

EN BANC

[G.R. No. 205357, September 02, 2014]

GMA NETWORK, INC., PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT. SENATOR ALAN PETER "COMPAÑERO" S. CAYETANO, PETITIONER-INTERVENOR.

[G.R. NO. 205374]

ABC DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

[G.R. NO. 205592]

MANILA BROADCASTING COMPANY, INC. AND NEWSOUNDS BROADCASTING NETWORK, INC., PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

[G.R. NO. 205852]

KAPISANAN NG MGA BRODKASTER NG PILIPINAS (KBP) AND ABS-CBN CORPORATION, PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

[G.R. NO. 206360]

RADIO MINDANAO NETWORK, INC., PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

D E C I S I O N

PERALTA, J.:

"The clash of rights demands a delicate balancing of interests approach which is a fundamental postulate of constitutional law."^[1]

Once again the Court is asked to draw a carefully drawn balance in the incessant conflicts between rights and regulations, liberties and limitations, and competing demands of the different segments of society. Here, we are confronted with the need to strike a workable and viable equilibrium between a constitutional mandate to maintain free, orderly, honest, peaceful and credible elections, together with the aim of ensuring equal opportunity, time and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates,^[2] on one hand, and the imperatives of a republican and democratic state,^[3] together with its guaranteed rights of suffrage,^[4] freedom of speech and of the press,^[5] and the people's right to information,^[6] on the other.

In a nutshell, the present petitions may be seen as in search of the answer to the question – **how does the Charter of a republican and democratic State achieve a viable and acceptable balance between liberty, without which, government becomes an unbearable tyrant, and authority, without which, society becomes an intolerable and dangerous arrangement?**

Assailed in these petitions are certain regulations promulgated by the Commission on Elections (*COMELEC*) relative to the conduct of the 2013 national and local elections dealing with political advertisements. Specifically, the petitions question the constitutionality of the limitations placed on aggregate airtime allowed to candidates and political parties, as well as the requirements incident thereto, such as the need to report the same, and the sanctions imposed for violations.

The five (5) petitions before the Court put in issue the alleged unconstitutionality of Section 9 (a) of COMELEC Resolution No. 9615 (Resolution) limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively. They contend that such restrictive regulation on allowable broadcast time violates freedom of the press, impairs the people’s right to suffrage as well as their right to information relative to the exercise of their right to choose who to elect during the forthcoming elections.

The heart of the controversy revolves upon the proper interpretation of the limitation on the number of minutes that candidates may use for television and radio advertisements, as provided in Section 6 of Republic Act No. 9006 (*R.A. No. 9006*), otherwise known as the *Fair Election Act*. Pertinent portions of said provision state, thus:

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 on by the COMELEC:

x x x x

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

b. Each bona fide candidate or registered political party for a locally elective office shall be entitled to not more than sixty (60) minutes of television advertisement and ninety (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.

During the previous elections of May 14, 2007 and May 10, 2010, COMELEC issued Resolutions implementing and interpreting Section 6 of R.A. No. 9006, regarding airtime limitations, to mean that a candidate is entitled to the aforesaid number of minutes "per station."^[7] For the May 2013 elections, however, respondent COMELEC promulgated Resolution No. 9615 dated January 15, 2013, changing the interpretation of said candidates' and political parties' airtime limitation for political campaigns or advertisements from a "per station" basis, to a "total aggregate" basis.

Petitioners ABS-CBN Corporation (*ABS-CBN*), ABC Development Corporation (*ABC*), GMA Network, Incorporated (*GMA*), Manila Broadcasting Company, Inc. (*MBC*), Newsounds Broadcasting Network, Inc. (*NBN*), and Radio Mindanao Network, Inc. (*RMN*) are owners/operators of radio and television networks in the Philippines, while petitioner Kapisanan ng mga Brodkaster ng Pilipinas (*KBP*) is the national organization of broadcasting companies in the Philippines representing operators of radio and television stations and said stations themselves. They sent their respective letters to the COMELEC questioning the provisions of the aforementioned Resolution, thus, the COMELEC held public hearings. Thereafter, on February 1, 2013, respondent issued Resolution No. 9631 amending provisions of Resolution No. 9615. Nevertheless, petitioners still found the provisions objectionable and oppressive, hence, the present petitions.

All of the petitioners assail the following provisions of the Resolution:

a) Section 7 (d),^[8] which provides for a penalty of suspension or revocation of an offender's franchise or permit, imposes criminal liability against broadcasting entities and their officers in the event they sell airtime in excess of the size, duration, or frequency authorized in the new rules;

b) Section 9 (a),^[9] which provides for an "aggregate total" airtime instead of the previous "per station" airtime for political campaigns or advertisements, and also required prior COMELEC approval for candidates' television and radio guestings and appearances; and

c) Section 14,^[10] which provides for a candidate's "right to reply."

In addition, petitioner ABC also questions Section 1 (4)^[11] thereof, which defines the term "political advertisement" or "election propaganda," while petitioner GMA further assails Section 35,^[12] which states that any violation of said Rules shall constitute an election offense.

On March 15, 2013, Senator Alan Peter S. Cayetano (*Petitioner-Intervenor*) filed a Motion for Leave to Intervene and to File and Admit the Petition-in-Intervention, which was granted by the Court per its Resolution dated March 19, 2013. Petitioner-Intervenor also assails Section 9 (a) of the Resolution changing the interpretation of candidates' and political parties' airtime limitation for political campaigns or advertisements from a "per station" basis, to a "total aggregate" basis.

Petitioners allege that Resolutions No. 9615 and 9631, amending the earlier Resolution, are unconstitutional and issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, for the reasons set forth hereunder.

Petitioners posit that Section 9 (a) of the assailed Resolution provides for a very restrictive aggregate airtime limit and a vague meaning for a proper computation of "aggregate total" airtime, and violates the equal protection guarantee, thereby defeating the intent and purpose of R.A. No. 9006.

Petitioners contend that Section 9 (a), which imposes a notice requirement, is vague and infringes on the constitutionally protected freedom of speech, of the press and of expression, and on the right of people to be informed on matters of public concern

Also, Section 9 (a) is a cruel and oppressive regulation as it imposes an unreasonable and almost impossible burden on broadcast mass media of monitoring a candidate's or political party's aggregate airtime, otherwise, it may incur administrative and criminal liability.

Further, petitioners claim that Section 7 (d) is null and void for unlawfully criminalizing acts not prohibited and penalized as criminal offenses by R.A. No. 9006.

Section 14 of Resolution No. 9615, providing for a candidate's or political party's "right to reply," is likewise assailed to be unconstitutional for being an improper exercise of the COMELEC's regulatory powers; for constituting prior restraint and infringing petitioners' freedom of expression, speech and the press; and for being violative of the equal protection guarantee.

In addition to the foregoing, petitioner GMA further argues that the Resolution was promulgated without public consultations, in violation of petitioners' right to due process. Petitioner ABC also avers that the Resolution's definition of the terms "political advertisement" and "election propaganda" suffers from overbreadth, thereby producing a "chilling effect," constituting prior restraint.

On the other hand, respondent posits in its Comment and Opposition^[13] dated March 8, 2013, that the petition should be denied based on the following reasons:

Respondent contends that the remedies of *certiorari* and prohibition are not available to petitioners, because the writ of certiorari is only available against the COMELEC's adjudicatory or quasi-judicial powers, while the writ of prohibition only lies against the exercise of judicial, quasi-judicial or ministerial functions. Said writs do not lie against the COMELEC's administrative or rule-making powers.

Respondent likewise alleges that petitioners do not have locus standi, as the constitutional rights and freedoms they enumerate are not personal to them, rather, they belong to candidates, political parties and the Filipino electorate in general, as the limitations are imposed on candidates, not on media outlets. It argues that petitioners' alleged risk of exposure to criminal liability is insufficient to give them legal standing as said "fear of injury" is highly speculative and contingent on a

future act.

Respondent then parries petitioners' attack on the alleged infirmities of the Resolution's provisions.

Respondent maintains that the per candidate rule or total aggregate airtime limit is in accordance with R.A. No. 9006 as this would truly give life to the constitutional objective to equalize access to media during elections. It sees this as a more effective way of levelling the playing field between candidates/political parties with enormous resources and those without much. Moreover, the Comelec's issuance of the assailed Resolution is pursuant to Section 4, Article IX (C) of the Constitution which vests on the Comelec the power to supervise and regulate, during election periods, transportation and other public utilities, as well as mass media, to wit:

Sec. 4. The Commission 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, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

This being the case, then the Resolutions cannot be said to have been issued with grave abuse of discretion amounting to lack of jurisdiction.

Next, respondent claims that the provisions are not vague because the assailed Resolutions have given clear and adequate mechanisms to protect broadcast stations from potential liability arising from a candidate's or party's violation of airtime limits by putting in the proviso that the station "may require buyer to warrant under oath that such purchase [of airtime] is not in excess of size, duration or frequency authorized by law or these rules." Furthermore, words should be understood in the sense that they have in common usage, and should be given their ordinary meaning. Thus, in the provision for the right to reply, "charges" against candidates or parties must be understood in the ordinary sense, referring to accusations or criticisms.

Respondent also sees no prior restraint in the provisions requiring notice to the Comelec for appearances or guestings of candidates in bona fide news broadcasts. It points out that the fact that notice may be given 24 hours after first broadcast only proves that the mechanism is for monitoring purposes only, not for censorship. Further, respondent argues, that for there to be prior restraint, official governmental restrictions on the press or other forms of expression must be done in advance of actual publication or dissemination. Moreover, petitioners are only required to inform the Comelec of candidates'/parties' guestings, but there is no regulation as to the content of the news or the expressions in news interviews or news documentaries. Respondent then emphasized that the Supreme Court has held that