EN BANC

G.R. No. 225442 – SAMAHAN NG MGA PROGRESIBONG KABATAAN (SPARK), JOANNE ROSE SACE LIM, JOHN ARVIN NAVARRO BUENAAGUA, RONEL BACCUTAN, MARK LEO DELOS REYES, and CLARISSA JOYCE VILLEGAS, minor, for herself and as represented by her father, JULIAN VILLEGAS, JR., petitioners, **v. QUEZON CITY, as represented by MAYOR HERBERT BAUTISTA, CITY OF MANILA, as represented by MAYOR JOSEPH ESTRADA, and NAVOTAS CITY, as represented by MAYOR JOHN REY TIANGCO,** respondents.

Promulgated:
August 8, 2017

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SEPARATE OPINION

LEONEN, *J.*:

I concur in the result. All of the assailed ordinances should have been struck down for failing to ground themselves on demonstrated rational bases, for failing to adopt the least restrictive means to achieve their aims, and for failing to show narrowly tailored enforcement measures that foreclose abuse by law enforcers. The doctrine of *parens patriae* fails to justify these ordinances. While this doctrine enables state intervention for the welfare of children, its operation must not transgress the constitutionally enshrined natural and primary right of parents to rear their children.

However, the adoption by this Court of the interpretation of Section 4, item (a) of the Quezon City Ordinance to the effect that parental permission in any form for any minor is also an exception will have the effect of narrowly tailoring the application of that curfew regulation.

The assailed ordinances are not novel. Navotas City Pambayang Ordinansa Blg. 99-02[1] was passed on August 26, 1999. City of Manila Ordinance No. 8046[2] was passed on October 14, 2002. Quezon City Ordinance No. SP-2301[3] was passed on July 31, 2014.

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1 Entitled "*Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong (18) Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila.*" *See rollo,* pp. 37–40.

2 Entitled "An Ordinance Declaring the Hours from 10:00 P.M. to 4:00 A.M. of the Following Day as 'Barangay Curfew Hours' for Children and Youths Below Eighteen (18) Years of Age; Prescribing Penalties Therefor; and for Other Purposes." *See rollo,* pp. 44–47.

3 Entitled "An Ordinance Setting for a Disciplinary Hours [sic] in Quezon City for Minors from 10:00 P.M. to 5:00 A.M., Providing Penalties for Parent/Guardian, for Violation Thereof and for Other Purposes." *See rollo,* pp. 48–60.

The present controversy was spurred by the revitalized, strict implementation of these curfew ordinances as part of police operations under the broad umbrella of "Oplan Rody." These operations were in fulfillment of President Rodrigo Duterte's campaign promise for a nationwide implementation of a curfew for minors.[4]

Samahan ng mga Progresibong Kabataan (SPARK), an association of youths and minors for "the protection of the rights and welfare of youths and minors," and its members Joanne Rose Sace Lim, John Arvin Navarro Buenaagua, Ronel Baccutan (Baccutan), Mark Leo Delos Reyes (Delos Reyes), and Clarissa Joyce Villegas (Villegas) filed the present Petition for Certiorari and Prohibition alleging that the ordinances are unconstitutional and in violation of Republic Act No. 9344.[5]

I

Constitutional challenges against local legislation

Petitioners submit a multi-faceted constitutional challenge against the assailed ordinances.

They assert that the assailed ordinances should be declared unconstitutional as the lack of expressed standards for the identification of minors facilitates arbitrary and discriminatory enforcement.[6]

Petitioners further argue that the assailed ordinances unduly restrict a minor's liberty, in general, and right to travel, in particular.[7]

Likewise, petitioners assert that, without due process, the assailed ordinances intrude into or deprive parents of their "natural and primary right"[8] to rear their children.

Ordinances are products of "derivative legislative power"[9] in that legislative power is delegated by the national legislature to local government units. They are presumed constitutional and, until judicially declared invalid, retain their binding effect. In *Tano v. Hon. Gov. Socrates:*[10]

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4 *Rollo,* p. 6, Petition.
5 Id. at 4–5, Petition.
6 Id. at 20, Petition.
7 Id. at 23, Petition.
8 Id. at 26, Petition.
9 *City of Manila v. Hon. Laguio,* 495 Phil. 289, 308 (2005) [Per J. Tinga, En Banc].
10 343 Phil. 670 (1997) [Per J. Davide, Jr., En Banc].

> It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. Where doubt exists, even if well-founded, there can be no finding of unconstitutionality. To doubt is to sustain.[11]

The presumption of constitutionality is rooted in the respect that the judiciary must accord to the legislature. In *Estrada v. Sandiganbayan:*[12]

> This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. Thus it has been said that the presumption is based on the deference the judicial branch accords to its coordinate branch — the legislature.
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> If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority. Hence in determining whether the acts of the legislature are in tune with the fundamental law, courts should proceed with judicial restraint and act with caution and forbearance.[13]

The same respect is proper for acts made by local legislative bodies, whose members are equally presumed to have acted conscientiously and with full awareness of the constitutional and statutory bounds within which they may operate. *Ermita-Malate Hotel and Motel Operators Association v. City of Manila*[14] explained:

> As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity . . . The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitates action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people . . . The Judiciary should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation."[15]

The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal

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[11] Id. at 700–701, *citing La Union Electric Cooperative v. Yaranon,* 259 Phil. 457 (1989) [Per J. Gancayco, First Division] and *Francisco v. Permskul,* 255 Phil. 311 (1989) [Per J. Cruz, En Banc].

[12] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[13] Id. at 342.

[14] 128 Phil. 473 (1967) [Per J. Fernando, En Banc].

[15] Id. at 475–476.

showing of the bases for invalidating a law. In *Smart Communications v. Municipality of Malvar*:[16]

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on . . . baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[17]

Consistent with the exacting standard for invalidating ordinances, *Hon. Fernando v. St. Scholastica's College*,[18] outlined the test for determining the validity of an ordinance:

> The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[19]

The first consideration hearkens to the primacy of the Constitution, as well as to the basic nature of ordinances as products of a power that was merely delegated to local government units. In *City of Manila v. Hon. Laguio*:[20]

> Anent the first criterion, ordinances shall only be valid when they are not contrary to the Constitution and to the laws. The Ordinance must satisfy two requirements: it must pass muster under the test of constitutionality and the test of consistency with the prevailing laws. That ordinances should be constitutional uphold the principle of the supremacy of the Constitution. The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.[21] (Citations omitted)

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16 727 Phil. 430 (2014) [Per J. Carpio, En Banc].
17 Id. at 447.
18 706 Phil. 138 (2013) [Per J. Mendoza, En Banc].
19 Id. at 157.
20 495 Phil. 289 (2005) [Per J. Tinga, En Banc].
21 Id. at 308.

II

Appraising due process and equal protection challenges

At stake here is the basic constitutional guarantee that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."[22] There are two (2) dimensions to this: first, is an enumeration of objects of protection—life, liberty and property; second, is an identification and delimitation of the legitimate mechanism for their modulation or abnegation—due process and equal protection. The first dimension lists specific objects whose bounds are amorphous; the second dimension delineates action, and therefore, requires precision.

Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.

"Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person"[23] and the American formulation of "life, liberty and the pursuit of happiness."[24] As the American Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured.[25] Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

"Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence.[26] "Life

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22 CONST., art. III, sec. 1.

23 Universal Declaration of Human Rights, art. 3.

24 American Declaration of Independence (1776).

25 In the words of the American Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men[.]"

26 See Abraham H. Maslow's, *A Theory of Human Motivation*, PSYCHOLOGICAL REVIEW, 50, 370–396 (1943).

and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions. As Justice George Malcolm, speaking for this Court in 1919, articulated:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.[27]

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves—expanding liberty—alongside the contemporaneous reality in which the Constitution operates. *People v. Hernandez*[28] illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

> [T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1)[29] to the protection of several aspects of freedom.[30]

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27 *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 705 (1919) [Per J. Malcolm, En Banc].

28 99 Phil. 515 (1956) [Per J. Concepcion, En Banc].

29 CONST. (1935), art. III, sec. 1 provides:
Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
. . . .
(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.
(4) The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.
(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.

While the extent of the constitutional protection of life and liberty is dynamic, evolving, and expanding with contemporaneous realities, the mechanism for preserving life and liberty is immutable: any intrusion into it must be with due process of law and must not run afoul of the equal protection of the laws.

Appraising the validity of government regulation in relation to the due process and equal protection clauses invokes three (3) levels of analysis. Proceeding similarly as we do now with the task of appraising local ordinances, *White Light Corporation v. City of Manila*[31] discussed:

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.
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> A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to

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(6) The right to form associations or societies for purposes not contrary to law shall not be abridged.
(7) No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.
(8) No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.
. . . .
(11) No ex post facto law or bill of attainder shall be enacted.
(12) No person shall be imprisoned for debt or non-payment of a poll tax.
(13) No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted.
(14) The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.
(15) No person shall be held to answer for a criminal offense without due process of law.
(16) All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required.
(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf.
(18) No person shall be compelled to be a witness against himself.
. . . .
(21) Free access to the courts shall not be denied to any person by reason of poverty.

30 *People v. Hernandez*, 99 Phil. 515, 551–552 (1956) [Per J. Concepcion, En Banc]. This enumeration must not be taken as an exhaustive listing of the extent of constitutional protection vis-à-vis liberty. Emphasis is placed on how the penumbra of cognate rights evolves and expands with the times.

31 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

> do so in *Reed v. Reed.* While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
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> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.
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> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[32] (Citations omitted)

An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest.

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.

Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] *considered.*"[33] This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is *conceptually* the least restrictive mechanism that the government may apply.

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a

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[32] Id. at 462–463.
[33] Id. at 463.

compelling state interest and that the means employed to effect it are narrowly-tailored, *actually*—not only conceptually—being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas[34] further explained:

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.[35] (Emphasis supplied)

Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes:

> Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.[36]

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34 487 Phil. 531 (2004). [Per J. Puno, En Banc]

35 Id. at 599–600.

36 *Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/221318.pdf> [Per J. Perlas-Bernabe, En Banc] citing *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009) [Per J. Tinga, En Banc]; Concurring Opinion of J. Leonardo-De Castro in *Garcia v. Drilon*,712 Phil. 44, 112–143 (2013) [Per J. Perlas-Bernabe, En Banc]; and Separate Concurring Opinion of C.J. Reynato S. Puno in *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 106 (2010) [Per J. Del Castillo, En Banc].

III

The present Petition entails fundamental rights and defines status offenses. Thus, strict scrutiny is proper.

By definition, a curfew restricts mobility. As effected by the assailed ordinances, this restriction applies daily at specified times and is directed at minors, who remain under the authority of their parents.

Thus, petitioners correctly note that at stake in the present Petition is the right to travel. Article III, Section 6 of the 1987 Constitution provides:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

While a constitutionally guaranteed fundamental right, this right is not absolute. The Constitution itself states that the right may be "impaired" in consideration of: national security, public safety, or public health.[37] The ponencia underscores that the avowed purpose of the assailed ordinances is "the promotion of juvenile safety and prevention of juvenile crime."[38] The assailed ordinances, therefore, seem to find justification as a valid exercise of the State's police power, regulating—as opposed to completely negating—the right to travel.

Given the overlap of the state's prerogatives with those of parents, equally at stake is the right that parents hold in the rearing of their children.

There are several facets of the right to privacy. *Ople v. Torres*[39] identified the right of persons to be secure "in their persons, houses, papers,

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[37] CONST., art. II, sec. 12.
Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

[38] *Ponencia*, p. 20.

[39] 354 Phil. 948 (1998) [Per J. Puno, En Banc] states:
[T]he right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in Section 3(1) of the Bill of Rights:
"Sec. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law."
Other facets of the right to privacy are protected in various provisions of the *Bill of Rights*, viz:
"Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

and effects,"[40] the right against unreasonable searches and seizures,[41] liberty of abode,[42] the right to form associations,[43] and the right against self-incrimination[44] as among these facets.

While not among the rights enumerated under Article III of the 1987 Constitution, the rights of parents with respect to the family is no less a fundamental right and an integral aspect of liberty and privacy. Article II, Section 12 characterizes the right of parents in the rearing of the youth to be "natural and primary."[45] It adds that it is a right, which shall "receive the support of the Government."[46]

Imbong v. Ochoa,[47] affirms the natural and primary rights of parents in the rearing of children as a facet of the right to privacy:

> To insist on a rule that interferes with the right of parents to exercise parental control over their minor-child or the right of the spouses to mutually decide on matters which very well affect the very purpose of marriage, that is, the establishment of conjugal and family life, would result in the violation of one's privacy with respect to his family.[48]

This Court's 2009 Decision in *White Light*[49] unequivocally characterized the right to privacy as a fundamental right. Thus, alleged statutory intrusion into it warrants strict scrutiny.[50]

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

. . . .

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

. . . .

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

. . . .

Section 17. No person shall be compelled to be a witness against himself." (Citations omitted)

40 CONST., art. III, sec. 2.

41 CONST., art. III, Sec. 2.

42 CONST., art. III, sec. 6.

43 CONST., art. III, sec. 8.

44 CONST., art. III, sec. 17.

45 CONST., art. II, sec. 12:

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

46 CONST., art. II, sec. 12.

47 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

48 Id. at 193.

49 596 Phil. 444 (2009) [Per J. Tinga, En Banc].

50 *White Light* is notable, not only for characterizing privacy as a fundamental right whose intrusions impel strict scrutiny. It is also notable for extending a similar inquiry previously made by this Court in

If we were to take the myopic view that an Ordinance should be analyzed strictly as to its effect only on the petitioners at bar, then it would seem that the only restraint imposed by the law which we are capacitated to act upon is the injury to property sustained by the petitioners, an injury that would warrant the application of the most deferential standard – the rational basis test. Yet as earlier stated, we recognize the capacity of the petitioners to invoke as well the constitutional rights of their patrons – those persons who would be deprived of availing short time access or wash-up rates to the lodging establishments in question.

. . . .

The rights at stake herein fall within the same fundamental rights to liberty which we upheld in *City of Manila v. Hon. Laguio, Jr.* We expounded on that most primordial of rights, thus:

> Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." . . . In accordance with this case, the rights of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; and to pursue any avocation are all deemed embraced in the concept of liberty . . .

It cannot be denied that the primary animus behind the ordinance is the curtailment of sexual behavior. The City asserts before this Court that the subject establishments "have gained notoriety as venue of 'prostitution, adultery and fornications' in Manila since they provide the necessary atmosphere for clandestine entry, presence and exit and thus became the 'ideal haven for prostitutes and thrill-seekers'". Whether or not this depiction of a mise-en-scene of vice is accurate, it cannot be denied that legitimate sexual behavior among consenting married or consenting single adults which is constitutionally protected will be curtailed as well, as it was in the City of Manila case. Our holding therein retains significance for our purposes:

1967, in *Ermita-Malate Hotel and Motel Operators Association, et al. v. City of Manila*, 128 Phil. 473 (1967) [Per J. Fernando, En Banc].

There, operators of motels assailed a supposed infringement of their property rights by an ordinance increasing license fees for their motels. In upholding the validity of the ordinance, this Court distinguished between "freedom of the mind" and property rights and held that "*if the liberty involved were freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting*, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measure is wider." Since the case only involved property rights, this Court found that the state interest of curbing "an admitted deterioration of the state of public morals" sufficed. White Light extended the consideration of rights involved in similar establishments by examining, not only motel owners' property rights but also their clientele's privacy rights.

> The concept of liberty compels respect for the individual whose claim to privacy and interference demands respect . . .
>
> Indeed, the right to privacy as a constitutional right was recognized in Morfe, the invasion of which should be justified by a compelling state interest. Morfe accorded recognition to the right to privacy independently of its identification with liberty; in itself it is fully deserving of constitutional protection. Governmental powers should stop short of certain intrusions into the personal life of the citizen.[51] (Citations omitted)

In determining that the interest invoked by the State was not sufficiently compelling to justify intrusion of the patrons' privacy rights, this Court weighed the State's need for the "promotion of public morality" as against the individual patrons' "liberty to make the choices in [their] lives," thus:

> The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect . . .
>
> . . . .
>
> [T]he continuing progression of the human story has seen not only the acceptance of the right-wrong distinction, but also the advent of fundamental liberties as the key to the enjoyment of life to the fullest. Our democracy is distinguished from non-free societies not with any more extensive elaboration on our part of what is moral and immoral, but from our recognition that the individual liberty to make the choices in our lives is innate, and protected by the State.[52] (Citation omitted)

Apart from impinging upon fundamental rights, the assailed ordinances define status offenses. They identify and restrict offenders, not purely on the basis of prohibited acts or omissions, but on the basis of their inherent personal condition. Altogether and to the restriction of all other persons, minors are exclusively classified as potential offenders. What is potential is then made real on a passive basis, as the commission of an offense relies merely on presence in public places at given times and not on the doing of a conclusively noxious act.

The assailed ordinances' adoption and implementation concern a prejudicial classification. The assailed ordinances are demonstrably incongruent with the Constitution's unequivocal nurturing attitude towards

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51 *White Light Corp. v. City of Manila,* 596 Phil. 444, 464–466 (2009) [Per J. Tinga, En Banc].

52 Id. at 469–471.

the youths and whose mandate is to "promote and protect their physical, moral, spiritual, intellectual, and social well-being."[53]

This attitude is reflected in Republic Act No. 9344, otherwise known as the Juvenile Justice and Welfare Act of 2006, which takes great pains at a nuanced approach to children. Republic Act No. 9344 meticulously defines a "child at risk" and a "child in conflict with the law" and distinguishes them from the generic identification of a "child" as any "person under the age of eighteen (18) years."[54] These concepts were adopted precisely to prevent a lackadaisical reduction to a wholesale and indiscriminate concept, consistent with the protection that is proper to a vulnerable sector. The assailed ordinances' broad and sweeping determination of presence in the streets past defined times as delinquencies warranting the imposition of sanctions tend to run afoul of the carefully calibrated attitude of Republic Act No. 9344 and the protection that the Constitution mandates. For these, a strict consideration of the assailed ordinances is equally proper.

IV

The apparent factual bases for the assailed ordinances are tenuous at best.

To prove the necessity of implementing curfew ordinances, respondents City of Manila and Quezon City provide statistical data on the number of Children in Conflict with the Law (CICL).[55] Quezon City's data is summarized as follows:[56]

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[53] CONST. art. II, sec. 13.

[54] Section 4. Definition of Terms. – The following terms as used in this Act shall be defined as follows:
. . . .
(c) "Child" refers to a person under the age of eighteen (18) years.
(d) "Child at Risk" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:
(1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
(2) being exploited including sexually or economically;
(3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
(4) coming from a dysfunctional or broken family or without a parent or guardian;
(5) being out of school;
(6) being a streetchild;
(7) being a member of a gang;
(8) living in a community with a high level of criminality or drug abuse; and
(9) living in situations of armed conflict.
(e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

[55] Rep. Act No. 9344, sec. 4 (e) "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

[56] *Rollo*, pp. 330–333.

Year	No. of Barangays	Barangay with submissions	Barangays without submissions	No. of Barangays with Zero CICL	Total no. of CICL
2013	142	102 (January to June) 44 (July to December)	40 (January to June) 98 (July to December)	Not provided	2677
2014	142	119 (January to June) 82 (July to December)	23 (January to June) 60 (July to December)	32 (January to June) 25 (July to December)	2937
2015	142	142	0	51	4778

The data submitted, however, is inconclusive to prove that the city is so overrun by juvenile crime that it may as well be totally rid of the public presence of children at specified times. While there is a perceptively raised number of CICLs in Quezon City, the data fails to specify the rate of these figures in relation to the total number of minors and, thus, fails to establish the extent to which CICLs dominate the city. As to geographical prevalence that may justify a city-wide prohibition, a substantial number of barangays reported not having CICLs for the entire year. As to prevalence that stretches across the relative maturity of all who may be considered minors (e.g., grade-schoolers as against adolescents), there was also no data showing the average age of these CICLs.

The City of Manila's data, on the other hand, is too conflicting to be authoritative. The data reports of the Manila Police Department, as summarized in the ponencia,[57] state:

YEAR	NUMBER OF CICL
2014	74
2015	30
January to June 2016	75

The Department of Social Welfare and Development of the City of Manila has vastly different numbers. As summarized in the ponencia:[58]

YEAR	NUMBER OF CICL
2015	845
January to June 2016	524

[57] *Ponencia*, p. 28, fn 139.
[58] Id.

The Department of Social Welfare of Manila submits that for January to August 2016, there was a total of 480 CICLs as part of their Zero Street Dwellers Campaign.[59] Of the 480 minors, 210 minors were apprehended for curfew violations, not for petty crimes.[60] Again, the data fails to account for the percentage of CICLs as against the total number of minors in Manila.

The ponencia cites *Shleifer v. City of Charlottesville*,[61] a United States Court of Appeals case, as basis for examining the validity of curfew ordinances in Metro Manila. Far from supporting the validity of the assailed ordinances, *Shleifer* discounts it. *Shleifer* relies on unequivocally demonstrated scientific and empirical data on the rise of juvenile crime and the emphasis on juvenile safety during curfew hours *in Charlottesville, Virginia*. Here, while local government units adduced data, there does not appear to have been a well-informed effort as to these data's processing, interpretation, and correlation with avowed policy objectives.

With incomplete and inconclusive bases, the concerned local government units' justifications of reducing crime and sweeping averments of "peace and order" hardly sustain a rational basis for the restriction of minors' movement during curfew hours. If at all, the assertion that curfew restrictions ipso facto equate to the reduction of CICLs appears to be a gratuitous conclusion. It is more sentimental than logical. Lacking in even a rational basis, it follows that there is no support for the more arduous requirement of demonstrating that the assailed ordinances support a compelling state interest.

V

It has not been demonstrated that the curfews effected by the assailed ordinances are the least restrictive means for achieving their avowed purposes.

The strict scrutiny test not only requires that the challenged law be narrowly tailored in order to achieve *compelling governmental interests*, it also requires that the mechanisms it adopts are the least burdensome or least drastic means to achieve its ends:

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

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59 *Rollo*, p. 201, Annex 5 of City of Manila Comment.
60 Id. at 202, Annex 5 of City of Manila Comment.
61 159 F.3d 843 (1998).

> Because Strict Scrutiny involves statutes which either classifies on the basis of an inherently suspect characteristic or infringes fundamental constitutional rights, the presumption of constitutionality is reversed; that is, such legislation is assumed to be unconstitutional until the government demonstrates otherwise. The government must show that the statute is supported by a compelling governmental interest and the means chosen to accomplish that interest are narrowly tailored. Gerald Gunther explains as follows:
>
> > . . . The intensive review associated with the new equal protection imposed two demands a demand not only as to means but also as to ends. Legislation qualifying for strict scrutiny required a far closer fit between classification and statutory purpose than the rough and ready flexibility traditionally tolerated by the old equal protection: means had to be shown "necessary" to achieve statutory ends, not merely "reasonably related." Moreover, equal protection became a source of ends scrutiny as well: legislation in the areas of the new equal protection had to be justified by "compelling" state interests, not merely the wide spectrum of "legitimate" state ends.
>
> Furthermore, the legislature must adopt the least burdensome or least drastic means available for achieving the governmental objective.[62] (Citations omitted)

The governmental interests to be protected must not only be reasonable. They must be *compelling*. Certainly, the promotion of public safety is compelling enough to restrict certain freedoms. It does not, however, suffice to make a generic, sweeping averment of public safety.

To reiterate, respondents have not shown adequate data to prove that an imposition of curfew lessens the number of CICLs. Respondents further fail to provide data on the frequency of crimes against unattended minors during curfew hours. Without this data, it cannot be concluded that the safety of minors is better achieved if they are not allowed out on the streets during curfew hours.

While the ponencia holds that the Navotas and Manila Ordinances tend to restrict minors' fundamental rights, it found that the Quezon City Ordinance is narrowly tailored to achieve its objectives. The Quezon City Ordinance's statement of its objectives reads:

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[62] Dissenting Opinion of J. Carpio Morales in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 697–701 (2004) [Per J. Puno, En Banc] citing *Skinner v. State of Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942); *Loving v. Commonwealth of Virginia*, 388 U.S. 1, 12 (1967); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 666 (1990); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903-904 (1986); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995); Chapter 9 of G. GUNTHER, CONSTITUTIONAL LAW (12th Ed., 1991); and Gunther, Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 HARV. L. REV. 1, 21 (1972).

> WHEREAS . . . the children, particularly the minors, appear to be neglected of their proper care and guidance, education, and moral development, which led them into exploitation, drug addiction, and become vulnerable to and at the risk of committing criminal offenses;
>
> . . . .
>
> WHEREAS, as a consequence, most of minor children become out-of-school youth, unproductive by-standers, street children, and member of notorious gangs who stay, roam around or meander in public or private roads, streets or other public places, whether singly or in groups, without lawful purpose or justification;
>
> WHEREAS, to keep themselves away from the watch and supervision of the barangay officials and other authorities, these misguided minor children preferred to converge or flock together during the night time until the wee hours of the morning resorting to drinking on the streets and other public places, illegal drug use and sometimes drug peddling, engaging in troubles and other criminal activities which often resulted to bodily injuries and loss of lives;
>
> WHEREAS, reports of barangay officials and law enforcement agencies reveal that minor children roaming around, loitering or wandering in the evening are the frequent personalities involved in various infractions of city ordinances and national laws;
>
> WHEREAS, it is necessary in the interest of public order and safety to regulate the movement of minor children during night time by setting disciplinary hours, protect them from neglect, abuse, cruelty and exploitation, and other conditions prejudicial or detrimental to their development;
>
> WHEREAS, to strengthen and support parental control on these minor children, there is a need to put a restraint on the tendency of a growing number of the youth spending their nocturnal activities wastefully, especially in the face of the unabated rise of criminality and to ensure that the dissident elements in society are not provided with potent avenues for furthering their nefarious activities[.][63]

In order to achieve these objectives,[64] the ponencia cites the ordinances' exemptions, which it found to be "sufficiently safeguard[ing] the minors' constitutional rights":[65]

> SECTION 4. EXEMPTIONS – Minor children under the following circumstances shall not be covered by the provisions of this ordinance:
>
> (a) Those accompanied by their parents or guardian;
> (b) Those on their way to or from a party, graduation ceremony, religious mass, and/or other extra-curricular activities of their

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63 *Rollo*, pp. 317–318.

64 It should be pointed out that the statement "most of minor children become out-of-school youth, unproductive by-standers, street children, and member of notorious gangs" is an absurd generalization without any basis.

65 *Ponencia*, p. 33.

> school or organization wherein their attendance are required or otherwise indispensable, or when such minors are out and unable to go home early due to circumstances beyond their control as verified by the proper authorities concerned; and
> (c) Those attending to, or in experience of, an emergency situation such as conflagration, earthquake, hospitalization, road accident, law enforcers encounter, and similar incidents;
> (d) When the minor is engaged in an authorized employment activity, or going to or returning home from the same place of employment activity, without any detour or stop;
> (e) When the minor is in motor vehicle or other travel accompanied by an adult in no violation of this Ordinance;
> (f) When the minor is involved in an emergency;
> (g) When the minor is out of his/her residence attending an official school, religious, recreational, educational, social, community or other similar private activity sponsored by the city, barangay, school or other similar private civic/religious organization/group (recognized by the community) that supervises the activity or when the minor is going to or returning home from such activity, without any detour or stop; and
> (h) When the minor can present papers certifying that he/she is a student and was dismissed from his/her class/es in the evening or that he/she is a working student.[66]

The ponencia states:

> [T]he Quezon City Ordinance, in truth, only prohibits unsupervised activities that hardly contribute to the well-being of minors who publicly loaf and loiter within the locality at a time where danger is perceivably more prominent.[67]

The ponencia unfortunately falls into a hasty generalization. It generalizes unattended minors out in the streets during curfew hours as potentially, if not actually, engaging in criminal activities, merely on the basis that they are not within the bounds of the stated exemptions. It is evident, however, that the exemptions are hardly exhaustive.

Consider the dilemma that petitioner Villegas faces when she goes out at night to buy food from a convenience store because the rest of her family is already asleep.[68] As a Quezon City resident, she violates the curfew merely for wanting to buy food when she gets home from school.

It may be that a minor is out with friends or a minor was told to make a purchase at a nearby sari-sari store. None of these is within the context of a "party, graduation ceremony, religious mass, and/or other extra-curricular

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66 *Rollo*, pp. 322–323.
67 *Ponencia*, p. 34.
68 *Rollo*, p. 7, Petition.

activities of their school and organization" or part of an "official school, religious, recreational, educational, social, community or other similar private activity." Still, these activities are not criminal or nefarious. To the contrary, socializing with friends, unsavorily portrayed as mere loafing or loitering as it may be, contributes to a person's social and psychological development. Doing one's chores is within the scope of respecting one's elders.

Imposing a curfew on minors merely on the assumption that it can keep them safe from crime is not the least restrictive means to achieve this objective. Petitioners suggest street lighting programs, installation of CCTVs in street corners, and visible police patrol.[69] Public safety is better achieved by effective police work, not by clearing streets of children en masse at night. Crimes can just as well occur in broad daylight and children can be just as susceptible in such an environment. Efficient law enforcement, more than sweeping, generalized measures, ensures that children will be safe regardless of what time they are out on the streets.

The assailed ordinances' deficiencies only serve to highlight their most disturbing aspect: the imposition of a curfew only burdens minors who are living in poverty.

For instance, the Quezon City Ordinance targets minors who are not traditionally employed as the exemptions require that the minor be engaged in "an *authorized* employment activity." Curfew violators could include minors who scour garbage at night looking for food to eat or scraps to sell. The Department of Social Welfare and Development of Manila reports that for 2016, 2,194 minors were turned over as part of their Zero Street Dwellers Campaign.[70] The greater likelihood that most, if not all, curfew violators will be street children—who have no place to even come home to—than actual CICLs. So too, those caught violating the ordinance will most likely have no parent or guardian to fetch them from barangay halls.

An examination of Manila Police District's data on CICLs show that for most of the crimes committed, the motive is poverty, not a drive for nocturnal escapades.[71] Thus, to lessen the instances of juvenile crime, the government must first alleviate poverty, not impose a curfew. Poverty alleviation programs, not curfews, are the least restrictive means of preventing indigent children from turning to a life of criminality.

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69 Id. at 24, Petition.

70 Id. at 200, Annex 5 of City of Manila Comment.

71 *See rollo*, pp. 116–197, Annexes "1," "2," and "3" of City of Manila Comment.

VI

The assailed ordinances give unbridled discretion to law enforcers.

The assailed ordinances are deficient not only for failing to provide the least restrictive means for achieving their avowed ends but also in failing to articulate safeguards and define limitations that foreclose abuses.

In assailing the lack of expressed standards for identifying minor, petitioners invoke the void for vagueness doctrine.[72]

The doctrine is explained in *People v. Nazario*:[73]

> As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.[74]

While facial challenges of a statute on the ground of vagueness is permitted only in cases involving alleged transgressions against the right to free speech, penal laws may nevertheless be invalidated for vagueness "as applied." In *Estrada v. Sandiganbayan*:[75]

> [T]he doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that "one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." As has been pointed out, "vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular

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72 *Rollo*, p. 19, *Petition*.

73 247-A Phil. 276 (1988) [Per J. Sarmiento, En Banc].

74 Id. at 286 *citing* TRIBE, AMERICAN CONSTITUTIONAL LAW 718 (1978) and *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

75 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

> defendant." Consequently, there is no basis for petitioner's claim that this Court review the Anti-Plunder Law on its face and in its entirety.[76]

The difference between a facial challenge and an as-applied challenge is settled. As explained in *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*:[77]

> Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.[78] (Citation omitted)

Thus, to invalidate a law with penal provisions, such as the assailed ordinances, as-applied parties must assert actual violations of their rights and not prospective violations of the rights of third persons. In *Imbong v. Ochoa*:[79]

> In relation to locus standi, the "as applied challenge" embodies the rule that one can challenge the constitutionality of a statute only if he asserts a violation of his own rights. The rule prohibits one from challenging the constitutionality of the statute grounded on a violation of the rights of third persons not before the court. This rule is also known as the prohibition against third-party standing.[80]

The ponencia states that petitioners' invocation of the void for vagueness doctrine is improper. It reasons that petitioners failed to point out any ambiguous provision in the assailed ordinances.[81] It then proceeds to examine the provisions of the ordinances, vis-à-vis their alleged defects, while discussing how these defects may affect minors and parents who are not parties to this case. In effect, the ponencia engaged in a facial examination of the assailed ordinances. This facial examination is an improper exercise for the assailed ordinances, as they are penal laws that do not ostensibly involve the right to free speech.

The more appropriate stance would have been to examine the assailed ordinances, not in isolation, but in the context of the specific cases pleaded by petitioners. Contrary to the ponencia's position, the lack of specific

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[76] Id. at 354–355 *citing United States v. Raines*, 362 U.S. 17, 21, 4 L. Ed. 2d 524, 529 (1960); *Yazoo & Mississippi Valley RR. v. Jackson Vinegar Co.*, 226 U.S. 217, 57 L. Ed. 193 (1912); and G. GUNTHER & K. SULLIVAN, CONSTITUTIONAL LAW 1299 (2001).

[77] 646 Phil. 452 (2010) [Per J. Carpio-Morales, En Banc].

[78] Id. at 489 *citing David v. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[79] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[80] Id. at 127 *citing* the Dissenting Opinion of J. Carpio in *Romualdez v. Commission on Elections*, 576 Phil. 357, 406 (2008) [Per J. Chico-Nazario, En Banc].

[81] *Ponencia*, pp. 11–12.

provisions in the assailed ordinances indeed made them vague, so much so that actual transgressions into petitioner's rights were made.

The questioned Navotas and City of Manila Ordinances do not state any guidelines on how law enforcement agencies may determine if a person apprehended is a minor.

For its part, Section 5(h) of the Quezon City ordinance provides:

> (h) Determine the age of the child pursuant to Section 7 of this Act;[82]

However, the Section 7 it refers to provides no guidelines on the identification of age. It merely states that any member of the community may call the attention of barangay officials if they see minors during curfew hours:

> SECTION 7. COMMUNITY INVOLVEMENT/PARTICIPATION – Any person who has personal knowledge of the existence of any minor during the wee hours as provided under Section 3 hereof, must immediately call the attention of the barangay.[83]

The ponencia asserts that Republic Act No. 9344, Section 7[84] addresses the lacunae as it articulates measures for determining age. However, none of the assailed ordinances actually refers law enforcers to extant statutes. Their actions and prerogatives are not actually limited whether by the assailed ordinances' express provisions or by implied invocation. True, Republic Act No. 9344 states its prescriptions but the assailed ordinances' equivocation by silence reduces these prescriptions to mere suggestions, at best, or to mere afterthoughts of a justification, at worst.

Thus, the lack of sufficient guidelines gives law enforcers "unbridled discretion in carrying out [the assailed ordinances'] provisions."[85] The present Petition illustrates how this has engendered abusive and even absurd situations.

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82 *Rollo*, p. 324.

83 Id. at 326.

84 Rep. Act No. 9344 , sec. 7. Determination of Age. – The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

85 *People v. Nazario*, 247-A Phil. 276, 286 (1988) [Per J. Sarmiento, En Banc].

Petitioner Mark Leo Delos Reyes (Delos Reyes), an 18-year-old—no longer a minor—student, recalled that when he was apprehended for violating the curfew, he showed the barangay tanod his registration card. Despite his presentation of an official document, the barangay tanod refused to believe him. Delos Reyes had to resort to showing the barangay tanod his hairy legs for the tanod to let him go.[86]

Petitioner Baccutan likewise alleged that he and his friends were apprehended by 10 barangay tanods for violating curfew even though he was already 19 years old at that time. He alleged that he and his friends were told to perform 200 squats and if they refused, they would be framed up for a crime. They were released only when the aunt of one (1) of his friends arrived.[87]

These instances illustrate how predicaments engendered by enforcing the assailed ordinances have not been resolved by "simply presenting any competent proof of identification"[88] considering that precisely, the assailed ordinances state no mandate for law enforcers to check proof of age before apprehension. Clear and explicit guidelines for implementation are imperative to foreclose further violations of petitioners' due process rights. In the interim, the assailed statutes must be invalidated on account of their vagueness.

VII

The doctrine of *parens patriae* does not sustain the assailed ordinances.

The doctrine of *parens patriae* fails to justify the intrusions into parental prerogatives made by the assailed ordinances. The State acts as *parens patriae* in the protection of minors only when there is a clear showing of neglect, abuse, or exploitation. It cannot, on its own, decide on how children are to be reared, supplanting its own wisdom to that of parents.

The doctrine of *parens patriae* is of Anglo-American, common law origin. It was understood to have "emanate[d] from the right of the Crown to protect those of its subjects who were unable to protect themselves."[89] It was the King's "royal prerogative"[90] to "take responsibility for those without

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86 *Rollo*, p. 7, Petition.

87 Id. at 6.

88 *Ponencia*, p. 13.

89 Kay Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO STATE L. J. 519, 526 (1996).

90 J. Ryan and D. Sampen, *Suing on Behalf of the State: A Parens Patriae Primer*, 86 ILL. BAR J. 684 (1998), *citing* Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 257 (172).

capacity to look after themselves."[91] At its outset, *parens patriae* contemplated situations where vulnerable persons had no means to support or protect themselves. Given this, it was the duty of the State, as the ultimate guardian of the people, to safeguard its citizens' welfare.

The doctrine became entrenched in the United States, even as it gained independence and developed its own legal tradition. In *Late Corporation of Church of Jesus Christ v. United States*,[92] the United States Supreme Court explained *parens patriae* as a beneficent state power and not an arbitrary royal prerogative:

> This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarch to the great detriment of the people and the destruction of their liberties. On the contrary, it is a most beneficent function, and often necessary to be exercised in the interest of humanity, and **for the prevention of injury to those who cannot protect themselves.**[93] (Emphasis supplied.)

In the same case, the United States Supreme Court emphasized that the exercise of *parens patriae* applies "to the beneficiaries of charities, who are often incapable of vindicating their rights, and justly look for protection to the sovereign authority."[94] It is from this reliance and expectation of the people that a state stands as "parent of the nation."[95]

American colonial rule and the adoption of American legal traditions that it entailed facilitated our own jurisdiction's adoption of the doctrine of *parens patriae*.[96] Originally, the doctrine was understood as "the inherent power and authority of the state to provide protection of the person and property of a person *non sui juris*."[97]

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91 Margaret Hall, *The Vulnerability Jurisdiction: Equity, Parens Patriae, and the Inherent Jurisdiction of the Court*, 2(1) CAN. J. OF COMP. & CONTEMP. L. 185, 190-191 (2016), *citing* Sir James Munby, *Protecting the Rights of Vulnerable and Incapacitous Adults – the Role of the Courts: An Example of Judicial Law-making*, 26 CHILD & FAMILY LAW QUARTERLY 64, 66 (2014).

92 136 U.S. 1, 57 (1890).

93 Id.

94 Id.

95 J. Ryan and D. Sampen, *Suing on Behalf of the State: A Parens Patriae Primer*, 86 ILL. BAR J. 684 (1998); *see also Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, G.R. No. 199669, April 25. 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/199669.pdf> [Per *J.* Reyes, En Banc].

96 *See Government of the Philippine Islands v. El Monte de Piedad*, 35 Phil. 728 (1916) [Per J. Trent, Second Division].

97 *Vasco v. Court of Appeals*, 171 Phil. 673, 677 (1978) [Per *J.* Aquino, Second Division], *citing* 67 C.J.S. 624; and *Government of the Philippine Islands v. El Monte de Piedad*, 35 Phil. 728 (1916) [Per *J.* Trent, Second Division].

However, significant developments have since calibrated our own understanding and application of the doctrine.

Article II, Section 12 of the 1987 Philippine Constitution provides:

> Section 12. . . . The natural and *primary* right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government. (Emphasis supplied.)

It is only the 1987 Constitution which introduced the qualifier "primary." The present Article II, Section 12's counterpart provision in the 1973 Constitution merely referred to "[t]he natural right and duty of parents":

> Section 4. . . . The natural right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the aid and support of the Government.[98]

As with the 1973 Constitution, the 1935 Constitution also merely spoke of "[t]he natural right and duty of parents":

> Section 4. The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the government.[99]

The addition of the qualifier "primary" unequivocally attests to the constitutional intent to afford primacy and preeminence to parental responsibility. More plainly stated, the Constitution now recognizes the superiority of parental prerogative. It follows, then, that state interventions, which are tantamount to deviations from the preeminent and superior rights of parents, are permitted only in instances where the parents themselves have failed or have become incapable of performing their duties.

Shifts in constitutional temperament contextualize *Nery v. Lorenzo*,[100] the authority cited by ponencia in explaining the State's role in the upbringing of children.[101] In *Nery*, this Court alluded to the State's supreme authority to exercise *parens patriae*. *Nery* was decided in 1972, when the 1935 Constitution was in operation.[102] It stated:

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98 CONST. (1973), art. II, sec. 4.
99 CONST. (1935), art. II, sec. 4.
100 150-A Phil. 241 (1972) [Per J. Fernando, Second Division].
101 *Ponencia*, p. 15.
102 CONST. (1935), art. II, sec. 4 was worded almost as similarly as the 1973 Constitution.

> [W]here minors are involved, the State acts as *parens patriae*. To it is cast the duty of protecting the rights of persons or individual[s] who because of age or incapacity are in an unfavorable position, vis-a-vis other parties. Unable as they are to take due care of what concerns them, they have the political community to look after their welfare. This obligation the state must live up to. It cannot be recreant to such a trust.[103]

This outmoded temperament is similarly reflected in the 1978 case of *Vasco v. Court of Appeals*,[104] where, without moderation or qualification, this Court asserted that "the State is considered the *parens patriae* of minors."[105]

In contrast, *Imbong v. Ochoa*,[106] a cased decided by this Court in 2014, unequivocally characterized parents' rights as being "superior" to the state:

> Section 12, Article II of the 1987 Constitution provides that the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and development of moral character shall receive the support of the Government. Like the 1973 Constitution and the 1935 Constitution, the 1987 Constitution affirms the State recognition of the invaluable role of parents in preparing the youth to become productive members of society. *Notably, it places more importance on the role of parents in the development of their children by recognizing that said role shall be "primary," that is, that the right of parents in upbringing the youth is superior to that of the State*.[107] (Emphasis supplied)

Thus, the State acts as *parens patriae* only when parents cannot fulfill their role, as in cases of neglect, abuse, or exploitation:

> The State as *parens patriae* affords special protection to children from abuse, exploitation and other conditions prejudicial to their development. It is mandated to provide protection to those of tender years. Through its laws, the State safeguards them from everyone, even their own parents, to the end that their eventual development as responsible citizens and members of society shall not be impeded, distracted or impaired by family acrimony.[108]

As it stands, the doctrine of *parens patriae* is a mere substitute or supplement to parents' authority over their children. It operates only when parental authority is established to be absent or grossly deficient. The wisdom underlying this doctrine considers the existence of harm *and* the

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[103] *Nery v. Lorenzo*, 150-A Phil. 241, 248 (1972) [Per J. Fernando, Second Division].
[104] 171 Phil. 673 (1978) [Per J. Aquino, Second Division].
[105] Id. at 677.
[106] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].
[107] Id. at 195 *citing* Records, 1986 Constitutional Convention, Volume IV, pp. 401–402.
[108] *Concepcion v. Court of Appeals*, 505 Phil. 529, 546 (2005) [Per J. Corona, Third Division]. *See also Dela Cruz v. Gracia*, G.R. No. 177728, July 31, 2009 [Per J. Carpio Morales, Second Division].

subsequent inability of the person to protect himself or herself. This premise entails the incapacity of parents and/or legal guardians to protect a child.

To hold otherwise is to afford an overarching and almost absolute power to the State; to allow the Government to arbitrarily exercise its *parens patriae* power might as well render the superior Constitutional right of parents inutile.

More refined applications of this doctrine reflect this position. In these instances where the State exercised its powers over minors on account of *parens patriae*, it was only because the children were prejudiced and it was *without* subverting the authority of the parents themselves when they have not acted in manifest offense against the rights of their children.

Thus, in *Bernabe v. Alejo*,[109] *parens patriae* was exercised in order to give the minor his day in court. This is a matter beyond the conventional capacities of parents, and therefore, it was necessary for the State to intervene in order to protect the interests of the child.

In *People v. Baylon*[110] and other rape cases,[111] this Court held that a rigorous application of the penal law is in order, since "[t]he state, as *parens patriae*, is under the obligation to minimize the risk of harm to those, who, because of their minority, are as yet unable to take care of themselves fully."[112] In these criminal cases where minor children were victims, this Court, acting as the representative of the State exercising its *parens patriae* power, was firm in imposing the appropriate penalties for the crimes—no matter how severe—precisely because it was the only way to mitigate further harm to minors. *Parens patriae* is also the reason why "a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse," as this Court held in *People v. Malto*.[113] Again, these State actions are well outside the conventional capabilities of the parents and in no way encroach on the latter's authority.

Such assistive and justified regulation is wanting in this case.

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109 424 Phil. 933 (2000) [Per *J.* Panganiban, Third Division].

110 156 Phil. 87 (1974) [Per *J.* Fenando, Second Division].

111 *See also People v. Cabodac*, 284-A Phil. 303, 312 (1992) [Per *J.* Melencio-Herrera, Second Division]; *People v. Dolores*, 266 Phil. 724 (1990) [Per *J.* Melencio-Herrera, Second Division]; *People v. Cawili*, 160 Phil.. 25 (1975) [Per *J.* Fernando, Second Division]; and *People v. Evangelista,* 346 Phil. 717 (1997) [Per *J.* Belosillo, First Division]; *People v. Malto*, 560 Phil. 119 (2007) [Per *J.* Corona, First Division].

112 *People v. Baylon*, 156 Phil. 87, 95 (1974) [Per *J.* Fenando, Second Division].

113 560 Phil. 119 (2007) [Per J. Corona, First Division].

VIII

In my view, the interpretation that this Court gives to Section 4, item (a) of the Quezon City Ordinance will sufficiently narrowly tailor its application so as to save it from its otherwise apparent breach of fundamental constitutional principles. Thus, in the ponencia of Justice Estela Perlas-Bernabe:

> To note, there is no lack of supervision when a parent duly authorizes his/her minor child to run lawful errands or engage in legitimate activities during the night, notwithstanding curfew hours. As astutely observed by Senior Associate Justice Antonio T. Carpio and Associate Justice Marvic M.V.F. Leonen during the deliberations on this case, parental permission is implicitly considered as an exception found in Section 4, item (a) of the Quezon City Ordinance, *i.e.*, "[t]hose accompanied by their parents or guardian", as accompaniment should be understood not only in its actual but also in its constructive sense. As the Court sees it, this should be the reasonable construction of this exception so as to reconcile the juvenile curfew measure with the basic premise that State interference is not superior but only complementary to parental supervision. After all, as the Constitution itself prescribes, the parents' right to rear their children is not only natural but primary.

Of course, nothing in this decision will preclude a stricter review in a factual case whose factual ambient will be different.

Accordingly, for these reasons, I concur in the result.

MARVIC M.V.F. LEONEN
Associate Justice