Republic of the Philippines
Supreme Court
Baguio City

EN BANC

SOCIAL WEATHER STATIONS, INC. AND PULSE ASIA, INC., Petitioners,	**G.R. No. 208062** Present:
-versus-	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., * PEREZ, MENDOZA, REYES, PERLAS-BERNABE, ** LEONEN, and JARDELEZA, *JJ.***
COMMISSION ON ELECTIONS, Respondent.	**Promulgated:** April 7, 2015

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DECISION

LEONEN, *J.*:

This resolves the Petition[1] for certiorari and prohibition under Rule

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* On official leave.
** On leave.
*** No part.
1 *Rollo*, pp. 3–18.

64, in relation to Rule 65, of the 1997 Rules of Civil Procedure praying that respondent Commission on Elections' Resolution No. 9674[2] dated April 23, 2013 be nullified and set aside and that the Commission on Elections be permanently enjoined from enforcing the same Resolution, as well as prosecuting Social Weather Stations, Inc. and Pulse Asia, Inc. for violating it or otherwise compelling compliance with it.[3]

Commission on Elections' (COMELEC) Resolution No. 9674 directed Social Weather Stations, Inc. (SWS) and Pulse Asia, Inc. (Pulse Asia), as well as "other survey firms of similar circumstance"[4] to submit to COMELEC the names of all commissioners and payors of all surveys published from February 12, 2013 to April 23, 2013, including those of their "subscribers."[5]

SWS and Pulse Asia are social research and public polling firms. Among their activities is the conduct of pre-election surveys.[6]

As recounted by SWS and Pulse Asia, on February 15 to February 17, 2013, SWS conducted a pre-election survey on voters' preferences for senatorial candidates. Thereafter, it published its findings.[7] The following question was asked in the survey:

> Kung ang eleksyon ay gaganapin ngayon, sino ang pinakamalamang ninyong iboboto bilang **mga SENADOR ng PILIPINAS**? Narito ang listahan ng mga kandidato. Paki-shade o itiman po ang naaangkop na oval katabi ng pangalan ng mga taong pinakamalamang ninyong iboboto. Maaari po kayong pumili ng hanggang labindalawang (12) kandidato.
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> **(LIST OF CANDIDATES OMITTED)**
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> *If the elections were held today, whom would you most probably vote for as **SENATORS of the PHILIPPINES?** Here is a list of candidates. Please shade the oval beside the name of the persons you would most likely vote for. You may choose up to twelve (12) candidates.*
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> **(LIST OF CANDIDATES OMITTED)**[8] (Emphasis in the original)

On March 20, 2013, Representative Tobias M. Tiangco (Tiangco), Secretary-General of the United Nationalist Alliance (UNA), wrote Atty.

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2 Id. at 22–24.
3 Id. at 16.
4 Id. at 23.
5 Id.
6 Id. at 3.
7 Id. at 6.
8 Id.

Esmeralda Ladra, Director of COMELEC's Law Department.[9] In his letter,[10] Tiangco asked COMELEC to "compel [SWS] to either comply with the directive in the Fair Election Act and COMELEC Resolution No. 9[6]1[5] and give the names or identities of the subscribers who paid for the [pre-election survey conducted from February 15 to February 17, 2013], or be liable for the violation thereof, an act constitutive of an election offense."[11]

Tiangco recounted that on February 28, 2013, he wrote to SWS requesting, among others, that he "be furnished the identity of persons who paid for the [pre-election survey conducted from February 15 to February 17, 2013] as well as those who subscribed to it."[12] Sometime in March 2013, SWS supposedly replied to Tiangco, "furnishing [him] with some particulars about the survey but [without] disclos[ing] the identity of the persons who commissioned or subscribed to the survey."[13]

Acting on Tiangco's letter and on the COMELEC Law Department's recommendation, the COMELEC En Banc issued the Order[14] dated April 10, 2013 setting the matter for hearing on April 16, 2013. The same Order directed SWS to submit its Comment within three (3) days of receipt.[15] On April 12, 2013, Pulse Asia received a letter from COMELEC "requesting its representative to attend the COMELEC hearing on 16 April 2013."[16]

SWS and Pulse Asia recounted that during the hearing, COMELEC Chairman Sixto S. Brillantes, Jr. (COMELEC Chairman Brillantes) stated that the proceeding was merely a clarificatory hearing and not a formal hearing or an investigation.[17]

On April 23, 2013, COMELEC issued the assailed Resolution No. 9674. The entire dispositive portion of this Resolution reads:

> WHEREFORE, premises considered, the Commis[s]ion **RESOLVED**, as it hereby **RESOLVES**, to **DIRECT** the SWS, Pulse Asia and other survey firms of similar circumstance to submit within three (3) days from receipt of this Resolution the names of all commissioners and payors of surveys published from February 12, 2013 to the date of the promulgation of this Resolution for copying and verification by the Commission. The submission shall include the names of all "subscribers" of those published surveys. Such information/data shall be for the

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9 Id. at 25 and 29.
10 Id. at 25–29.
11 Id. at 28–29.
12 Id. at 25.
13 Id. at 26.
14 Id. at 44–45.
15 Id. at 45.
16 Id. at 7.
17 Id.

exclusive and confidential use of the Commission;

RESOLVED FURTHER, that all surveys published subsequent to the promulgation of this Resolution must be accompanied by all the information required in Republic Act no. 9006, including the names of commissioners, payors and subscribers.

This resolution shall take effect immediately after publication.

A violation of these rules shall constitu[t]e an election offense as provided in Republic Act no. 9006, or the Fair Election Act.[18] (Emphasis in the original)

As basis for Resolution No. 9674, COMELEC cited Article IX-C, Section 2(1)[19] of the 1987 Constitution and Sections 5.1 to 5.3[20] of Republic Act No. 9006, otherwise known as the Fair Election Act, as implemented by COMELEC Resolution No. 9615.[21]

SWS and Pulse Asia alleged that following the issuance of Resolution No. 9674 and as of their filing before this court of the present Petition, they have not been furnished copies of Resolution No. 9674.[22] (They emphasized that while a certified true copy of this Resolution is attached to their Petition, this is a copy which they themselves secured "for the purpose of complying with the requirement that Rule 65 petitions must be accompanied by a certified true copy of the assailed order or resolution[.]"[23])

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18 Id. at 23.

19 CONST., art. IX-C, sec. 2 provides:
Sec. 2. The Commission on Elections shall exercise the following powers and functions:
(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

20 Rep. Act. No. 9006 (2001), sec. 5.1 to sec. 5.3 provide:
SEC. 5. Election Surveys. -
5.1 Election surveys refer to the measurement of opinions and perceptions of the voters as regards a candidate's popularity, qualifications, platforms or a matter of public discussion in relation to the election, including voters' preference for candidates or publicly discussed issues during the campaign period (hereafter referred to as "Survey").
5.2 During the election period, any person, natural as well as juridical, candidate or organization who publishes a survey must likewise publish the following information:
a. The name of the person, candidate, party or organization who commissioned or paid for the survey;
b. The name of the person, polling firm or survey organization who conducted the survey;
c. The period during which the survey was conducted, the methodology used, including the number of individual respondents and the areas from which they were selected, and the specific questions asked;
d. The margin of error of the survey;
e. For each question for which the margin of error is greater than that reported under paragraph (d), the margin of error for that question; and
f. A mailing address and telephone number, indicating it as an address or telephone number at which the sponsor can be contacted to obtain a written report regarding the survey in accordance with Subsection 5.3.
5.3 The survey together with raw data gathered to support its conclusions shall be available for inspection, copying and verification by the COMELEC or by a registered political party or a bona fide candidate, or by any COMELEC-accredited citizen's arm. A reasonable fee sufficient to cover the costs of inspection, copying and verification may be charged.

21 *Rollo*, pp. 22–23.

22 Id. at 7.

23 Id.

In the letter[24] dated April 30, 2013, SWS and Pulse Asia informed COMELEC Chairman Brillantes that they have not received a copy of Resolution No. 9674. They also articulated their view that Resolution No. 9674 was tainted with irregularities, having been issued *ultra vires* (i.e., in excess of what the Fair Election Act allows) and in violation of the non-impairment of contracts clause of the Constitution. They also expressed their intention to bring the matter before this court on account of these supposed irregularities. Thus, they requested that COMELEC defer or hold in abeyance Resolution No. 9674's enforcement.[25]

On May 8, 2013, the COMELEC Law Department issued a Notice[26] to SWS (and also to Pulse Asia) directing it to furnish COMELEC with a list of the names of all "commissioners, subscribers, and payors of surveys published from February 12, 2013 until April 23, 2013."[27] SWS was warned that failure to comply with the Notice shall constitute an election offense punishable under the Omnibus Election Code.[28]

On July 1, 2013, COMELEC issued a Subpoena[29] notifying SWS and Pulse Asia that a Complaint "for violation of Section 264[,] par. 1 and 2 of the Omnibus Election Code[30] in relation to R.A. 9006"[31] was filed against them. (This was docketed as E.O. Case No. 13-222). They were also directed to appear and to submit their counter-affidavits and other supporting documents at the hearing set on August 6, 2013.[32]

SWS and Pulse Asia maintained that before receiving the Subpoena, they were never informed that a criminal case had been filed against them. They added that they were never furnished copies of the relevant criminal

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24 Id. at 53–54.
25 Id.
26 Id. at 96–97.
27 Id at 97.
28 Id.
29 Id. at 98–99.
30 Batas Blg. 881 (1985), sec. 264 provides:
SECTION 264. Penalties. - Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.
In case of prisoner or prisoners illegally released from any penitentiary or jail during the prohibited period as provided in Section 261, paragraph (n) of this Code, the director of prisons, provincial warden, keeper of the jail or prison, or persons who are required by law to keep said prisoner in their custody shall, if convicted by a competent court, be sentenced to suffer the penalty of prision mayor in its maximum period if the prisoner or prisoners so illegally released commit any act of intimidation, terrorism of interference in the election.
31 *Rollo*, p. 98.
32 Id. at 99.

Complaint.[33]

On July 26, 2013, petitioners Social Weather Stations, Inc. and Pulse Asia, Inc. filed the present Petition.[34] They assail Resolution No. 9674 as having been issued *ultra vires*. They are of the position that Resolution No. 9674, in requiring the submission of information on subscribers, is in excess of what the Fair Election Act requires.[35] Likewise, they assert that Resolution No. 9674 transgresses the Fair Election Act in making itself executory immediately after publication.[36] Moreover, they claim that it violates the non-impairment of contracts clause of the Constitution,[37] and was enforced in violation of their right to due process (as they were charged for its violation despite not having been properly served with its copies or of the complaint filed against them).[38] Petitioners pray for the issuance of a temporary restraining order and/or writ of preliminary injunction in the interim.[39]

In this court's July 30, 2013 Resolution,[40] COMELEC was required to file a Comment on the Petition. In the same Resolution, this court issued a temporary restraining order "enjoining the enforcement of COMELEC Resolution No. 9674 with respect to submission of the names of regular subscribers but not to the submission of (1) the names of specific subscribers for the limited period of February 12, 2013 to April 23, 2013 who have paid a substantial amount of money for access to survey results and privileged survey data; and (2) the names of all commissioners and payors of surveys published within the same period."[41]

On October 10, 2013, COMELEC filed its Comment.[42] On February 12, 2014, petitioners filed their Joint Reply.[43]

In this court's February 18, 2014 Resolution,[44] the present Petition was given due course, and the parties were directed to file their memoranda. Petitioners complied on May 16, 2014[45] and COMELEC on June 25, 2014.[46]

For resolution are the following issues:

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33 Id. at 8.
34 Id. at 3.
35 Id. at 9–12.
36 Id. at 14.
37 Id. at 13.
38 Id. at 12–13.
39 Id. at 16.
40 Id. at 113.
41 Id.
42 Id. at 149–165.
43 Id. at 185–195.
44 Id. at 197–198.
45 Id. at 202–221.
46 Id. at 240–260.

First, whether Resolution No. 9674 is invalid in that it requires the disclosure of the names of "subscribers" of election surveys;

Second, whether the rights of petitioners to free speech will be curtailed by the requirement to submit the names of their subscribers;

Third, whether Resolution No. 9674, insofar as it compels petitioners to submit the names of their subscribers, violates the constitutional proscription against the impairment of contracts (Article II, Section 10);

Fourth, whether at the time petitioners were required by COMELEC to reveal the names of the subscribers to their election surveys, Resolution No. 9674 was already in force and effect; and

Lastly, whether COMELEC deprived petitioners of due process of law when it:

a) failed to provide them with a copy of Resolution No. 9674 and the criminal complaint for an election offense; and

b) refused to specify the election offense under which they were being prosecuted.

We sustain the validity of Resolution No. 9674. The names of those who commission or pay for election surveys, including subscribers of survey firms, must be disclosed pursuant to Section 5.2(a) of the Fair Election Act. This requirement is a valid regulation in the exercise of police power and effects the constitutional policy of "guarantee[ing] equal access to opportunities for public service[.]"[47] Section 5.2(a)'s requirement of disclosing subscribers neither curtails petitioners' free speech rights nor violates the constitutional proscription against the impairment of contracts.

However, it is evident that Resolution No. 9674 was promulgated in violation of the period set by the Fair Election Act. Petitioners were also not served a copy of Resolution No. 9674 with which it was asked to comply. They were neither shown nor served copies of the criminal Complaint subject of E.O. Case No. 13-222. Petitioners' right to due process was, thus, violated.

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[47] CONST., art. II, sec. 26 provides:
Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

I

Petitioners assail Resolution No. 9674's requirement of submission of names of subscribers, including those who did not commission or pay for a specific survey or caused its publication, for being *ultra vires*. They maintain that the Fair Election Act "as it was written by Congress covers only those who commission or pay for a particular election survey, and requires disclosure of their names only when that particular survey is published."[48] From this, they add that COMELEC exceeded its authority — "creat[ing] an election offense where there was none before"[49] — in considering as an election offense any violation of Resolution No. 9674.

COMELEC, for its part, insists on the "wide latitude of discretion"[50] granted to it in the performance of its constitutional duty to "[e]nforce and administer all laws and regulations relative to the conduct of an election[.]"[51] It adds that "as the specialized constitutional body charged with the enforcement and administration of election laws,"[52] its contemporaneous construction of Section 5.2(a) of the Fair Election Act is "entitled to great weight and respect."[53] Citing the supposed legislative intent of Section 5.2 as "broaden[ing] the subject of disclosure,"[54] COMELEC claims that Section 5.2(a) "draws no distinction between the direct payors and the indirect payors of the survey."[55] It adds that requiring the disclosure of survey subscribers addresses the requirement of reporting election expenditures by candidates and political parties, thereby helping COMELEC check compliance with this requirement.[56]

Section 5.2(a) of the Fair Election Act, read in a manner consistent not only with its text but also with the purpose for which it, along with the Fair Election Act, was adopted, sustains COMELEC's position.

Republic Act No. 9006 was adopted with the end in mind of "guarantee[ing] or ensur[ing] equal opportunity for public service"[57] and to

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48 *Rollo*, p. 11.
49 Id.
50 Id. at 245, *citing Ligot v. Commission on Elections*, 31 Phil. 45, 47 (1970) [Per Curiam, En Banc].
51 CONST., art. IX-C, sec. 2(1).
52 *Rollo*, p. 246.
53 Id.
54 Id. at 246.
55 Id. at 247.
56 Id. at 248–249.
57 Rep. Act No. 9006 (2001), sec. 2 provides:
SEC. 2. Declaration of Principles. - The State shall, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of media of communication or information to guarantee or ensure equal opportunity for public service, including access to media time and space, and the equitable right to reply, for public information campaigns and fora among candidates and assure free, orderly, honest, peaceful and credible elections.
The State shall ensure that bona fide candidates for any public office shall be free from any form of harassment and discrimination.

this end, stipulates mechanisms for the "supervis[ion] or regulat[ion of] the enjoyment or utilization of all franchises or permits for the operation of media of communication or information[.]"[58] Hence, its short title: *Fair* Election Act.

Situated within the constitutional order, the Fair Election Act provides means to realize the policy articulated in Article II, Section 26 of the 1987 Constitution to "guarantee equal access to opportunities for public service[.]" Article II, Section 26 models an understanding of Philippine political and electoral reality. It is not merely hortatory or a statement of value. Among others, it sums up an aversion to the perpetuation of political power through electoral contests skewed in favor of those with resources to dominate the deliberative space in any media.

Apart from making real Article II, Section 26's constitutional policy, the Fair Election Act represents the legislature's compliance with the requirement of Article XIII, Section 1: "Congress . . . give[s] highest priority to the enactment of measures that . . . reduce . . . political inequalities . . . by equitably diffusing wealth and political power for the common good."[59]

Moreover, the constitutional desire to "guarantee equal access to opportunities for public service"[60] is the same intent that animates the Constitution's investiture in COMELEC of the power to "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."[61]

Specific provisions in the Fair Election Act regulate the means

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58 Rep. Act No. 9006 (2001), sec. 2.

59 CONST., art. XIII, sec. 1 provides:
Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

60 CONST., art. II, sec. 26 provides:
Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

61 CONST., art. IX-C, sec. 4 provides:
Section 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, time, and space, and the right to reply, including reasonable, 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.

through which candidates for elective public office, as well as political parties and groups participating in the party-list system, are able to make themselves known to voters, the same means through which they earn votes.

Section 3 permits the use of lawful election propaganda.[62] Section 4 regulates published or printed, and broadcast election propaganda.[63] Section 6 governs access to media time and space.[64] Sections 7 and 8 provide for

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[62] Rep. Act No. 9006 (2001), sec. 3 provides:
SEC. 3. Lawful Election Propaganda. - Election propaganda, whether on television, cable television, radio, newspapers or any other medium is hereby allowed for all registered political parties, national, regional, sectoral parties or organizations participating under the party-list elections and for all bona fide candidates seeking national and local elective positions subject to the limitation on authorized expenses of candidates and political parties, observance of truth in advertising and to the supervision and regulation by the Commission on Elections (COMELEC).
For the purpose of this Act, lawful election propaganda shall include:
3.1 Pamphlets, leaflets, cards, decals, stickers or other written or printed materials the size of which does not exceed eight and one-half inches in width and fourteen inches in length;
3.2 Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office;
3.3 Cloth, paper or cardboard posters, whether framed, or posted, with an area not exceeding two (2) feet by three (3) feet, except that, at the site and on the occasion of a public meeting or rally, or in announcing the holding of said meeting or rally, streamers not exceeding three (3) feet by eight (8) feet in size, shall be allowed: Provided, That said streamers may be displayed five (5) days before the date of the meeting or rally and shall be removed within twenty-four (24) hours after said meeting or rally;
3.4 Paid advertisements in print or broadcast media: Provided, That the advertisements shall follow the requirements set forth in Section 4 of this Act; and
3.5 All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act.

[63] Rep. Act No. 9006 (2001), sec. 4 provides:
SEC. 4. Requirements for Published or Printed and Broadcast Election Propaganda. -
4.1 Any newspaper, newsletter, newsweekly, gazette or magazine advertising, posters, pamphlets, comic books, circulars, handbills, bumper stickers, streamers, simple list of candidates or any published or printed political matter and any broadcast of election propaganda by television or radio for or against a candidate or group of candidates to any public office shall bear and be identified by the reasonably legible or audible words "political advertisement paid for," followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired.
4.2 If the broadcast is given free of charge by the radio or television station, it shall be identified by the words "airtime for this broadcast was provided free of charge by" followed by the true and correct name and address of the broadcast entity.
4.3 Print, broadcast or outdoor advertisements donated to the candidate or political party shall not be printed, published, broadcast or exhibited without the written acceptance by the said candidate or political party. Such written acceptance shall be attached to the advertising contract and shall be submitted to the COMELEC as provided in Subsection 6.3 hereof.

[64] Rep. Act No. 9006 (2001), sec. 6 provides:
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:
6.1 Print advertisements shall not exceed one-fourth (1/4) page in broadsheet and one-half (1/2) page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period.
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

COMELEC's competencies (i.e., affirmative action, and the so-called "COMELEC Space" and "COMELEC Time") that enable it to equalize candidates' exposure to voters.[65] Section 9 regulates venues for the posting

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of the frequency, date, time and duration of advertisements broadcast for any candidate or political party.

6.3 All mass media entities shall 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 (5) days after its signing. In every case, it shall be signed by the donor, the candidate concerned or by the duly authorized representative of the political party.

6.4 No franchise or permit to operate a radio or television station shall be granted or issued, suspended or cancelled during the election period.

In all instances, the COMELEC shall supervise the use and employment of press, radio and television facilities insofar as the placement of political advertisements is concerned to ensure that candidates are given equal opportunities under equal circumstances to make known their qualifications and their stand on public issues within the limits set forth in the Omnibus Election Code and Republic Act No. 7166 on election spending.

The COMELEC shall ensure that radio or television or cable television broadcasting entities shall not allow the scheduling of any program or permit any sponsor to manifestly favor or oppose any candidate or political party by unduly or repeatedly referring to or including said candidate and/or political party in such program respecting, however, in all instances the right of said broadcast entities to air accounts of significant news or news worthy events and views on matters of public interest.

6.5 All members of media, television, radio or print, shall scrupulously report and interpret the news, taking care not to suppress essential facts nor to distort the truth by omission or improper emphasis. They shall recognize the duty to air the other side and the duty to correct substantive errors promptly.

6.6 Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall be deemed resigned, if so required by their employer, or shall take a leave of absence from his/her work as such during the campaign period: Provided, That any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party.

6.7 No movie, cinematograph or documentary portraying the life or biography of a candidate shall be publicly exhibited in a theater, television station or any public forum during the campaign period.

6.8 No movie, cinematograph or documentary portrayed by an actor or media personality who is himself a candidate shall likewise be publicly exhibited in a theater or any public forum during the campaign period.

[65] Rep. Act No. 9006 (2001), secs. 7 and 8 provide:

SEC. 7. Affirmative Action by the COMELEC. -

7.1 Pursuant to Sections 90 and 92 of the Omnibus Election Code (Batas Pambansa Blg. 881), the COMELEC shall procure the print space upon payment of just compensation from at least three (3) national newspapers of general circulation wherein candidates for national office can announce their candidacies. Such space shall be allocated free of charge equally and impartially among all the candidates for national office on three (3) different calendar days: the first day within the first week of the campaign period; the second day within the fifth week of the campaign period; and the third day within the tenth week of the campaign period.

7.2 The COMELEC shall also procure free airtime from at least three (3) national television networks and three (3) national radio networks, which shall also be allocated free of charge equally and impartially among all candidates for national office. Such free time shall be allocated on three (3) different calendar days: the first day within the first week of the campaign period; the second day within the fifth week of the campaign period; and the third day within the tenth week of the campaign period.

7.3 The COMELEC may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates. The debates among presidential candidates shall be scheduled on three (3) different calendar days: the first debate shall be scheduled within the first and second week of the campaign period; the second debate within the fifth and sixth week of the campaign period; and the third debate shall be scheduled within the tenth and eleventh week of the campaign period.

The sponsoring television or radio network may sell airtime for commercials and advertisements to interested advertisers and sponsors. The COMELEC shall promulgate rules and regulations for the holding of such debates.

SEC. 8. COMELEC Space and Time. - The COMELEC shall procure space in at least one (1) newspaper of general circulation and air time in at least one (1) major broadcasting station or entity in

of campaign materials.[66] Section 10 provides for parties' and candidates' right to reply.[67] Section 11 requires media outlets to make available the use of their facilities for election propaganda at discounted rates.[68]

The Fair Election Act also governs published surveys during elections.

Section 5.1 defines election surveys as "the measurement of opinions and perceptions of the voters as regards a candidate's popularity, qualifications, platforms or a matter of public discussion in relation to the election, including voters' preference for candidates or publicly discussed issues during the campaign period[.]" Sections 5.2 and 5.3 provide regulations that facilitate transparency with respect to election surveys. Section 5.4[69] is no longer in effect, having been declared unconstitutional in this court's May 5, 2001 Decision in *Social Weather Stations and Kamahalan Publishing Corp. v. COMELEC*.[70] Section 5.5[71] pertains to exit

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every province or city: Provided, however, That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "COMELEC Space": Provided, further, That in the absence of said broadcasting station or entity, broadcasting shall be done in any radio or television station in said province or city, which shall be known as "COMELEC Time." Said time shall be allocated to the COMELEC free of charge, while said space shall be allocated to the COMELEC upon payment of just compensation. The COMELEC time and space shall be utilized exclusively by the COMELEC for public information dissemination on election-related concerns.

66 Rep. Act No. 9006 (2001), sec. 9 provides:
SEC. 9. Posting of Campaign Materials. - The COMELEC may authorize political parties and party-list groups to erect common poster areas for their candidates in not more than ten (10) public places such as plazas, markets, barangay centers and the like, wherein candidates can post, display or exhibit election propaganda: Provided, That the size of the poster areas shall not exceed twelve (12) by sixteen (16) feet or its equivalent.
Independent candidates with no political parties may likewise be authorized to erect common poster areas in not more than ten (10) public places, the size of which shall not exceed four (4) by six (6) feet or its equivalent.
Candidates may post any lawful propaganda material in private places with the consent of the owner thereof, and in public places or property which shall be allocated equitably and impartially among the candidates.

67 Rep. Act No. 9006 (2001), sec. 10 provides:
SEC. 10. Right to Reply. - All registered parties and bona fide candidates shall have the right to reply to charges published against them. The reply shall be given publicity by the newspaper, television and/or radio station which first printed or aired the charges with the same prominence or in the same page or section or in the same time slot as the first statement.

68 Rep. Act No. 9006 (2001), sec. 11 provides:
SEC. 11. Rates for Political Propaganda. - During the election period, media outlets shall charge registered political parties and bona fide candidates a discounted rate of thirty percent (30%) for television, twenty percent (20%) for radio and ten percent (10%) for print over the average rates charged during the first three quarters of the calendar year preceding the elections.

69 Rep. Act No. 9006 (2001), sec. 5.4 provides:
SEC. 5. Election Surveys. –
5.4 Surveys affecting national candidates shall not be published fifteen (15) days before an election and surveys affecting local candidates shall not be published seven (7) days before an election.

70 409 Phil. 571 (2001) [Per J. Mendoza, En Banc].

71 Rep. Act No. 9006 (2001), sec. 5.5 provides:
SEC. 5. Election Surveys. –
5.5 Exit polls may only be taken subject to the following requirements:
a. Pollsters shall not conduct their surveys within fifty (50) meters from the poling place, whether said survey is taken in a home, dwelling place and other places;
b. Pollsters shall wear distinctive clothing;
c. Pollsters shall inform the voters that they may refuse to answer; and
d. The result of the exit polls may be announced after the closing of the polls on election day,

polls.

Section 5.2 enumerates the information that a person publishing an election survey must publish along with the survey itself:

> 5.2 During the election period, any person, natural as well as juridical, candidate or organization who publishes a survey must likewise publish the following information:
>
> a. *The name of the person, candidate, party or organization who commissioned or paid for* ***the survey***;
> b. The name of the person, polling firm or survey organization who conducted the survey;
> c. The period during which the survey was conducted, the methodology used, including the number of individual respondents and the areas from which they were selected, and the specific questions asked;
> d. The margin of error of the survey;
> e. For each question for which the margin of error is greater than that reported under paragraph (d), the margin of error for that question; and
> f. A mailing address and telephone number, indicating it as an address or telephone number at which the sponsor can be contacted to obtain a written report regarding the survey in accordance with Subsection 5.3. (Emphasis supplied)

Section 5.3 facilitates the inspection, copying, and verification not only of an election survey but also of the raw data used as bases for its conclusions:

> 5.3 The survey together with raw data gathered to support its conclusions shall be available for inspection, copying and verification by the COMELEC or by a registered political party or a bona fide candidate, or by any COMELEC-accredited citizen's arm. A reasonable fee sufficient to cover the costs of inspection, copying and verification may be charged.

As with all the other provisions of the Fair Election Act, Section 5 is a means to guarantee equal access to the deliberative forums essential to win an elective public office. Any reading of Section 5 and of its individual components, such as Section 5.2(a), cannot be divorced from this purpose.

The inclusion of election surveys in the list of items regulated by the

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and must dearly identify the total number of respondents, and the places where they were taken. Said announcement shall state that the same is unofficial and does not represent a trend.

Fair Election Act is a recognition that election surveys are not a mere descriptive aggregation of data. Publishing surveys are a means to shape the preference of voters, inform the strategy of campaign machineries, and ultimately, affect the outcome of elections. Election surveys have a similar nature as election propaganda. They are expensive, normally paid for by those interested in the outcome of elections, and have tremendous consequences on election results.

II

Views vary on the precise extent to which surveys or "polls" shape voter preferences, if at all.

Election surveys have been critiqued for amplifying the notion of an election as a "horse race"[72] and for reducing elections to the lowest common denominator of percentage points or a candidate's erstwhile share in the vote market rather than focusing on issues, principles, programs, and platforms.

Several possible, albeit conflicting, effects of surveys on voter behavior have been postulated:

First, there is the ***bandwagon effect*** where "electors rally to support the candidate leading in the polls."[73] This "assumes that knowledge of a popular 'tide' will likely change voting intentions in [favor] of the frontrunner, that many electors feel more comfortable supporting a popular choice or that people accept the perceived collective wisdom of others as being enough reason for supporting a candidate."[74]

Second, there is the ***underdog effect*** where "electors rally to support the candidate trailing in the polls."[75] This shift can be motivated by sympathy for the perceived underdog.[76]

Third, there is the ***motivating effect*** where "individuals who had not intended to vote are persuaded to do so,"[77] having been alerted of the fact of

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72 David Rothschild and Neil Malhotra, *Are public opinion polls self-fulfilling prophecies?* 1 <http://rap.sagepub.com/content/sprap/1/2/2053168014547667.full.pdf> (visited March 25, 2015).

73 J. Gonthier, Dissenting Opinion in *Thomson Newspapers Co. v. Canada (Attorney General)*, 1 S.C.R. 877, 893 (1998), *citing* Guy LACHAPELLE, POLLS AND THE MEDIA IN CANADIAN ELECTIONS: TAKING THE PULSE, Ottawa: Royal Commission on Electoral Reform and Party Financing (1991).

74 *Public Opinion Polling in Canada*, Canada Library of Parliament 6 <http://www.parl.gc.ca/Content/LOP/researchpublications/bp371-e.pdf> (visited March 25, 2015).

75 J. Gonthier, Dissenting Opinion in *Thomson Newspapers Co. v. Canada (Attorney General)*, 1 S.C.R. 877, 893 (1998), *citing* Guy LACHAPELLE, POLLS AND THE MEDIA IN CANADIAN ELECTIONS: TAKING THE PULSE, Ottawa: Royal Commission on Electoral Reform and Party Financing (1991).

76 *Public Opinion Polling in Canada*, Canada Library of Parliament 6 <http://www.parl.gc.ca/Content/LOP/researchpublications/bp371-e.pdf> (visited March 25, 2015).

77 Id. at 7.

an election's imminence.[78]

Fourth, there is also the ***demotivating effect*** where "voters abstain from voting out of certainty that their candidate or party will win[.]"[79]

Fifth, there are reports of a behavior known as ***strategic voting*** where "voting is influenced by the chances of winning[.]"[80]

Lastly, there is also the theory of a ***free-will effect*** where "voters cast their ballots to prove the polls wrong[.]"[81]

Election surveys published during election periods create the "politics of expectations."[82] Voters act in accordance with what is perceived to be an existing or emerging state of affairs with respect to how candidates are faring.

Of the six (6) effects, the bandwagon effect has a particular resonance and has been of concern. Surveys, or opinion polls, "by directly influencing individual-level support . . . , can be self-fulfilling prophecies and produce opinion cascades."[83] "[A] poll's prediction may come to pass not only because it measures public opinion but also because it may influence public opinion."[84]

The bandwagon effect is of particular concern because of the observed human tendency to conform. Three (3) mechanisms through which survey results may induce conformity have been posited:

> (1) normative social influence, or people's desire to adopt the majority position in order to feel liked and accepted or believe they are on the winning team;
>
> (2) informational social influence, or people learning from the 'wisdom of crowds' via social proof because they 'believe that others' interpretation of an ambiguous situation is more accurate . . . and will help [them] choose an appropriate course of action'; and

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78 J. Gonthier, Dissenting Opinion in *Thomson Newspapers Co. v. Canada (Attorney General)*, 1 S.C.R. 877 (1998), *citing* Guy LACHAPELLE, POLLS AND THE MEDIA IN CANADIAN ELECTIONS: TAKING THE PULSE, Ottawa: Royal Commission on Electoral Reform and Party Financing (1991).

79 *Public Opinion Polling in Canada*, Canada Library of Parliament 7 <http://www.parl.gc.ca/Content/LOP/researchpublications/bp371-e.pdf> (visited March 25, 2015).

80 Id. at 6.

81 Id. at 7.

82 Id. at 6.

83 David Rothschild and Neil Malhotra, *Are public opinion polls self-fulfilling prophecies?* 6 <http://rap.sagepub.com/content/sprap/1/2/2053168014547667.full.pdf> (visited March 25, 2015).

84 Id. at 1.

> (3) people resolving cognitive dissonance by switching to the side they infer is going to win based on the poll.[85]

Likewise, it has been argued that the bandwagon effect is but the obverse of the so-called false-consensus effect or false-consensus bias:

> The bandwagon effect, a form of conformity, is the mirror image of the false consensus effect, where people misperceive that their own behaviors and attitudes are more popular than they actually are. In the political domain, one mechanism underlying the false consensus effect is wishful thinking – people gaining utility from thinking their candidate is ahead or their opinions are popular.[86]

The bandwagon effect induced by election surveys assumes even greater significance in considering the health of a democracy.

Integral to our appreciation of democracy is the recognition that democracy is fundamentally deliberative. It is rooted in the exchange and dialogue of ideas. Accordingly, free expression, not least of all from the minority and from those who do not conform, i.e., those who dissent and criticize, is indispensable:

> 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.
>
> Borrowing the words of Justice Brandeis, "it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies."
>
> In this jurisdiction, this court held that "[t]he interest of society and the maintenance of good government demand a full discussion of public

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85 Id. at 2.
86 Id.

> affairs." This court has, thus, adopted the principle that "debate on public issues should be uninhibited, robust, and wide open . . . [including even] unpleasantly sharp attacks on government and public officials."[87]

However, "conformity pressures can suppress minority opinion."[88] The bandwagon effect conjures images of an impregnable majority, thereby tending to push farther toward the peripheries those who are already marginalized. Worse, the bandwagon effect foments the illusion of a homogenous monolith denying the very existence of those in the minority. This undermines the "normative conceptions of democracy"[89] substituting the democratic dialogue with acquiescence to perceived or projected orthodoxy.

Surveys, far from being a passive "snapshot of many viewpoints held by a segment of the population at a given time,"[90] can warp existing public opinion and can mould public opinion. They are constitutive. Published election surveys offer valuable insight into public opinion not just because they represent it but more so because they also tend to make it.

Appreciating this tendency to both entrench and marginalize is of acute relevance in the context of Philippine political reality. This is the same reality that our policymakers, primarily the framers of the Constitution, have seen fit to address.

III

The constitutional dictum to "guarantee equal access to opportunities for public service"[91] and (even more specifically and explicitly) to "prohibit political dynasties"[92] does not exist in a vacuum.

Politics in the Philippines has been criticized as "a lucrative means of

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87 *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 37 [Per J. Leonen, En Banc], *citing* James A. Gardner, *Shut Up and Vote: A Critique of Deliberative Democracy and the Life of Talk*, 63 TENN. L. REV. 421, 422 (1996); John J. Worley, *Deliberative Constitutionalism*, BYU L. REV. 431, 441 (2009), *citing* Jon Elster, *Deliberative Democracy* 8 (1998); CONST., art. II, sec. 1; J. Sanchez, Concurring and Dissenting Opinion in *Gonzales, et al. v. COMELEC*, 137 Phil. 471, 523 (1969) [Per J. Fernando, En Banc], *citing* Concurring Opinion in *Whitney v. California*, 274 U.S. 357, 375 (1927); *United States v. Bustos*, 37 Phil. 731, 740 (1918) [Per J. Malcolm, En Banc]; *Adiong v. COMELEC*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 716 [Per J. Gutierrez, Jr., En Banc]. *See also Gonzales, et al. v. COMELEC*, 137 Phil. 471, 493 (1969) [Per J. Fernando, En Banc].

88 David Rothschild and Neil Malhotra, *Are public opinion polls self-fulfilling prophecies?* 6 <http://rap.sagepub.com/content/sprap/1/2/2053168014547667.full.pdf> (visited March 25, 2015).

89 Id.

90 *Public Opinion Polling in Canada*, Canada Library of Parliament 4 <http://www.parl.gc.ca/Content/LOP/researchpublications/bp371-e.pdf> (visited March 25, 2015).

91 CONST., art. II, sec. 26.

92 CONST., art. II, sec. 26.

self-aggrandizement."[93] Ours is an exclusive system that perpetuates power and provides sanctuary to those who have already secured their place. Traditional Filipino politics connotes elite families that, with the state, are "engaged in a reciprocal relationship that constantly defines and redefines both."[94] As recounted by Alfred McCoy, this reciprocal relationship, typified by rent-seeking (i.e., "taking advantage of their access to state privileges to expand proprietary wealth"[95]), is a vicious cycle propagated for as long as the Philippines has been a republic: "The emergence of the Republic as a weak postcolonial state augmented the power of rent-seeking political families — a development that further weakened the state's own resources."[96]

The Philippines, as it emerged in the wake of Ferdinand Marcos' presidency and the adoption of the 1987 Constitution, saw the "celebritification"[97] of political office. On the legislature and studying emerging contrasts in the composition of its two chambers — the Senate and the House of Representatives — it has been noted:

> The old political families, however are not as string in the Senate as they are in the House. This could be read, if not as a total repudiation by voters of family power, then at least as an attempt by them to tap other sources of national leadership. Celebrities and military and police officers have emerged as alternatives to traditional politicians. It could be that these new men and women have captured the popular imagination or that they are more in tune with the public pulse. But their emergence could very well be seen as an indication of the paucity of choices: Political parties, for one, have not succeeded in proffering a wider range of options to an electorate weary of trapos.[98]

This celebritification nurtures misleading notions of an enhanced or healthier democracy, one that opens avenues to a crop of political leaders not belonging to oligarchic families. Viewed critically however, this is nothing more than a pipe dream. New elites now share the political stage with the old. The tension between two contrary tendencies actually serves to preserve the status quo of elitism — an expanded elitism perhaps, but elitism no less. To evoke a truism, "the more things change, the more they stay the same":

> But the "celebritification" of the Senate can also be interpreted as

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93 Shiela S. Coronel, Yvonne T. Chua, Boomba B. Cruz, and Luz Rimban, THE RULEMAKERS: HOW THE WEALTHY AND WELL-BORN DOMINATE THE CONGRESS 24 (2007).

94 AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES, edited by Alfred W. McCoy 10 (1994).

95 Shiela S. Coronel, Yvonne T. Chua, Boomba B. Cruz, and Luz Rimban, THE RULEMAKERS: HOW THE WEALTHY AND WELL-BORN DOMINATE THE CONGRESS 51 (2007).

96 AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES, edited by Alfred W. McCoy 11 (1994).

97 Shiela S. Coronel, Yvonne T. Chua, Boomba B. Cruz, and Luz Rimban, THE RULEMAKERS: HOW THE WEALTHY AND WELL-BORN DOMINATE THE CONGRESS 33 (2007).

98 Id.

> the democratization of an exclusive body once reserved only for the very rich, the politically experienced, and the intellectually brilliant. In a sense, the bar of entry has been lowered, and *anyone with national renown can contest a seat in a chamber once famous for sharp debates and polysyllabic peroration*.
>
> *The main criterion for a Senate seat is now name recall.* This is where celebrities have the edge even over older political families with bankable names. . . .
>
> . . . .
>
> The diminishing clout of old families in the Senate—and their continued dominance in the House—shows the push and pull of two contrary tendencies. The first tendency is toward the new: The importance of name recall in national elections taking place in a media-inundated environment makes it easier for movie and media personalities, and harder for old-style politicians, to be elected. The second tendency is veering toward the old: At the district level, trapo-style patronage and machine politics remain deeply entrenched, giving political families the edge in elections.[99]

Thus, where once there was elitism solely along lines of kinship — Alfred McCoy's so-called "anarchy of families" — now there is also elitism demarcated by name recall, populist projection, and media exposure, arguably, an "anarchy of celebrities."

Certainly, it is not the business of this court to engage in its own determination of the wisdom of policy. Nevertheless, having to grapple with the tasks of adjudication and interpretation, it has become necessary to bring to light the intent that underlies the disputed statutory provision, as well as the constitutional regime and social context, in which this provision is situated.

To reiterate, the inclusion of published election surveys in a statute that regulates election propaganda and other means through which candidates may shape voter preferences is itself telling of the recognition that published election surveys, too, may influence voter preferences. This inclusion is similarly telling of a recognition that, left unregulated, election surveys can undermine the purposes of ensuring "fair" elections. These recognitions are embedded in the Fair Election Act; they are not judicial constructs. In adjudicating with these as bases, this court is merely adhering to the legislative imperative.

IV

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[99] Id. at 35.

It is necessary that the Fair Election Act be appreciated for what it is: a mechanism for ensuring equality. The Fair Elections Act is a means to effect the "necessary condition" to a genuine democratic dialogue, to realizing a deliberative democracy. The concept of this "necessary condition" was previously considered by this court in *Diocese of Bacolod v. COMELEC*:[100]

> In his seminal work, Repressive Tolerance, philosopher and social theorist Herbert Marcuse recognized how institutionalized inequality exists as a background limitation, rendering freedoms exercised within such limitation as merely "protect[ing] the already established machinery of discrimination." In his view, any improvement "in the normal course of events" within an unequal society, without subversion, only strengthens existing interests of those in power and control.
>
> In other words, abstract guarantees of fundamental rights like freedom of expression may become meaningless if not taken in a real context. This tendency to tackle rights in the abstract compromises liberties. In his words:
>
> > Liberty is self-determination, autonomy—this is almost a tautology, but a tautology which results from a whole series of synthetic judgments. It stipulates the ability to determine one's own life: to be able to determine what to do and what not to do, what to suffer and what not. But the subject of this autonomy is never the contingent, private individual as that which he actually is or happens to be; it is rather the individual as a human being who is capable of being free with the others. And the problem of making possible such a harmony between every individual liberty and the other is not that of finding a compromise between competitors, or between freedom and law, between general and individual interest, common and private welfare in an established society, but of creating the society in which man is no longer enslaved by institutions which vitiate self-determination from the beginning. In other words, freedom is still to be created even for the freest of the existing societies.
>
> Marcuse suggests that the democratic argument — with all opinions presented to and deliberated by the people — "implies a necessary condition, namely, that the people must be capable of deliberating and choosing on the basis of knowledge, that they must have access to authentic information, and that, on this basis, their evaluation must be the result of autonomous thought." He submits that "[d]ifferent opinions and 'philosophies' can no longer compete peacefully for adherence and persuasion on rational grounds: the 'marketplace of ideas' is organized and delimited by those who determine the national and the individual interest."
>
> A slant toward left manifests from his belief that "there is a

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[100] *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per J. Leonen, En Banc].

> 'natural right' of resistance for oppressed and overpowered minorities to use extralegal means if the legal ones have proved to be inadequate." Marcuse, thus, stands for an equality that breaks away and transcends from established hierarchies, power structures, and indoctrinations. The tolerance of libertarian society he refers to as "repressive tolerance."[101]

What is involved here is petitioners' freedom of speech and of expression, that is, to publish their findings. More specifically, what is involved here is their right to political speech, that which "refers to speech 'both intended and received as a contribution to public deliberation about some issue,' 'foster[ing] informed and civic-minded deliberation.'"[102]

The nature of the speech involved, as well as the Fair Election Act's purpose of ensuring political equality, calls into operation the equality-based approach to weighing *liberty* to express vis-à-vis *equality* of opportunities. As explained in *Diocese of Bacolod*:[103]

> In an equality-based approach, "politically disadvantaged speech prevails over regulation[,] but regulation promoting political equality prevails over speech." This view allows the government leeway to redistribute or equalize 'speaking power,' such as protecting, even implicitly subsidizing, unpopular or dissenting voices often systematically subdued within society's ideological ladder. This view acknowledges that there are dominant political actors who, through authority, power, resources, identity, or status, have capabilities that may drown out the messages of others. This is especially true in a developing or emerging economy that is part of the majoritarian world like ours.
>
> …
>
> The scope of the guarantee of free expression takes into consideration the constitutional respect for human potentiality and the effect of speech. It valorizes the ability of human beings to express and their necessity to relate. On the other hand, a complete guarantee must also take into consideration the effects it will have in a deliberative democracy. Skewed distribution of resources as well as the cultural hegemony of the majority may have the effect of drowning out the speech and the messages of those in the minority. In a sense, social inequality does have its effect on the exercise and effect of the guarantee of free speech. Those who have more will have better access to media that reaches a wider audience than those who have less. Those who espouse the more popular ideas will have better reception than the subversive and the dissenters of society. To be really heard and understood, the marginalized view normally undergoes its own degree of struggle.

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[101] Id. at 56–57, *citing* Herbert Marcuse, *Repressive Tolerance*, in A CRITIQUE OF PURE TOLERANCE 85 (1965).

[102] Id. at 92, *citing footnote 64 of Freedom of Speech and Expression*, 116 HARV. L. REV. 272 (2002) and *Freedom of Speech and Expression*, 116 HARV. L. REV. 272, 278 (2002).

[103] *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per J. Leonen, En Banc].

> The traditional view has been to tolerate the viewpoint of the speaker and the content of his or her expression. This view, thus, restricts laws or regulation that allows public officials to make judgments of the value of such viewpoint or message content. This should still be the principal approach.
>
> However, the requirements of the Constitution regarding equality in opportunity must provide limits to some expression during electoral campaigns.[104]

The required judicial temperament in appraising speech in the context of electoral campaigns *which is principally designed to endorse a candidate*, both by candidates and / or political parties, on the one hand, and private citizens, on the other, has thus been articulated:

> Thus clearly, regulation of speech in the context of electoral campaigns made by candidates or the members of their political parties or their political parties may be regulated as to time, place, and manner. This is the effect of our rulings in *Osmeña v. COMELEC* and *National Press Club v. COMELEC*.
>
> Regulation of speech in the context of electoral campaigns made by persons who are not candidates or who do not speak as members of a political party which are, taken as a whole, principally advocacies of a social issue that the public must consider during elections is unconstitutional. Such regulation is inconsistent with the guarantee of according the fullest possible range of opinions coming from the electorate including those that can catalyze candid, uninhibited, and robust debate in the criteria for the choice of a candidate.
>
> This does not mean that there cannot be a specie of speech by a private citizen which will not amount to an election paraphernalia to be validly regulated by law.
>
> *Regulation of election paraphernalia will still be constitutionally valid if it reaches into speech of persons who are not candidates or who do not speak as members of a political party if they are not candidates, only if what is regulated is declarative speech that, taken as a whole, has for its principal object the endorsement of a candidate only. The regulation (a) should be provided by law, (b) reasonable, (c) narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression, and (d) demonstrably the least restrictive means to achieve that object. The regulation must only be with respect to the time, place, and manner of the rendition of the message. In no situation may the speech be prohibited or censored on the basis of its content. For this purpose, it will not matter whether the speech is made with or on private property.*[105] [Emphasis in the original]

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[104] Id. at 56 and 62, *citing* Kathleen M. Sullivan, *Two Concepts of Freedom of Speech*, 124 HARV. L. REV. 144–146 (2010).

[105] Id. at 62–63.

V

Concededly, what are involved here are not election propaganda *per se*. Election surveys, on their face, do not state or allude to preferred candidates. As a means, election surveys are ambivalent. To an academician, they are an aggrupation of data. To a journalist, they are matters for reportage. To a historian, they form part of a chronicle. Election surveys thus become unambiguous only when viewed in relation to the end for which they are employed. To those whose end is to get a candidate elected, election surveys, when limited to their own private consumption, are a means to formulate strategy. *When published, however, the tendency to shape voter preferences comes into play.* In this respect, published election surveys partake of the nature of election propaganda. It is then declarative speech in the context of an electoral campaign properly subject to regulation. Hence, Section 5.2 of the Fair Election Act's regulation of *published* surveys.

We thus proceed to evaluate Resolution No. 9674's requirement of disclosing the names of subscribers to election surveys in light of the requisites for valid regulation of declarative speech by private entities in the context of an election campaign:

First, the text of Section 5.2(a) of the Fair Election Act supports the inclusion of subscribers among those persons who "paid for the survey[.]"[106] Thus, Resolution No. 9674 is a regulation finding basis in statute.

COMELEC correctly points out that in Section 5.2(a) of the Fair Election Act, those who "commissioned" and those who "paid for" the published survey are separated by the disjunctive term "or."[107] This disassociates those who "commissioned" from those who "paid for" and identifies them as alternatives to each other.[108] Section 5.2(a) thus requires the disclosure of two (2) classes of persons: "[first,] those who commissioned or sponsored the survey; and [second,] those who paid for the survey."[109]

The second class makes no distinction between those who pay for a specific survey and those who pay for election surveys in general. Indeed,

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[106] Rep. Act No. 9006 (2001), sec. 5.2(a) provides:
Sec. 5. Election Surveys. -
. . . .
5.2 During the election period, any person, natural as well as juridical, candidate or organization who publishes a survey must likewise publish the following information:
a. The name of the person, candidate, party or organization who commissioned or paid for the survey[.]

[107] *Rollo*, p. 246.

[108] *See Saludaga v. Sandiganbayan*, 633 Phil. 369 (2010) [Per J. Mendoza, Third Division].

[109] *Rollo*, p. 246.

subscribers do not escape the burden of paying for the component articles comprising a subscription. They may pay for them in aggregate, but they pay for them just the same. From the text of Section 5.2(a), the legislative intent or regulatory concern is clear: "those who have financed, one way or another, the [published] survey"[110] must be disclosed.

Second, not only an important or substantial state interest but even a compelling one reasonably grounds Resolution No. 9674's inclusion of subscribers to election surveys. Thus, regardless of whether an intermediate or strict standard is used, Resolution No. 9674 passes scrutiny.

It is settled that constitutionally declared principles are a compelling state interest:

> Compelling governmental interest would include constitutionally declared principles. We have held, for example, that "the welfare of children and the State's mandate to protect and care for them, as parens patriae, constitute a substantial and compelling government interest in regulating . . . utterances in TV broadcast."[111]

Here, we have established that the regulation of election surveys effects the constitutional policy, articulated in Article II, Section 26, and reiterated and affirmed in Article IX-C, Section 4 and Article XIII, Section 26 of the 1987 Constitution, of "guarantee[ing] equal access to opportunities for public service[.]"[112]

Resolution No. 9674 addresses the reality that an election survey is formative as it is descriptive. It can be a means to shape the preference of voters and, thus, the outcome of elections. In the hands of those whose end is to get a candidate elected, it is a means for such end and partakes of the nature of election propaganda. Accordingly, the imperative of "fair" elections impels their regulation.

Lastly, Resolution No. 9674 is "narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression"[113] and is

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110 Id.

111 *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 50 [Per J. Leonen, En Banc], *citing* CONST., art. II, secs. 12 and 13; and *Soriano v. Laguardia, et al.*, 605 Phil. 43, 106 (2009) [Per J. Velasco, Jr., En Banc].

112 CONST., art. II, sec. 26 provides:
Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

113 *Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 63 [Per J. Leonen, En Banc].

"demonstrably the least restrictive means to achieve that object."[114]

While it does regulate expression (i.e., petitioners' publication of election surveys), it does not go so far as to suppress desired expression. There is neither prohibition nor censorship specifically aimed at election surveys. The freedom to publish election surveys remains. All Resolution No. 9674 does is articulate a regulation as regards the *manner* of publication, that is, that the disclosure of those who commissioned and/or paid for, including those subscribed to, published election surveys must be made.

VI

Petitioners harp on what they claim to be Section 5.2(a)'s "plain meaning" and assert that there is no room to entertain COMELEC's construction of Section 5.2(a).[115]

It has been said that "[a] cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application."[116]

Clarifications, however, are in order.

First, ***verba legis*** or the so-called plain-meaning rule applies only when the law is *completely* clear, such that there is *absolutely* no room for interpretation. Its application is premised on a situation where the words of the legislature are clear that its intention, insofar as the facts of a case demand from the point of view of a contemporary interpretative community, is neither vague nor ambiguous. This is a matter of judicial appreciation. It cannot apply merely on a party's contention on supposed clarity and lack of room for interpretation.

This is descriptive of the situation here.

Interestingly, both COMELEC and petitioners appeal to what they (respectively) construe to be plainly evident from Section 5.2(a)'s text: on the part of COMELEC, that the use of the words "paid for" evinces no distinction between direct purchasers and those who purchase via subscription schemes; and, on the part of petitioners, that Section 5.2(a)'s desistance from actually using the word "subscriber" means that subscribers are beyond its contemplation.[117] The variance in the parties' positions,

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114 Id.
115 *Rollo*, pp. 210–212.
116 *Bolos v. Bolos*, 648 Phil. 630, 637 (2010) [Per J. Mendoza, Second Division].
117 *Rollo*, p. 11.

considering that they are both banking on what they claim to be the Fair Election Act's plain meaning, is the best evidence of an extant ambiguity.

Second, statutory construction cannot lend itself to pedantic rigor that foments absurdity. The dangers of inordinate insistence on literal interpretation are commonsensical and need not be belabored. These dangers are by no means endemic to legal interpretation. Even in everyday conversations, misplaced literal interpretations are fodder for humor. A fixation on technical rules of grammar is no less innocuous. A pompously doctrinaire approach to text can stifle, rather than facilitate, the legislative wisdom that unbridled textualism purports to bolster.[118]

Third, the assumption that there is, in all cases, a universal plain language is erroneous. In reality, universality and uniformity in meaning is a rarity. A contrary belief wrongly assumes that language is static.

The more appropriate and more effective approach is, thus, holistic rather than parochial: to consider context and the interplay of the historical, the contemporary, and even the envisioned. Judicial interpretation entails the convergence of social realities and social ideals. The latter are meant to be effected by the legal apparatus, chief of which is the bedrock of the prevailing legal order: the Constitution. Indeed, the word in the vernacular that describes the Constitution — *saligan* — demonstrates this imperative of constitutional primacy.

Thus, we refuse to read Section 5.2(a) of the Fair Election Act in isolation. Here, we consider not an abstruse provision but a stipulation that is part of the whole, i.e., the statute of which it is a part, that is aimed at realizing the ideal of *fair* elections. We consider not a cloistered provision but a norm that should have a present authoritative effect to achieve the ideals of those who currently read, depend on, and demand fealty from the Constitution.

VII

We note with favor COMELEC's emphasis on the "wide latitude of discretion"[119] granted to it in the performance of its constitutional duty to "[e]nforce and administer all laws and regulations relative to the conduct of

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[118] *See for instance* J. Leonen, Dissenting Opinion in *Chavez v. Judicial and Bar Council*, G.R. No. 202242, April 16, 2013 <http://sc.judiciary.gov.ph/jurisprudence/2013/april2013/202242_leonen.pdf> 8 [Per J. Mendoza, En Banc]: "Thus, the authoritativeness of text is no excuse to provide an unworkable result or one which undermines the intended structure of government provided in the Constitution. Text is authoritative but it is not exhaustive of the entire universe of meaning."

[119] *Rollo*, p. 245, *citing Ligot v. Commission on Elections*, 31 Phil. 45, 47 (1970) [Per Curiam, En Banc].

an election[.]"[120] But this is with the caution that it does not reach "grave abuse of discretion[.]"[121]

Alliance for Nationalism and Democracy v. COMELEC[122] had the following to say regarding *factual* findings made by COMELEC, an independent constitutional organ:

> [T]he rule that factual findings of administrative bodies will not be disturbed by courts of justice except when there is absolutely no evidence or no substantial evidence in support of such findings should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs.[123]

Proceeding from this, we emphasize that this norm of deference applies not only to factual findings. This applies with equal force to independent constitutional organs' general exercise of their functions. The constitutional placing of independent constitutional organs on a plane higher than those of administrative agencies created only by statute is not restricted to competence in fact-finding. It extends to all purposes for which the Constitution created them.

We reiterate, however, that our recognition of this deferential norm is made with caution. This rule of deference does not give independent constitutional organs, like COMELEC, license to gravely abuse their discretion. With respect to rule-making, while the wisdom of "subordinate legislation" or the rule-making power of agencies tasked with the administration of government is acknowledged, rule-making agencies are not given unfettered power to promulgate rules. As explained in *Gerochi v. Department of Energy*,[124] it is imperative that subordinate legislation "be germane to the objects and purposes of the law and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law."[125] A regulation that purports to effect a statute but goes beyond the bounds of that statute is *ultra vires*; it is in excess of the rule-making agency's competence. Thus, it is void and ineffectual.

This is not the case here. There is no grave abuse of discretion. Resolution No. 9674 serves a constitutional purpose and works well within the bounds of the Constitution and of statute.

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120 CONST., art. IX-C, sec. 2(1).
121 *See* CONST., art. VIII, sec.1, par. 2.
122 G.R. No. 206987, September 10, 2013, 705 SCRA 340 [Per J. Perez, En Banc].
123 Id. at 348–349, *citing Mastura v. Commission on Elections*, 349 Phil. 423, 429 (1998) [Per J. Bellosillo, En Banc].
124 554 Phil. 563 (2007) [Per J. Nachura, En Banc].
125 Id. at 585.

VIII

Petitioners argue that Resolution No. 9674 constitutes a prior restraint in that:

> Resolution No. 9674 makes it an election offense for a survey firm not to disclose the names of subscribers who have paid substantial amounts to them, even if the survey portions provided to them have not been published. This requirement is unduly burdensome and onerous and constitutes a prior restraint on the right of survey firms to gather information on public opinion and disseminate it to the citizenry.
>
> . . . If Resolution No. 9674 is allowed to stand, survey firms will no longer be able to operate because they will not have enough clients and will not be financially sustainable. COMELEC will finally be able to do indirectly what it could not do directly, which is to prohibit the conduct of election surveys and the publication or dissemination of the results to the public.[126]

Petitioners' assertions are erroneous.

Chavez v. Gonzales[127] explained the concept of prior restraint as follows:

> *Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.* 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.[128] (Emphasis supplied, citations omitted)

The very definition of "prior restraint" negates petitioner's assertions. Resolution No. 9674 poses no prohibition or censorship specifically aimed at election surveys. Apart from regulating the manner of publication,

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126 *Rollo*, pp. 212–213.
127 569 Phil. 155 (2008) [Per C.J. Puno, En Banc].
128 Id. at 203–204.

petitioners remain free to publish election surveys. COMELEC correctly points out that "[t]he disclosure requirement kicks in *only upon, not prior to,* publication."[129]

In any case, the requirement of disclosing subscribers is neither unduly burdensome nor onerous. Prior to the promulgation of Resolution No. 9674, survey firms are already understood to be bound by the requirement to disclose those who commission or pay for published election surveys. Petitioners have been complying with this without incident since the Fair Election Act was enacted in 2001. After more than a decade of compliance, it is odd for petitioners to suddenly assail the disclosure requirement as unduly burdensome or onerous.

Petitioners' claim that "[i]f Resolution No. 9674 is allowed to stand, survey firms will no longer be able to operate because they will not have enough clients and will not be financially sustainable"[130] is too speculative and conjectural to warrant our consideration. The assumption is that persons who want to avail of election survey results will automatically be dissuaded from doing so when there is a requirement of submission of their names during the campaign period. This is neither self-evident, nor a presumption that is susceptible to judicial notice. There is no evidence to establish a causal connection.

Petitioners' free speech rights must be weighed in relation to the Fair Election Act's purpose of ensuring political equality and, therefore, the speech of others who want to participate unencumbered in our political spaces. On one hand, there are petitioners' right to publish and publications which are attended by the interests of those who can employ published data to their partisan ends. On the other, there is regulation that may effect equality and, thus, strengthen the capacity of those on society's margins or those who grope for resources to engage in the democratic dialogue. The latter fosters the ideals of deliberative democracy. It does not trump the former; rather, it provides the environment where the survey group's free speech rights should reside.

IX

Petitioners argue that Resolution No. 9674 violates Article III, Section 10 of the 1987 Constitution.[131] They claim that it "unduly interferes with [their] existing contracts . . . by forcing [them] to disclose information that,

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129 *Rollo*, p. 250.
130 Id. at 213.
131 CONST., art. III, sec. 10 provides:
Section 10. No law impairing the obligation of contracts shall be passed.

under the contracts, is confidential or privileged."[132]

For its part, COMELEC argues that "[t]he non-impairment clause of the Constitution must yield to the loftier purposes sought to be achieved by the government."[133] It adds that "[p]etitioners' existing contracts with third parties must be understood to have been made in reference to the possible exercise of the COMELEC's regulatory powers."[134]

It is settled that "the constitutional guaranty of non-impairment . . . is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare."[135] "It is a basic rule in contracts that the law is deemed written into the contract between the parties."[136] The incorporation of regulations into contracts is "a postulate of the police power of the State."[137]

The relation of the state's police power with the principle of non-impairment of contracts was thoroughly explained in *Ortigas and Co. V. Feati Bank*:[138]

> [W]hile non-impairment of contracts is constitutionally guaranteed, the rule is not absolute, since it has to be reconciled with the legitimate exercise of police power, i.e., "the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. Invariably described as "the most essential, insistent, and illimitable of powers" and "in a sense, the greatest and most powerful attribute of government, the exercise of the power may be judicially inquired into and corrected only if it is capricious, 'whimsical, unjust or unreasonable, there having been a denial of due process or a violation of any other applicable constitutional guarantee. As this Court held through Justice Jose P. Bengzon in *Philippine Long Distance Company vs. City of Davao, et al*. police power "is elastic and must be responsive to various social conditions; it is not, confined within narrow circumscriptions of precedents resting on past conditions; it must follow the legal progress of a democratic way of life." We were even more emphatic in *Vda. de Genuino vs. The Court of Agrarian Relations, et al*., when We declared: "We do not see why public welfare when clashing with the individual right to property should not be made to prevail through the state's exercise of its police power.[139] (Citations omitted)

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132 *Rollo*, p. 13.
133 Id. at 255.
134 Id. at 256.
135 *Abe v. Foster Wheeler Corp*, 110 Phil. 198, 203 (1960) [Per J. Barrera, En Banc].
136 *National Steel Corporation v. The Regional Trial Court of Lanao del Norte, Branch 2, Iligan City*, 364 Phil. 240, 256 (1999) [Per J. Purisima, Third Division].
137 *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*, 248 Phil. 762, 771 (1988) [Per J. Cruz, First Division], *citing Stone v. Mississippi*, 101 US 814.
138 183 Phil. 176 (1979) [Per J. Santos, En Banc].
139 Id. at 188–189.

This case does not involve a "capricious, whimsical, unjust or unreasonable"[140] regulation. We have demonstrated that not only an important or substantial state interest, but even a compelling one anchors Resolution No. 9674's requirement of disclosing subscribers to election surveys. It effects the constitutional policy of "guarantee[ing] equal access to opportunities for public service"[141] and is impelled by the imperative of "fair" elections.

As a valid exercise of COMELEC's regulatory powers, Resolution No. 9674 is correctly deemed written into petitioners' existing contracts.

Parenthetically, the obligations of agreements manifested in the concept of contracts are creations of law. This right to demand performance not only involves its requisites, privileges, and regulation in the Civil Code or special laws, but is also subject to the Constitution. The expectations inherent in a contract may be compelling, but so are the normative frameworks demanded by law and the provisions of the Constitution.

X

Petitioners point out that Section 13 of the Fair Election Act provides that "[r]ules and regulations promulgated by the COMELEC under and by authority of this Section *shall take effect on the seventh day after their publication* in at least two (2) daily newspapers of general circulation." In contrast, Resolution No. 9674 provides that it "shall take effect *immediately* after publication."[142] Thus, they assert that Resolution No. 9674's effectivity clause is invalid. From this, they argue that Resolution No. 9674 has not taken effect and cannot be enforced against them or against other persons.[143]

COMELEC counters that Section 13 of the Fair Election Act's provision that rules shall take effect "on the seventh day after their publication" applies only to Resolution No. 9615, the Implementing Rules and Regulations (IRR) of the Fair Election Act, and not to Resolution No. 9674, which "merely enforces Section 26[144] of Resolution No. 9615."[145]

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140 Id. at 188.

141 CONST., art. II, sec. 26 provides:
Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

142 *Rollo*, p. 23.

143 Id. at 14–15.

144 COMELEC Resolution No. 9615 (2013), sec. 26 provides:
SECTION 26. Election Surveys. - During the election period, any person, whether natural or juridical, candidate or organization may conduct an election survey. The survey shall be published and shall include the following information:
(a) The name of the person, candidate, party, or organization that commissioned or paid for the survey;

Noting that Resolution No. 9674 was nevertheless published in the Philippine Daily Inquirer and the Philippine Star both on April 25, 2013, COMELEC adds that, in any case, "the lapse of the seven-day period from the date of its publication has rendered the instant issue moot and academic."[146]

It is COMELEC which is in error on this score.

Section 13 of the Fair Election Act reads:

> Section 13. *Authority of the COMELEC to Promulgate Rules; Election Offenses*. - *The COMELEC shall promulgate* and furnish all political parties and candidates and the mass media entities *the rules and regulations for the implementation of this Act*, consistent with the criteria established in Article IX-C, Section 4 of the Constitution and Section 86 of the Omnibus Election Code (Batas Pambansa Bldg. 881).
>
> *Rules and regulations promulgated by the COMELEC under and by authority of this Section shall take effect on the seventh day after their publication in at least two (2) daily newspapers of general circulation.* Prior to effectivity of said rules and regulations, no political advertisement or propaganda for or against any candidate or political party shall be published or broadcast through mass media.
>
> Violation of this Act and the rules and regulations of the COMELEC issued to implement this Act shall be an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code (Batas Pambansa Bldg. 881). (Emphasis supplied)

Resolution No. 9615 is denominated "*Rules and Regulations Implementing Republic Act No. 9006*, otherwise known as the 'Fair Election Act', in connection to [sic] the 13 May 2013 National and Local Elections, and Subsequent Elections[.]"

(b) The name of the person, polling firm or survey organization who conducted the survey;
(c) The period during which the survey was conducted, the methodology used, including the number of individual respondents and the areas from which they were selected, and the specific questions asked;
(d) The margin of error of the survey;
(e) For each question for which the margin of error is greater than that reported under paragraph (4), the margin of error for that question; and
(f) A mailing address and telephone number, indicating it as an address or telephone number at which the sponsor can be contacted to obtain a written report regarding the survey in accordance with the next succeeding paragraph.
(g) The survey together with raw data gathered to support its conclusions shall be available for inspection, copying and verification by the Commission. Any violation of this SECTION shall constitute an election offense.

145 *Rollo*, pp. 257–258.
146 Id. at 258.

The only conceivable reason that would lead COMELEC to the conclusion that it is only Resolution No. 9615 (and not the assailed Resolution No. 9674) that needs to comply with the requirement of Section 13 of the Fair Election Act is Section 13's use of the phrase "*rules and regulations for the implementation of this Act*[.]" That is, since Resolution No. 9615 is the Resolution which, *by name*, is called the "Rules and Regulations Implementing Republic Act No. 9006," COMELEC seems to think that other rules named differently need not comply.

It is an error to insist on this literal reasoning.

Section 13 applies to all rules and regulations implementing the Fair Election Act, regardless of how they are denominated or called. COMELEC's further reasoning that what Resolution No. 9674 intends to implement is Resolution No. 9615 and not the Fair Election Act itself is nothing but a circuitous denial of Resolution No. 9674's true nature. COMELEC's reasoning is its own admission that the assailed Resolution supplements what the Implementing Rules and Regulations of the Fair Election Act provides. Ultimately, Resolution No. 9674 also implements the Fair Election Act and must, thus, comply with the requirements of its Section 13.

Accordingly, Resolution No. 9674 could not have become effective as soon as it was published in the Philippine Daily Inquirer and the Philippine Star on April 25, 2013. Taking into consideration the seven-day period required by Section 13, the soonest that it could have come into effect was on May 2, 2013.

This notwithstanding, petitioners were not bound to comply with the requirement "to submit within three (3) days from receipt of this Resolution the names of all commissioners and payors of surveys published from February 12, 2013 to the date of the promulgation of this Resolution[.]"[147] As shall be discussed, COMELEC's (continuing) failure to serve copies of Resolution No. 9674 on petitioners prevented this three-day period from even commencing.

XI

Petitioners point out that they were never served copies of Resolution No. 9674. Thus, they claim that this Resolution's self-stated three-day period within which they must comply has not begun to run and that COMELEC's insistence on their compliance violates their right to due process. They add that COMELEC has also failed to provide them with

[147] Id. at 23.

copies of the criminal complaint subject of E.O. Case No. 13-222 for which the Subpoena dated July 1, 2013 was issued against them.

COMELEC, however, insists that "[p]etitioners were given fair notice of the Resolution"[148] in that:

> [t]he Notice dated 08 May 2013 sent to and received by petitioners not only makes reference to the Resolution by its number and title but also indicates its date of promulgation, the two newspapers of general circulation in which it was published, it date of publication, and, more important [sic], reproduces in full its dispositive portion[.][149]

COMELEC adds that, in any case, petitioners were "able to secure a certified true copy of the [assailed] Resolution."[150] On the filing of a criminal complaint, COMELEC asserts that attached to the Subpoena served on petitioners was a copy of Resolution No. 13-0739 of the COMELEC En Banc which "provides a verbatim reproduction of the Memorandum of the Director of the Law Department detailing petitioners' failure to comply with the assailed Resolution and of the Memorandum of Commissioner [Christian Robert S.] Lim submitting the matter for the appropriate action of the COMELEC en banc."[151]

COMELEC relies on infirm reasoning and reveals how, in criminally charging petitioners, it acted arbitrarily, whimsically, and capriciously, and violated petitioners' right to due process.

By its own reasoning, COMELEC admits that petitioners were never actually served copies of Resolution No. 9674 *after it was promulgated on April 23, 2013*. It insists, however, that this flaw has been remedied by service to petitioners of the May 8, 2013 Notice which reproduced Resolution No. 9674's dispositive portion.

Dismembering an official issuance by producing only a portion of it (even if the reproduced portion is the most significant, i.e., dispositive, portion) is not the same as serving on the concerned parties a copy of the official issuance itself. Petitioners may have been informed of what the dispositive portion stated, but it remains that they were never notified and served copies of the assailed Resolution itself. In Resolution No. 9674's own words, compliance was expected "within three (3) days from receipt of *this Resolution*[,]"[152] not of its partial, dismembered, reproduction.

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148 Id. at 258.
149 Id. at 251.
150 Id. at 252.
151 Id.
152 Id. at 23.

Not having been served with copies of Resolution No. 9674 itself, petitioners are right in construing the three-day period for compliance as not having begun to run. From this, it follows that no violation of the requirement "to submit within three (3) days from receipt of this Resolution the names of all commissioners and payors of surveys published from February 12, 2013 to the date of the promulgation of this Resolution[.]"[153] could have been committed. Thus, there was no basis for considering petitioners to have committed an election offense arising from this alleged violation.

It is of no consequence that the May 8, 2013 Notice warned petitioners that failure to comply with it "shall constitute an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code."[154] It is true that the Omnibus Election Code has been in force and effect long before Resolution No. 9674 was promulgated; nevertheless, the supposed violation of the Omnibus Election Code rests on petitioners' alleged non-compliance with Resolution No. 9674. This is a matter which, as we have demonstrated, is baseless, the three-day period for compliance not having even commenced.

It is similarly inconsequential that petitioners were subsequently able to obtain certified true copies of Resolution No. 9674. Petitioners' own diligence in complying with the formal requirements of Rule 65 petitions filed before this court cannot possibly be the cure for COMELEC's inaction. These certified true copies were secured precisely to enable petitioners to assail COMELEC's actions, not to validate them. It would be misguided to subscribe to COMELEC's suggestion that petitioners' diligence should be their own undoing. To accede to this would be to effectively intimidate parties with legitimate grievances against government actions from taking the necessary steps to comply with (formal) requisites for judicial remedies and, ultimately, prevent them from protecting their rights.

COMELEC's error is compounded by its failure to provide petitioners with copies of the criminal complaint subject of E.O. Case No. 13-222. COMELEC has neither alleged nor proven that it has done so. Per its own allegations, all it did was serve petitioners with the May 8, 2013 Notice and the July 1, 2013 Subpoena.

These facts considered, it was not only grave error, but grave abuse of discretion, for COMELEC to pursue unfounded criminal charges against petitioners. In so doing, COMELEC violated petitioners' right to due process.

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153 Id.
154 Id. at 97.

WHEREFORE, the Petition is **PARTIALLY GRANTED** in that COMELEC Resolution No. 9674 is upheld, and respondent Commission on Elections is **ENJOINED** from prosecuting petitioners Social Weather Stations, Inc. and Pulse Asia, Inc. for their supposed violation of COMELEC Resolution No. 9674 in respect of their non-submission of the names of all commissioners and payors, including subscribers, of surveys published during the campaign period for the 2013 elections.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

(On official leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

(On leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

no part
prior action
as Sol Gen

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice