

In a normal year, these many cases relating to elections would not come across as interesting. However, what makes this series of cases significant and relevant to the current factual milieu are the repercussions they will have in the conduct of the 2016 national elections. This, of course, does not even consider the cases of *Pabillo v. Commission on Elections*,<sup>18</sup> where the Supreme

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11. See, e.g., Andreo Calonzo, NAMFREL exec confirms ‘dagdag bawas’ in Lanao del Sur during ‘04 polls, available at <http://www.gmanetwork.com/news/story/227738/news/nation/namfrel-exec-confirms-dagdag-bawas-in-lanao-del-sur-during-04-polls> (last accessed July 29, 2015).
  12. Jose Rodel Clapano, *Erap concedes but wants fraud probe*, PHIL. STAR, June 10, 2010, available at <http://www.philstar.com/headlines/582694/erap-concedes-wants-fraud-probe> (last accessed July 29, 2015). But see Reinir Padua, *ERAP finds ally in NGO on poll fraud claim*, PHIL. STAR, May 18, 2010, available at <http://www.philstar.com/headlines/575911/erap-finds-ally-ngo-poll-fraud-claim> (last accessed July 29, 2015).
  13. See generally PHIL. CONST. art. IX-C, § 2.
  14. *GMA Network, Inc. v. Commission on Elections*, G.R. No. 205357, Sep. 2, 2014, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357.pdf> (last accessed July 29, 2015).
  15. *Id.*
  16. *Ejercito v. Commission on Elections*, G.R. No. 212398, Nov. 25, 2014, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/212398.pdf> (last accessed July 29, 2015).
  17. *Id.*
  18. *Pabillo v. Commission on Elections*, G.R. No. 216098, Apr. 21, 2015, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/216098.pdf> (last accessed July 29, 2015).

Court nullified the contract awarded by the COMELEC in favor of Smartmatic over the refurbishment of the precinct count optical scanner (PCOS) machines,<sup>19</sup> and of *The Diocese of Bacolod v. Commission on Elections*,<sup>20</sup> where the Supreme Court also nullified an order by the COMELEC against the Archdiocese of Bacolod to take down the latter's "Team *Patay*" and "Team *Buhay*" posters.<sup>21</sup> Those would entail another topic altogether.

It is from these foregoing circumstances that this disquisition intends to parse the cases promulgated by the Supreme Court that ruled on the COMELEC's regulatory powers over electoral campaign and expenditures, and to identify how these jurisprudential pronouncements will possibly affect the conduct of the 2016 national elections.

### III. THE REGULATION OF ELECTORAL CAMPAIGN IN MAINSTREAM MEDIA — GMA NETWORK, INC. V. COMMISSION ON ELECTIONS

#### A. *The Case*

The Fair Elections Act<sup>22</sup> was promulgated with the intention of making the playing field for all candidates level and fair, and "to guarantee or ensure equal opportunity for public service, including access to media time and space[.]"<sup>23</sup> One of the provisions of the Fair Elections Act is the imposition of a time limit for each candidate to run his or her advertisements,<sup>24</sup> to wit

Sec. 6. Equal Access to Media Time and Space. – All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be *amplified* by the COMELEC:

...

#### 6.2

(a) *Each bona fide candidate or registered political party for a nationally elective office shall be entitled to not more than [120] minutes of television advertisement and [180] minutes of radio advertisement whether by purchase or donation.*

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19. *Id.*

20. *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, Jan. 21, 2015, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> (last accessed July 29, 2015).

21. *Id.*

22. An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful and Credible Elections Through Fair Election Practices [Fair Elections Act], Republic Act No. 9006 (2001).

23. *Id.* § 2.

24. *Id.* § 6.

(b) *Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than [60] minutes of television advertisement and [90] minutes of radio advertisement whether by purchase or donation.*

For this purpose, the COMELEC shall require any broadcast station or entity to submit to the COMELEC a copy of its broadcast logs and certificates of performance for the review and verification of the frequency, date, time[,] and duration of advertisements broadcast for any candidate or political party.<sup>25</sup>

For the longest time, the COMELEC interpreted this time limit as being imposed on a “per station” basis.<sup>26</sup> This effectively meant that a candidate can advertise his or her campaign paraphernalia on *each and every television and radio station*, provided they fell within the time limits imposed. Hypothetically speaking, if there are 10 television stations in the Philippines, then, a candidate running for a national office is free to broadcast 1,200–minutes worth of political and campaign material.

However, in an unprecedented move, the COMELEC *en banc*, under the leadership of then COMELEC Chairman Sixto A. Brillantes, Jr., issued COMELEC Resolution No. 9615,<sup>27</sup> invoking the COMELEC’s power to

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25. *Id.* (emphasis supplied).

26. *GMA Network, Inc.*, G.R. No. 205357 (citing Commission on Elections, Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the Fair Election Act, in Relation to the May 14, 2007 Synchronized National and Local Elections, Resolution No. 7767 [COMELEC Res. No. 7767], § 13 (Nov. 30, 2006) & Commission on Elections, Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the Fair Election Practices Act, in Relation to the May 10, 2010 Synchronized National and Local Elections, and Subsequent Elections, Resolution No. 8758 [COMELEC Res. No. 8758], § 11 (Feb. 4, 2010)). These two COMELEC Resolutions provide:

For candidates/ Registered Political parties for a National Elective Position	[120] minutes in television or cable television, and [180] minutes in radio, for all television or cable television networks, or all radio stations whether by purchase or donation, wherever located, per station
For candidates/ Registered Political parties for a Local Elective Position	[60] minutes in television or cable television, and [90] minutes in radio for all television or cable networks, or all radio stations whether by purchase or donation, wherever located, per station

COMELEC Res. No. 8758, § 11 (a). *See also* COMELEC Res. No. 7767, § 13 (1).

27. Commission on Elections, Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the “Fair Election Act,” in Connection to the

“regulate”<sup>28</sup> and the prerogative to “amplify”<sup>29</sup> such rules. Effectively, the COMELEC’s new stance would be that the same provision of the Fair Elections Act would, *now*, be imposed on an “aggregate” basis<sup>30</sup> instead of the “per station” basis —

Sec. 9. Requirements and/or Limitations on the Use of Election Propaganda through Mass Media. — All parties and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

a. Broadcast Election Propaganda

The duration of air time that a candidate, or party may use for their broadcast advertisements or election propaganda shall be, as follows:

For Candidates/ Registered Political parties for a National Elective Position	Not more than an aggregate total of [120] minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and [180] minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation.
For Candidates/ Registered Political parties for a Local Elective Position	Not more than an aggregate total of [60] minutes of television advertising, whether appearing on national, regional, or local, free or cable television, and [90] minutes of radio advertising, whether airing on national, regional, or local radio, whether by purchase or donation. <sup>31</sup>

Different media outfits assailed this move as violating the constitutional rights to freedom of the press and of speech, the right to suffrage, and the right to information.<sup>32</sup> The assailants of COMELEC Resolution No. 9615 contended that the said issuance provides for a “very restrictive aggregate airtime limit and [provides] a vague meaning for a proper computation of ‘aggregate total’ airtime”<sup>33</sup> and violates the equal protection requirement of the Constitution.<sup>34</sup> Senator Alan Peter S. Cayetano also intervened to assert

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13 May 2013 National and Local Elections, and Subsequent Elections, Resolution No. 9615 [COMELEC Res. No. 9615], (Jan. 15, 2013).

28. *GMA Network, Inc.*, G.R. No. 205357. *See also* Fair Elections Act, § 6.

29. *GMA Network, Inc.*, G.R. No. 205357.

30. COMELEC Res. No. 9615, § 9 (a).

31. *Id.*

32. *GMA Network, Inc.*, G.R. No. 205357.

33. *Id.*

34. *Id.*

that the “COMELEC merely maintained that [the change in interpretation of the time limit] ‘is meant to level the playing field between the moneyed candidates and those who [do not] have enough resources,’ without particularizing the empirical data upon which such a sweeping statement was based.”<sup>35</sup>

The COMELEC, however, denied any claim of violating any constitutional guarantee by invoking the powers granted them by the Constitution, to wit —

The [COMELEC] may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefore, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.<sup>36</sup>

The main theory advanced by the COMELEC was that the Constitution, as mentioned above, and the Fair Elections Act both gave them the considerable discretion to amplify rules over the regulation of the campaign of the candidates.<sup>37</sup>

### *B. The Ratio*

The Supreme Court ruled against the COMELEC.<sup>38</sup> The main issue upon which the case turned was whether the powers granted to the COMELEC by the Constitution included the power to effect a “drastic reduction of allowable minutes within which candidates and political parties would be able to campaign through the air.”<sup>39</sup> The Supreme Court found particular weight on the arguments of Senator Cayetano that the COMELEC effected the change in time limits without providing reasonable empirical data to support such change.<sup>40</sup>

The Supreme Court ruled that “the COMELEC did not have any other basis for coming up with a new manner of determining allowable time limits

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35. *Id.*

36. PHIL. CONST. art. IX-C, § 4.

37. *GMA Network, Inc.*, G.R. No. 205357.

38. *Id.*

39. *Id.*

40. *Id.*

except its own idea as to what should be the maximum number of minutes based on its exercise of discretion as to how to level the playing field.”<sup>41</sup>

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41. *Id.* (citing Transcript of Stenographic Notes (TSN) of COMELEC Public Hearing (Jan. 31, 2013)).

Chairman Brillantes: So if we can regulate and amplify, we may amplify[,] meaning we can expand if we want to. But the authority of the Commission is if we do not want to amplify and we think that the 120 or 180 [minutes] is [O.K.], we cannot be compelled to amplify. We think that 120 or 180 [minutes] [ ] is enough.

Atty. Lucila: But with due respect Your Honor, I think the basis of the resolution is found in the law and the law has been [interpreted] before in 2010 to be 120 [minutes] per station, so why the change, [Y]our Honor?

Chairman Brillantes: No, the change is not there[.] [T]he right to amplify is with the Commission on Elections. *Nobody can encroach in our right to amplify.* Now, if in 2010 the Commission felt that per station or per network is the rule then that is the prerogative of the Commission then they could amplify it to expand it. *If the current Commission feels that 120 [minutes] is enough for the particular medium like [television] and 180 [minutes] for radio, that is our prerogative.* How can you encroach and what is unconstitutional about it?

Atty. Lucila: We are not questioning the authority of the Honorable Commission to regulate Your Honor, we are just raising our concern on the manner of regulation because as it is right now, there is a changing mode or sentiments of the Commission and the public has the right to know[.] [W]as there rampant overspending on political ads in 2010[?] [W]e were not informed[,] Your Honor. Was there abuse of the media in 2010[?] [W]e were not informed[,] Your Honor. So we would like to know what is the basis of the sudden change in this limitation, Your Honor. [L]aw must have a consistent interpretation that [is]our position, Your Honor.

Chairman Brillantes: *But my initial interpretation, this is personal to this representation counsel, is that if the Constitution allows us to regulate and then it gives us the prerogative to amplify then the prerogative to amplify you should leave this to the discretion of the Commission.* Which means if previous Commissions felt that expanding it should be part of our authority that was a valid exercise if we reduce it to what is provided for by law which is 120-180 [minutes] per medium, [television], radio, that is also within the law and that is still within our prerogative as provided for by the Constitution. If you say we have to expose the candidates to the public then I think [...] the negative reaction should come from the candidates not from the media, unless you have some interest to protect directly. Is there any interest on the part of the media to expand it?

Atty. Lucila: Well, our interest Your Honor is to participate in this election[,] Your Honor[,] and we have been constantly as the



Anchored primarily on the remark of then Chairman Brillantes that “if the Constitution allows [the COMELEC] to regulate and then it gives [it] the prerogative to amplify[,] then ... [one] should leave [the prerogative to amplify] to the discretion of the Commission.”<sup>42</sup> This remark, according to the Supreme Court, is tainted with grave abuse of discretion that amounted to lack or excess of jurisdiction.<sup>43</sup>

While the Supreme Court recognized that the COMELEC had the power to enforce election laws, it could not do so without laying a reasonable premise.<sup>44</sup> The Supreme Court discussed that a change in administrative rules by government agencies should be accompanied with a reasonable and a sound rationale for such change.<sup>45</sup> Thus, —

However, we think it essential, for the sake of clarity and intellectual honesty, that if an administrative agency decides inconsistently with previous action, that it explain thoroughly why a different result is warranted, or if need be, why the previous standards should no longer apply or should be overturned. Such explanation is warranted in order to sufficiently establish a decision as having rational basis. Any inconsistent decision lacking thorough ratiocination in support may be struck down as being arbitrary. And any decision with absolutely nothing to support it is a nullity.<sup>46</sup>

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resolution says and even in the part involved because you will be getting some affirmative action time coming from the media itself and COMELEC time coming from the media itself. So we could like to be both involved in the whole process of the exercise of the freedom of suffrage[,] Your Honor.

Chairman Brillantes: Yes, but the very essence of the Constitutional provision as well as the provision of [Resolution No.] 9006 is actually to level the playing field. That should be the paramount consideration. If we allow everybody to make use of all their time and all radio [and television time] then there will be practically unlimited use of the mass media[.]

Atty. Lucila: Was there in 2010[,] Your Honor, ... any data to support that there was an unlimited and abuse of [ ] political ads in the mass media that became the basis of this change in interpretation[?] We would like to know about it[,] Your Honor.

*Id.* (emphasis supplied).

42. *GMA Network, Inc.*, G.R. No. 205357.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* (citing *Globe Telecom, Inc. v. National Telecommunications Commission*, 435 SCRA 110, 144-45 (2004)).

Another reason that the Supreme Court used to reject the assailed resolution was the primacy of the freedoms of speech, press, information, and suffrage in the hierarchy of rights<sup>47</sup> and that to impose restrictions on the same would require the presence of compelling state interest.<sup>48</sup> It ruled, through words too lengthy to bear repetition, that the bastion of democracy — elections — would be rendered inutile and altogether worthless if the media for the exchange of discourse and debate would severely be restricted.<sup>49</sup> The Supreme Court further quipped that to impose limitations on one of the preferred rights is an affront enough, to do so without a “clear-cut”<sup>50</sup> basis would be adding insult to injury.

### C. A Critique

In terms of the powers of the COMELEC to regulate the conduct of elections, the Author agrees with the Supreme Court that such exercise of a power so great should be tempered with the fundamental guarantees of due process and equal protection.<sup>51</sup> To allow an administrative agency to exercise such a power with wonton respect for no one but itself, is to revert back to the day and age when laws were just ceremonial placeholders the people look up to for false hope.<sup>52</sup> The statements made during the hearings conducted by the COMELEC — that since power was given them to amplify the rules, so should be discretion in an unchecked manner — is clearly an indication of abuse of such power.<sup>53</sup> The Author further agrees with the position taken by Senator Cayetano that the COMELEC abused this power when, despite pleas, no justification was given for the change in the interpretation of time limits.<sup>54</sup> Meanwhile, one of the petitioners, GMA Network, Inc., provided empirical data to show that the use of television as

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47. *Id.* See also *Iglesia Ni Cristo v. Court of Appeals*, 259 SCRA 529 (1996).

48. *GMA Network, Inc.*, G.R. No. 205357.

49. *Id.*

50. *Id.*

51. See generally *Loong v. Commission on Elections*, 257 SCRA 1 (1996).

52. See generally *Lokin, Jr. v. Commission on Elections*, 621 SCRA 385, 404 & 411 (2010).

53. See TSN of COMELEC Public Hearing, *supra* note 41. It can be clearly seen from the flow of the hearing that former COMELEC Chairman Brillantes did not have any plan whatsoever of providing any empirical data to support the change of interpretation made by the COMELEC despite the pleas of petitioners *Id.*

54. *GMA Network, Inc.*, G.R. No. 205357.

a medium of campaigning is a more cost-effective way of reaching out to the electorate than the traditional campaign sorties in every locality.<sup>55</sup>

However, the Author agrees with the Concurring Opinion of Justice Arturo M. Brion that the *ponencia* failed to explain why the assailed COMELEC Resolution No. 9615 violated the freedoms of speech, expression, and of the press.<sup>56</sup> The *ponencia* only anchored its arguments on these matters by providing that the limitations on political speech should be grounded on a compelling state interest.<sup>57</sup> Justice Diosdado M. Peralta only provided a definition of what a political speech is and how the same should be given unrestrictive and an effective medium for broadcast.<sup>58</sup> The Supreme Court, perhaps, failed to recall that in the case of *National Press Club v. Commission on Elections*,<sup>59</sup> the restriction on the sale or donation of advertisement spaces or airtime to individuals or political parties to equalize the electoral playing field was declared to be a *valid ground for such a restriction*.<sup>60</sup> Thus, in *National Press Club*, the leveling of the playing field was found constitutional while, in this case, perhaps, in the absence of empirical

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55. *Id.* See also THE CONSORTIUM ON ELECTORAL REFORMS AND INSTITUTE FOR POLITICAL AND ELECTORAL REFORM, THE GROUND WAR A CAMPAIGN FINANCE FIELD MONITORING IN THE 2010 PHILIPPINE NATIONAL AND LOCAL ELECTIONS 12-21 (2010).

56. *GMA Network, Inc.*, G.R. No. 205357 (J. Brion, concurring opinion).

57. *Id.*

58. *Id.*

59. *National Press Club v. Commission on Elections*, 207 SCRA 1 (1992).

60. See *GMA Network, Inc.*, G.R. No. 205357 (J. Brion, concurring opinion). In *National Press Club*, the Supreme Court even went to the extent of saying that pervasive and repetitive political advertisements constitute an affront of a person's right to privacy —

Finally, the 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 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.'

*National Press Club*, 207 SCRA at 15.

data on the side of COMELEC to justify the same, it was found lacking in sufficiency.<sup>61</sup>

Clearly, the Supreme Court put much premium on the remarks of then Chairman Brillantes that was riddled with abuse of discretion. It begs one to ask, therefore, if the ruling would have gone the same way evidence if to the contrary had been presented by the COMELEC. Nonetheless, there seems to be no issue worth discussing given the unrebutted claims of GMA Network, Inc. and Senator Cayetano that campaigning through the use of broadcast media is more cost-effective and cheaper than campaigning through the traditional sorties.<sup>62</sup> With this postulate — if one can call it that — as outstanding, not having been rebutted, then it is clear that the less-moneyed individuals eyeing public office would be afforded a greater opportunity to market his platforms and programs of government through broadcast media. By some twist of fate, perhaps, the Supreme Court's decision effectively found its way to adhere to the true intent of the Fair Elections Act, one of which is to provide equal access to all candidates of elective office, regardless of their socio-economic status.

#### *D. The Implications*

The Author posits that the status quo will remain — that there will still be a plethora of advertisements both on television and radio, and that the general conception that the rich candidates will still have a comparative advantage over those who have less money to spend.<sup>63</sup> Even if one were to accept as

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61. *Compare National Press Club*, 207 SCRA at 15 (where the Supreme Court found the restrictions on political advertisements as a valid and compelling state interest), *with GMA Network, Inc.*, G.R. No. 205357 (where the Supreme Court found the restrictions on the time limits as impinging on the constitutional rights to freedom of speech, of the press, to information, and of suffrage). Note, however, that in the latter case, the COMELEC provided no empirical evidence to explain its sudden shift to an “aggregate” basis of computing the advertisements. Another interesting point to note is that in the former case, what was assailed was a provision in Republic Act No. 6646 or the Electoral Reforms Law of 1997, while in the latter case, it was an administrative interpretation that was assailed. From the foregoing, it can be inferred that the SC gave much deference to the legislative prerogatives of Congress while the same was not afforded the COMELEC, which merely issued a COMELEC Resolution. *Id.*

62. Cayetano urges COMELEC to reverse ruling on candidate airtime restriction, *available at* <http://www.ptvnews.ph/bottom-news-life2/11-11-nation-submenu/14043-cayetano-urges-COMELEC-to-reverse-ruling-on-candidate-airtime-restriction> (last accessed July 29, 2015).

63. *See generally* Julio Teehankee, *Electoral Politics in the Philippines*, in *ELECTORAL POLITICS IN SOUTHEAST & EAST ASIA* 162-75 (Aurel Croissant & Marei John, eds., 2002).

true the assertion that campaigning through broadcast media is far more cost-effective and cheaper than local campaign sorties, the cost of procuring airtime in media outfits is still very expensive. Thus, the bottom line remains — only the rich candidates will be able to avail of this media. This remains to be both the sad and daunting reality that plague the Philippine electoral system today.

However, the Author also believes that, with the COMELEC's increased surveillance over media outfits concerning compliance with broadcast limits, the candidates will be more conscious of the amount of airtime that they consume. As will be discussed in the latter part of this Article, the COMELEC is given the power to review contracts entered into between candidates and media outfits, in line with its duty to regulate both the time-limit and financial aspects of campaign.

It may also be good to note that spending millions on the campaign does not give a candidate a sure ticket to winning. In 2013, the 12 highest election spenders were the following:<sup>64</sup>

Candidate Name	Amount Spent (in ₱)	Electoral Result (Rank)
Enrile, Juan Ponce Jr. C.	150,401,072.09	Lost (15th)
Ejercito, Joseph Victor G.	138,207,825.76	Won (11th)
Villar, Cynthia A.	133,979,127.25	Won (10th)
Aquino, Paolo Benigno A.	131,044,782.33	Won (7th)
Cayetano, Alan Peter S.	128,695,057.10	Won (3d)
Binay, Maria Lourdes Nancy S.	124,327,987.81	Won (5th)
Poe-Llamanzares, Mary Grace S.	123,448,994.86	Won (1st)
Angara, Juan Edgardo M.	120,136,752.86	Won (6th)
Escudero, Francis Joseph G.	100,723,309.10	Won (4th)
Hontiveros-Barraquiel, Ana Theresia N.	88,628,348.11	Lost (17th)
Legarda, Loren B.	83,034,205.00	Won (2d)
Pimentel, Aquilino III	75,552,863.49	Won (8th)

The highest election spender, Juan Ponce C. Enrile, Jr., failed to win a Senate seat.<sup>65</sup> Senators Antonio F. Trillanes IV, who spent ₱30,135,014.77,<sup>66</sup>

64. See Enrile is 2013 election's biggest spender, *available at* <http://archive.sunstar.com.ph/manila/local-news/2013/06/17/enrile-2013-election-s-biggest-spender-287838> (last accessed June 23, 2015).

65. See Carmela Fonbuena, Jack Enrile not closing doors on 2016, *available at* <http://www.rappler.com/nation/30688-jack-enrile-2016-plans> (last accessed July 29, 2015).

and Gregorio B. Honasan II, who spent ₱24,111,848.96,<sup>67</sup> placed ninth and 12th, respectively.<sup>68</sup> If the results of the 2013 would be an indication of anything, it would be that spending multitudes of money does not guarantee electoral victory.

While *GMA Network, Inc.* only touched upon mainstream media, no sufficient law or COMELEC regulation has been passed to regulate campaigning in other forms of media, such as the internet and social media.<sup>69</sup> What is in place, however, is the same COMELEC Resolution No. 9615, which provides the restrictions on the size and pixels of online election propaganda.<sup>70</sup> It will be recalled that in 2010, internet users were

66. See COMELEC, Statement of Election Contributions and Expenditures of Senatorial Candidate Antonio F. Trillanes IV, *available at* [http://www.comelec.gov.ph/uploads/downloadables/2013NLESOCE/SENATORIAL/Trillanes\\_Antonio\\_IV/SOCE.pdf](http://www.comelec.gov.ph/uploads/downloadables/2013NLESOCE/SENATORIAL/Trillanes_Antonio_IV/SOCE.pdf) (last accessed July 29, 2015).

67. See COMELEC, Statement of Contributions and Expenditures of Senatorial Candidate Gregorio B. Honasan II, *available at* [http://www.comelec.gov.ph/uploads/downloadables/2013NLESOCE/SENATORIAL/Honasan\\_Gringo/SOCE.pdf](http://www.comelec.gov.ph/uploads/downloadables/2013NLESOCE/SENATORIAL/Honasan_Gringo/SOCE.pdf) (last accessed July 29, 2015).

68. COMELEC, May 13, 2013 National and Local Elections, *available at* <http://www.COMELEC.gov.ph/?r=Archives/RegularElections/2013NLE/Results/SenatorialElections2013> (last accessed July 29, 2015).

69. Camille Diola, *COMELEC: No rules on online political campaign*, PHIL. STAR, Feb. 20, 2013, *available at* <http://www.philstar.com/headlines/2013/02/20/911129/comelec-no-rules-online-political-campaign> (last accessed July 29, 2015).

70. Section 9 of COMELEC Res. No. 9615 provides —

c. Online Election Propaganda

The maximum size of online propaganda for each candidate, whether for a national or local elective position, or party shall be as follows:

Name	Width/pixels	Height/pixels	Aspect Ratio
Rectangles and Pop-ups			
Medium	300	250	1.2
Square Pop-up	250	250	1
Vertical Rectangle	240	400	1.67
Large Rectangle	336	280	1.2
Rectangle	180	150	1.2
3:1 Rectangle	300	100	3
Pop-Under	7.20	300	2.4
Banners and Buttons			
Full Banner	468	60	7.8
Half Banner	234	60	3.9
Micro-Bar	88	31	2.84

“treated” to campaign videos of certain presidential candidates whenever they tried to access YouTube videos on the internet.<sup>71</sup> This, apparently, costs money as they take the form of “boosted” posts on the internet.<sup>72</sup> Therefore, one can expect that in the months before the elections, there would be an increase in the amount of sponsored and “boosted” posts not only on YouTube but also on other social media platforms. This advent does not even take into account the use of unrestricted use of unlimited text messaging sent by a pre-paid number to millions of mobile phone users with both electoral and black propaganda as contents.<sup>73</sup> To say that this method of electoral advertisement warrants COMELEC regulation is an understatement. Nevertheless, for the latter to successfully do so, it should anchor its actions not on haste, but on empirical data.

IV. THE FINANCIAL REGULATION OF ELECTORAL CAMPAIGN —  
EJERCITO V. COMMISSION ON ELECTIONS

Button 1	120	90	1.33
Button 2	120	60	2
Vertical Banner	120	240	2
Square Button	125	125	1
Leaderboard	728	90	8.09
Skyscrapers			
Wide skyscraper	160	600	3.75
Skyscraper	120	600	5
Half-Page ad	300	600	2

Said online advertisement, whether procured by purchase, or given free of charge, shall not be published more than three times a week per website during the campaign period. For this purpose, the exhibition or display of the online advertisement for any length of time, regardless of frequency, within a 24 hour period, shall be construed as one instance of publication.

COMELEC Res. No. 9615, § 9 (c).

71. See generally RAUL PERTIERRA, *THE NEW MEDIA, SOCIETY & POLITICS IN THE PHILIPPINES 20-29* (2012).
72. See YouTube, *Start Advertising on YouTube*, available at <https://www.youtube.com/yt/advertise/> (last accessed July 29, 2015). See also Eric Siu, *Looking For New Ways to Reach Customers? Try YouTube Advertising*, available at <http://www.forbes.com/sites/theyec/2014/05/08/looking-for-new-ways-to-reach-customers-try-youtube-advertising/> (last accessed July 29, 2015).
73. Jaemark Tordecilla, *Text blast blabber*, available at <http://pcij.org/stories/text-blast-blabber/> (last accessed July 29, 2015).

### A. *The Case*

One of the provisions of the Omnibus Election Code (OEC)<sup>74</sup> provides for the penalty of disqualification for every candidate who spends, in his election campaign, an excess of what is allowed by law.<sup>75</sup> To implement this provision of the OEC, the COMELEC issued Resolution No. 9615, the same resolution involved in *GMA Network, Inc.* Section 5 of the Resolution provides for the authorized expenses of candidates and parties, to wit —

The aggregate amount that a candidate or party may spend for election campaign shall be as follows:

- (a) For candidates – Three pesos (₱3.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy;
- (b) For other candidates without any political party and without support from any political party – Five pesos (₱5.00) for every voter currently registered in the constituency where the candidate filed his certificate of candidacy.
- (c) For Political Parties and party-list groups – Five pesos (₱5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.<sup>76</sup>

For allegedly violating the provisions of the OEC vis-à-vis COMELEC Resolution No. 9615, a disqualification case was filed against Laguna Governor Emilio Ramon “E.R.” P. Ejercito before the COMELEC.<sup>77</sup> From the records of the complainants, it would appear that Ejercito spent a minimum of ₱23,730,784.00 on television advertisements alone.<sup>78</sup> This is a clear and blatant violation of the maximum amount imposed by the COMELEC Resolution No. 9615, which would have effectively meant a cap of ₱4,576,566.00 for a gubernatorial run in Laguna that had a total of 1,525,522 registered voters.<sup>79</sup>

Ejercito raised the primary defense that the evidence submitted by the complainants, who, incidentally, lost to Ejercito for the gubernatorial race, were “speculative, self-serving, and uncorroborated by any other substantial

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74. Omnibus Election Code of the Philippines [OMNIBUS ELECTION CODE], Batas Pambansa Bilang 881, as Amended (1985).

75. *Id.* art. IX, § 68 (c).

76. COMELEC Res. No. 9615, § 5.

77. Kristine Angeli Sabillo, *ER Ejercito disqualified by Comelec for poll overspending*, PHIL. DAILY INQ., Sep. 26, 2013, available at <http://newsinfo.inquirer.net/495575/er-ejercito-disqualified-by-comelec-for-poll-overspending> (last accessed July 29, 2015).

78. *Ejercito*, G.R. No. 212398.

79. *Id.*



evidence.”<sup>80</sup> Ejercito also invoked the ruling of the Supreme Court in *Sinaca v. Mula*,<sup>81</sup> claiming that clout on his eligibility to become governor has been rendered moot by his proclamation as Governor.<sup>82</sup>

Acting favorably on the disqualification case, Ejercito was disqualified for the position of Laguna Governor for having violated the provisions of the OEC on overspending.<sup>83</sup> Ejercito appealed this decision of the COMELEC en banc arguing, among others, that the COMELEC division failed to afford Ejercito due process when the former refused to consider the absence of a finding of a competent court that the latter committed the alleged offense of overspending<sup>84</sup> and that the division relied on documentary evidence not formally offered.<sup>85</sup>

The main theory of Ejercito hinges on the argument that there happened a substantial amendment of the initial complaint filed against him — from a disqualification case under Section 68 of the OEC to one of an electoral offense, which should be prosecuted under Section 265 of the OEC.<sup>86</sup> Ejercito claimed that since there was a substantial amendment in the case filed against him and there was neither preliminary investigation nor finding of guilt by a competent court, the order to disqualify him was riddled with violations of due process.<sup>87</sup> As a corollary, he claimed that the evidence submitted by the other party against him was not admissible having not been formally offered in the proceedings.<sup>88</sup>

### *B. The Ratio*

The Supreme Court, again speaking through Justice Peralta, ruled that the COMELEC had the power to disqualify Ejercito from serving as Laguna Governor for violating the overspending provisions of the OEC.<sup>89</sup>

Dismissing the argument that Ejercito’s right to due process was violated, the Supreme Court declared that the COMELEC had the power

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80. *Id.*

81. *Sinaca v. Mula*, 315 SCRA 266 (1999).

82. *Ejercito*, G.R. No. 212398 (citing *Sinaca*, 315 SCRA at 281).

83. Philippine Daily Inquirer, *What Went Before: ER Ejercito’s disqualification as Laguna gov*, PHIL. DAILY INQ., Nov 26, 2014, available at <http://newsinfo.inquirer.net/652862/what-went-before-er-ejercitos-disqualification-as-laguna-gov> (last accessed July 29, 2015).

84. *Id.* See also *Ejercito*, G.R. No. 212398.

85. *Ejercito*, G.R. No. 212398.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

not only to prosecute an erring candidate for electoral offenses but also to disqualify them if the grounds enumerated by the law were present.<sup>90</sup> The Supreme Court relied on its decision in *Codilla, Sr. v. De Venecia*,<sup>91</sup> where it ruled that the COMELEC had the power to disqualify candidates if the grounds provided by the Section 68 were present.<sup>92</sup> According to the Supreme Court, Ejercito could not “feign ignorance”<sup>93</sup> as to the nature of the petition to disqualify him since the averments were clear — that the main cause of action was for violating the spending limits imposed by law<sup>94</sup> — and the corresponding penalties for such a violation were also clearly provided by the OEC.

The Supreme Court also went to declare that the COMELEC need not go through the process of preliminary investigation if the case pending before it is one of disqualification.<sup>95</sup> It only needs to go through the process of preliminary investigation if the case pertains to the criminal aspect of the disqualification case.<sup>96</sup> The Supreme Court, citing *Lanot v. Commission on Elections*,<sup>97</sup> ruled that the electoral aspect of a disqualification case *per se* is different from the criminal aspect of a disqualification case —

The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. *An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and vice-versa.*

The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender,

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90. *Id.*

91. *Codilla, Sr. v. De Venecia*, 393 SCRA 639 (2002).

92. *Id.* at 670.

93. *Ejercito*, G.R. No. 212398.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Lanot v. Commission on Elections*, 507 SCRA 114 (2006).

which may even include disqualification from holding a future public office.<sup>98</sup>

In terms of the evidence submitted, and that the same failed to meet the standards enunciated by the rules on evidence, the Supreme Court was quick to rebut this contention by asserting that the Rules of Court do not apply to electoral cases “except by analogy or in a suppletory character and whenever practicable and convenient.”<sup>99</sup> Citing the internal rules of the COMELEC, the Supreme Court also invoked the COMELEC Rules of Procedure, which provide that “[t]he rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful[,] and credible elections and to achieve *just, expeditious[,] and inexpensive determination and disposition of every action and proceeding* brought before the [COMELEC]”<sup>100</sup> and that “[i]n the interest of justice and in order to obtain *speedy disposition of all matters* pending before the [COMELEC], [the] rules or any portion thereof may be suspended by the [COMELEC].”<sup>101</sup> Perhaps the best way to summarize the Supreme Court’s dismissal of the contentions of Ejercito on the remedial aspect is to quote a previous case by the Supreme Court also cited in the *ponencia* —

Settled is the rule that the COMELEC Rules of Procedure are subject to liberal construction. The COMELEC has the power to liberally interpret or even suspend its rules of procedure in the interest of justice, including obtaining a speedy disposition of all matters pending before it. This liberality is for the purpose of promoting the effective and efficient implementation of its objectives — ensuring the holding of free, orderly, honest, peaceful, and credible elections, as well as achieving just, expeditious, and inexpensive determination and disposition of every action and proceeding brought before the COMELEC. Unlike an ordinary civil action, an election contest is imbued with public interest. It involves not only the adjudication of private and pecuniary interests of rival candidates, but also the paramount need of dispelling the uncertainty which beclouds the real choice of the electorate. And the tribunal has the corresponding duty to ascertain, by all means within its command, whom the people truly chose as their rightful leader.<sup>102</sup>

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98. *Ejercito*, G.R. No. 212398 (citing *Lanot*, 507 SCRA at 139-40) (emphasis supplied).

99. 1997 RULES OF CIVIL PROCEDURE, rule 1, § 4.

100. COMELEC, The 1993 Commission on Elections Rules of Procedure [1993 COMELEC Rules of Procedure], rule 1, § 3 (Feb. 15, 1993) (emphasis supplied).

101. *Id.* § 4 (emphasis supplied).

102. *Ejercito*, G.R. No. 212398 (citing *Hayudini v. Commission on Elections*, 723 SCRA 223, 242-43 (2014)).

The Supreme Court also culled from statutes the power of the COMELEC to inquire into campaign expenditures on the basis of advertising contracts submitted to the same.<sup>103</sup> The Fair Elections Act require all media entities to “furnish the COMELEC with a copy of all contracts for advertising, promoting[,] or opposing any political party or the candidacy of any person for public office within five [ ] days after its signing.”<sup>104</sup> The implementing regulations of the Fair Elections Act authorize the Campaign Finance Unit of the COMELEC to:

- (a) *Monitor* fund raising and *spending activities*;
- (b) *Receive and keep* reports and statements of candidates, parties, contributors[,] and election contractors, and *advertising contracts of mass media entities*;
- (c) *Compile and analyze the reports* and statements as soon as they are received and make an *initial determination of compliance*;
- (d) *Develop and manage a recording system* for all reports, statements, and contracts received by it and to digitize information contained therein;
- (e) Publish the digitized information gathered from the reports, statements[,] and contracts and make them available to the public;
- (f) Develop a reportorial and monitoring system;
- (g) *Audit all reports, statements[,] and contracts and determine compliance by the candidates, parties, contributors, and election contractors, including the inspection of [b]ooks and records of candidates, parties[,] and mass media entities and issue subpoenas in relation thereto and submit its findings to the [COMELEC en banc]*;
- (h) Coordinate with and/or assist other departments/offices of the [COMELEC] receiving related reports on Campaign Finance including prosecution of violators and collection of fines and/or imposition of perpetual disqualification; [and]
- (i) Perform other functions as ordered by the [COMELEC].<sup>105</sup>

From the foregoing, it can be seen that the COMELEC indeed has the power to receive advertising contracts entered into by a political candidate and a media outfit as part of the latter's duties as mandated by law. Not only has the COMELEC been given the power to be furnished a copy of the said contracts, the COMELEC also has the power to audit and determine compliance by candidates of regulatory laws on campaign and expenditure.

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103. *Id.*

104. Fair Elections Act, § 6.3.

105. Commission on Elections, Rules and Regulations Governing Campaign Finance and Disclosure in Connection with the 13 May 2013 National and Local Elections and Subsequent Elections Thereafter, Resolution No. 9476 [COMELEC Res. No. 9476], rule 2, § 1 (June 22, 2012) (emphasis supplied).

These were not rebutted by Ejercito in his petition nor did he claim the same as an undue delegation of power. That the COMELEC has both the duty and power to keep and audit these advertising contracts is clear in law.<sup>106</sup>

### *C. A Critique*

To say that the COMELEC has the power to disqualify a candidate for exceeding the expenditure limits imposed by law is clear and without question, both from a textual and a substantial standpoint.<sup>107</sup> The law, itself, is clear and replete with provisions that make a candidate liable for disqualification should he or she exceed the amount set by law.<sup>108</sup> Perhaps, what is most striking about this case is that this is the first time in recent vintage that a highly popular candidate for public office has ever been stripped of his or her position solely on the basis of overspending.<sup>109</sup> Normally, the Filipinos have been accustomed to being bombarded by campaign materials both on soft and hard media. For the longest time, no one has ever been charged with campaign overspending, and no one as high profile as Ejercito has ever been found guilty of and punished for the same.<sup>110</sup> Nothing illegal can ever be tolerated by prolonged use. Therefore, it is laudable that the COMELEC has taken up the cudgels when it decided to be stricter in implementing this equalizing measure. Ejercito bewails being a victim of political persecution, given that his family is in the opposition. The issue of political biases and persecution should altogether be tackled in a separate discourse for it would entail the use of a different lens to view the scenario from. But the clear thing visible in this action by the COMELEC is that its mandate to enforce the law was buttressed.

However, one thing remains unclear — the applicability of the case to national officials. This case involved a local position whose qualifications are determined by law.<sup>111</sup> Will the provisions on overspending apply even to constitutional offices such as the Offices of the President, the Vice President, the Senate, and the House of Representatives? Lest it be forgotten that in

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106. *Ejercito*, G.R. No. 212398.

107. *Id.*

108. See OMNIBUS ELECTION CODE, art. IX, § 68 (c) & *Ejercito*, G.R. No. 212398.

109. See Rose-An Jessica Dioquino, ER Ejercito cries foul over ‘unfair’ treatment of Aquino administration, available at <http://www.gmanetwork.com/news/story/390492/news/nation/er-ejercito-cries-foul-over-unfair-treatment-of-aquino-administration> (last accessed July 29, 2015).

110. Miguel Gamara, Overspending to Victory: COMELEC rules to disqualify ER Ejercito as Laguna gov, available at <http://pcij.org/stories/COMELEC-rules-to-disqualify-er-ejercito-as-laguna-gov/> (last accessed July 29, 2015).

111. *Ejercito*, G.R. No. 212398.

the case of *Social Justice Society (SJS) v. Dangerous Drugs Board*,<sup>112</sup> the SC declared unconstitutional the addition of drug testing as a requisite for one to be considered a senatorial candidate.<sup>113</sup> This was tantamount to an expansion of the constitutionally-listed requirements for the position of Senator.<sup>114</sup> This clearly is an unsettled question.

#### *D. The Implications*

From the reports of compliance by the COMELEC on the candidates' submission of Statement of Election Contributions and Expenditures (SOCE),<sup>115</sup> it can be seen that that candidates are now, more than ever, conscious of how much money they spend on the campaign.<sup>116</sup> The Author opines that in the coming 2016 national elections, there would be increased compliance with both the limitations on campaign spending and the reportorial requirements of the candidates and the media outfits. It can also be recalled that in 2013, as many as 424 local officials were asked to vacate their offices for failing to sign their SOCE themselves, among other infractions.<sup>117</sup> Yet, despite stirring criticisms from election law experts, the COMELEC still decided to push through with penalizing the violators.

Another interesting point, and as what has been discussed in the analysis of the case of *GMA Network, Inc.*, is the use of below-the-line advertising and other platforms that entail no cost, such as social media and sponsored websites. For example, a social media account, such as Facebook, would have the "boost" feature where the reach of a post (e.g., status, photo, video, etc.) would be greater if the user will pay a premium or a fee.<sup>118</sup> Does the website owner, such as Facebook, qualify as a media outfit that is required to submit to the COMELEC "contracts," "reports," or receipts

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112. *Social Justice Society (SJS) v. Dangerous Drugs Board*, 570 SCRA 410 (2008).

113. *Id.* at 425.

114. *Id.* at 424.

115. See generally Gabriel Cardinoza, *COMELEC, Pangasinan execs say Espino filed SOCE on time*, PHIL. DAILY INQ., Dec. 12, 2013, available at <http://newsinfo.inquirer.net/545231/COMELEC-pangasinan-execs-say-espino-filed-soce-on-time> (last accessed July 29, 2015).

116. Sheila Crisostomo, *COMELEC pushes anew increase in campaign spending*, PHIL. STAR, Apr. 9, 2015, available at <http://www.philstar.com/headlines/2015/04/09/1441842/COMELEC-pushes-anew-increase-campaign-spending> (last accessed July 29, 2015).

117. Miriam Grace Go, *COMELEC 'can't unseat elected pols.'* available at <http://www.rappler.com/nation/45795-soce-flaws-COMELEC-cannot-unseat-officials> (last accessed July 29, 2015).

118. Facebook, *How much does it cost to boost a post?*, available at <https://www.facebook.com/help/344177172342419> (last accessed July 29, 2015). See also YouTube, *supra* note 72.

that involve candidates? Given that the payments for these transactions are normally done over the internet and the veracity of the owner of such online accounts can be easily called into question, is this not an indirect way of subverting the intent of the law on overspending? Another example would be the sponsored videos on YouTube. Before a user is able to view the video he or she wants, a sponsored video would be flashed and previewed before the actual video is loaded.<sup>119</sup> This entails cost. How would the reporting system for this be?

It can be gainsaid that the stricter implementation on overspending laws will cause greater compliance with the law. However, this is not without the intellectual and cunning resort to loopholes in the law, such as the use of boosted posts on social media platforms.

#### V. SIGNS OF THINGS TO COME?

To remedy the loopholes that have been identified by the two cases discussed is to go to Congress to amend the applicable and pertinent laws. The most pressing of all these loopholes is the lack of any law that would regulate the campaign and expenditure done through the internet, social media, and other “below-the-line”<sup>120</sup> methods. Clearly, using these media means reaching a wide viewership at a cheaper cost. But cheap cost is still money that falls within the definition of expenditure in election laws and are subject to limitations. The COMELEC has issued regulations for online campaigning<sup>121</sup> but the same is too narrow in definition and does not comprehend the full and diverse milieu of forms by which advertising through the internet and other contemporary broadcasting is carried out. The COMELEC regulation is highly susceptible to litigation for being issued in violation of the doctrine of delegation of powers, for the Fair Elections Act does not even define nor mention online campaigning. It is, therefore, an imperative that a law be enacted to cover this.

Another thing that need be remedied is strengthening the powers of the COMELEC to access, review, and audit the reportorial requirements submitted to it to monitor compliance with air time and expenditure limits. Only the implementing rules and regulations of the Fair Elections Act outlines what the powers of the COMELEC have when it comes to these

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119. See YouTube, *supra* note 72.

120. Business Case Studies, Using promotion to campaign for public services: A UNISON case study, available at <http://businesscasestudies.co.uk/unison/using-promotion-to-campaign-for-public-services/below-the-line-promotion.html> (last accessed July 29, 2015).

121. See generally COMELEC Res. No. 9615, § 9 (c)-(d).

documents.<sup>122</sup> Although an administrative agency is bridled with powers broad enough to advance powers germane to its general functions and purposes,<sup>123</sup> the possibility of constitutional litigation on the ground of undue delegation is still highly likely. It is, therefore, imperative that the Fair Elections Act be amended to vest the COMELEC with investigatory and prosecutorial powers over electoral campaign and expenditure.

The unrestricted use of text messaging should also be regulated, as unlimited text messaging is exceedingly predominant nowadays.<sup>124</sup> This feature is prone to abuse by electoral candidates. With the House of Representatives having the delayed foresight of enacting a service identification module (SIM) card registration law,<sup>125</sup> they should also, perhaps, amend the Fair Elections Act to include regulatory mechanisms for election campaign done through text messaging. This does not even consider the provisions of the Cybercrime Prevention Act of 2012<sup>126</sup> on “unsolicited commercial transactions”<sup>127</sup> over spam e-mails in the internet.

122. COMELEC Res. No. 9615, § 9 (d) (3) & COMELEC Res. No. 9476, rule 2, § I.

123. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., *ADMINISTRATIVE LAW TEXT AND CASES* 84 (2013 2d.).

124. Tordecilla, *supra* note 73.

125. *See* An Act Requiring the Registration of All Users of Prepaid Subscriber Identity Module (SIM) Cards, H.B. No. 5231, 16th Cong., 2d Reg. Sess. (2014).

126. An Act Defining Cybercrime, Providing for the Prevention, Investigation, Suppression and the Imposition of Penalties Therefor and for Other Purposes [Cybercrime Prevention Act of 2012], Republic Act No. 10175 (2011).

127. *Id.* § 4 (c) (3). This Provision provides that

[t]he transmission of commercial electronic communication with the use of computer system which seek to advertise, sell, or offer for sale products and services are prohibited unless:

- (i) There is prior affirmative consent from the recipient; or
- (ii) The primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
- (iii) The following conditions are present:
  - (aa) The commercial electronic communication contains a simple, valid, and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;
  - (bb) The commercial electronic communication does not purposely disguise the source of the electronic message; and



To finally settle the issue of the “aggregate” or “per station” question in airtime limits, it is submitted that the Fair Elections Act be amended to finally clarify its language. The Author recommends that a contingent legislation provision<sup>128</sup> be included to empower the COMELEC to adjust the time limits imposed by law based on the presence or absence of certain indicators. For example, if there be a time that the cost of broadcasting campaign materials through television would undoubtedly be cheaper, so much so that it would be, without a doubt, the most cost-effective and equalizing means of reaching out to the electorate, then the COMELEC, by virtue of the said contingent legislation provision, adjust the time limit to a higher maximum.

An all-too-important loophole that needs rectification is the jurisprudential pronouncement in *Penera v. Commission on Elections*<sup>129</sup> that the operative act that renders one a candidate and, thus, being legally able to violate the premature campaigning provisions of the law.<sup>130</sup> Both of the cases reveal this great loophole. Advertisements, which primarily aim to attract and solicit votes by portraying programs of government and political promises under the guise of information dissemination campaigns, are aplenty even this early.<sup>131</sup> It would be an understatement to state that these are obviously calculated to incite awareness in the public about the future candidates. Another understatement is that these television spots cost money. Therefore, the continued reliance on the *Penera* doctrine subverts the intention of the law to prevent premature campaigning. This has to be remedied by Congress.

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(cc) The commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.

*Id.*

128. See *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330 (1997). In this case, the Supreme Court declared valid the provision that allowed the President to accelerate the activation of the Oil Deregulation Law if the indicators outlined by law were present. *Id.* at 386.

129. *Penera v. Commission on Elections*, 599 SCRA 609 (2009).

130. *Id.* at 638 & 642-43. This case effectively removes teeth from the provisions of the law against premature campaigning. In a nutshell, a person who has not yet filed his Certificate of Candidacy (COC) is not considered a “candidate” within the meaning of law and, thus, is not liable for premature campaigning. Therefore, a void in the law exists when a person can run broadcast an unlimited amount of political platforms and then claim the defense of the *Penera* doctrine as defense in arguing that the premature campaigning clause does not apply to a person who is not yet, legally, defined as a candidate. *Id.*

131. CNN Philippines Staff, Who do you want as the next president of the Philippines?, available at <http://cnnphilippines.com/news/2015/04/22/survey-bet-for-president-philippines-2016.html> (last accessed July 29, 2015).

One thing that is uncertain as of today lies with the fact that there is a new COMELEC Chairperson in the person of Juan Andres D. Bautista and two Commissioners, Rowena Amelia V. Guanzon and Sheriff Abbass.<sup>132</sup> How the COMELEC will fair under the leadership of the newly-composed en banc is definitely a sight for the interested mind — something that will affect not just the next six years of Philippine history but almost surely, long-term.

## VI. CONCLUSION

The two cases parsed reveal two important things: first, that the SC will tread very carefully on the regulatory powers of the COMELEC on electoral campaign and expenditure when the same trample on preferred rights, such as the freedoms of speech, press, information, and suffrage or when they are entered into with wanton abuse; and second, that the SC will not be afraid to reiterate the powers of the COMELEC to enforce electoral-leveling measures if the same are clearly grounded on statute. If there is one thing that is certain amongst all these, it the fanfare that surrounds Philippine elections and how enamored the Filipinos are in participating in the process. While in the past, Filipinos have been blind followers of the moneyed and well-publicized candidates, one can see today a discerning voter — one who sees beyond the money and the propaganda and looks into the real intentions and platforms of the candidates. To achieve a staggeringly high rate of voter literacy in the Philippines would leave at a void the need to remedy the electoral campaign and expenditure laws in the country.

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132. Andreo Calonzo, PCGG chief Bautista named new Comelec chair, *available at* <http://www.gmanetwork.com/news/story/481178/news/nation/pcgg-chief-bautista-named-new-COMELEC-chair> (last accessed July 29, 2015).