Republic of the Philippines
Supreme Court
Manila

EN BANC

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, - versus - **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.	**G.R. No. 225442** Present: SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, MENDOZA, PERLAS-BERNABE, LEONEN, JARDELEZA, CAGUIOA, MARTIRES, TIJAM, and REYES, JR., *JJ.* Promulgated: August 8, 2017

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D E C I S I O N

PERLAS-BERNABE, *J.*:

This petition for *certiorari* and prohibition [1] assails the constitutionality of the curfew ordinances issued by the local governments of Quezon City, Manila, and Navotas. The petition prays that a temporary

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* Or "*Samahan ng Progresibong Kabataan*," *rollo*, p. 4.

1 Id. at 3-36.

restraining order (TRO) be issued ordering respondents Herbert Bautista, Joseph Estrada, and John Rey Tiangco, as Mayors of their respective local governments, to prohibit, refrain, and desist from implementing and enforcing these issuances, pending resolution of this case, and eventually, declare the City of Manila's ordinance as *ultra vires* for being contrary to Republic Act No. (RA) 9344,[2] or the "Juvenile Justice and Welfare Act," as amended, and all curfew ordinances as unconstitutional for violating the constitutional right of minors to travel, as well as the right of parents to rear their children.

The Facts

Following the campaign of President Rodrigo Roa Duterte to implement a nationwide curfew for minors, several local governments in Metro Manila started to strictly implement their curfew ordinances on minors through police operations which were publicly known as part of "Oplan Rody."[3]

Among those local governments that implemented curfew ordinances were respondents: (*a*) Navotas City, through *Pambayang Ordinansa Blg.* 99-02,[4] dated August 26, 1999, entitled "*Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong* (18) *Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila,*" as amended by *Pambayang Ordinansa Blg.* 2002-13,[5] dated June 6, 2002 (Navotas Ordinance); (*b*) City of Manila, through Ordinance No. 8046[6] 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" dated October 14, 2002 (Manila Ordinance); and (*c*) Quezon City, through Ordinance No. SP-2301,[7] Series of 2014, entitled "An Ordinance Setting for a [sic] Disciplinary Hours 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" dated July 31, 2014 (Quezon City Ordinance; collectively, Curfew Ordinances).[8]

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2 Entitled "AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," approved on April 28, 2006.

3 *Rollo*, p. 6.

4 Id. at 37-40.

5 Id. at 41-43. Entitled "*Ordinansa na Nag-aamyenda sa Ilang Bahagi ng Tuntunin 1, 2 at Tuntunin 4 ng Pambayang Ordinansa Blg. 99-02, Kilala Bilang Ordinansang Nagtatakda ng* 'Curfew' *ng mga Kabataan na Wala Pang Labing Walong* (18) *Taong Gulang sa Bayan ng Navotas, Kalakhang Maynila.*"

6 Id. at 44-47.

7 Id. at 48-60.

8 See id. at 5-6.

Petitioners,[9] spearheaded by the *Samahan ng mga Progresibong Kabataan* (SPARK) – an association of young adults and minors that aims to forward a free and just society, in particular the protection of the rights and welfare of the youth and minors[10] – filed this present petition, arguing that the Curfew Ordinances are unconstitutional because they: (*a*) result in arbitrary and discriminatory enforcement, and thus, fall under the void for vagueness doctrine; (*b*) suffer from overbreadth by proscribing or impairing legitimate activities of minors during curfew hours; (*c*) deprive minors of the right to liberty and the right to travel without substantive due process; and (*d*) deprive parents of their natural and primary right in rearing the youth without substantive due process.[11] In addition, petitioners assert that the Manila Ordinance contravenes RA 9344, as amended by RA 10630.[12]

More specifically, petitioners posit that the Curfew Ordinances encourage arbitrary and discriminatory enforcement as there are no clear provisions or detailed standards on how law enforcers should apprehend and properly determine the age of the alleged curfew violators.[13] They further argue that the law enforcer's apprehension depends only on his physical assessment, and, thus, subjective and based only on the law enforcer's visual assessment of the alleged curfew violator.[14]

While petitioners recognize that the Curfew Ordinances contain provisions indicating the activities exempted from the operation of the imposed curfews, *i.e.*, exemption of working students or students with evening class, they contend that the lists of exemptions *do not cover the range and breadth of legitimate activities* or reasons as to why minors would be out at night, and, hence, proscribe or impair the legitimate activities of minors during curfew hours.[15]

Petitioners likewise proffer that the Curfew Ordinances: (*a*) are unconstitutional as they deprive minors of the right to liberty and the right to travel without substantive due process;[16] and (*b*) fail to pass the strict scrutiny test, for not being narrowly tailored and for employing means that bear no reasonable relation to their purpose.[17] They argue that the prohibition of minors on streets during curfew hours will not *per se* protect and promote the social and moral welfare of children of the community.[18]

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9 Namely, herein petitioners Joanne Rose Sace Lim and John Arvin Navarro Buenaagua, and Ronel Baccutan, Mark Leo Delos Reyes, and Clarissa Joyce Villegas, minor, for herself and as represented by her father, Julian Villegas, Jr, as leaders and members of the SPARK, respectively. Id. at 4-5.

10 Id. at 4.

11 See id. at 16.

12 Entitled "AN ACT STRENGTHENING THE JUVENILE JUSTICE SYSTEM IN THE PHILIPPINES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9344, OTHERWISE KNOWN AS THE 'JUVENILE JUSTICE AND WELFARE ACT OF 2006' AND APPROPRIATING FUNDS THEREFOR," approved on October 3, 2013.

13 See *rollo*, pp. 20-21.

14 See id.

15 See id. at 21-22.

16 Id. at 23.

17 Id. at 23-25.

18 Id. at 25.

Furthermore, petitioners claim that the Manila Ordinance, particularly Section 4[19] thereof, contravenes Section 57-A[20] of RA 9344, as amended, given that the cited curfew provision imposes on minors the penalties of imprisonment, reprimand, and admonition. They contend that the imposition of penalties contravenes RA 9344's express command that no penalty shall be imposed on minors for curfew violations.[21]

Lastly, petitioners submit that there is no compelling State interest to impose curfews contrary to the parents' prerogative to impose them in the exercise of their natural and primary right in the rearing of the youth, and that even if a compelling interest exists, less restrictive means are available to achieve the same. In this regard, they suggest massive street lighting programs, installation of CCTVs (closed-circuit televisions) in public streets, and regular visible patrols by law enforcers as other viable means of protecting children and preventing crimes at night. They further opine that the government can impose more reasonable sanctions, *i.e.*, mandatory parental counseling and education seminars informing the parents of the reasons behind the curfew, and that imprisonment is too harsh a penalty for parents who allowed their children to be out during curfew hours.[22]

The Issue Before the Court

The primordial issue for the Court's resolution in this case is whether or not the Curfew Ordinances are unconstitutional.

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[19] Sec. 4. Sanctions and Penalties for Violation. Any child or youth violating this ordinance shall be sanctioned/punished as follows:
(a) If the offender is fifteen (15) years of age and below, the sanction shall consist of a REPRIMAND for the youth offender and ADMONITION to the offender's parent, guardian or person exercising parental authority.
(b) If offender is Fifteen (15) years and under Eighteen (18) years of age, the sanction/penalty shall be:
1. for the FIRST OFFENSE, Reprimand and Admonition;
2. for the SECOND OFFENSE, Reprimand and Admonition, and a warning about the legal impositions in case of a third and subsequent violation; and
3. for the THIRD OFFENSE AND SUBSEQUENT OFFENSES, Imprisonment of one (1) day to ten (10) days, or a Fine of TWO THOUSAND PESOS (Php2,000.00), or both at the discretion of the Court: *PROVIDED,* That the complaint shall be filed by the Punong Barangay with the office of the City Prosecutor. (See id. at 45.)

[20] Section 57-A. *Violations of Local Ordinances.* – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. No penalty shall be imposed on children for said violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided for in such ordinances. The child shall also be recorded as a "child at risk" and not as a "child in conflict with the law." The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars.

[21] See *rollo*, pp. 18-19.

[22] Id. at 26-28.

The Court's Ruling

The petition is **partly granted.**

I.

At the onset, the Court addresses the procedural issues raised in this case. Respondents seek the dismissal of the petition, questioning: (*a*) the propriety of *certiorari* and prohibition under Rule 65 of the Rules of Court to assail the constitutionality of the Curfew Ordinances; (*b*) petitioners' direct resort to the Court, contrary to the hierarchy of courts doctrine; and (*c*) the lack of actual controversy and standing to warrant judicial review.[23]

A. Propriety of the Petition for Certiorari and Prohibition.

Under the 1987 Constitution, judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[24] Section 1, Article VIII of the 1987 Constitution reads:

> ARTICLE VIII
> JUDICIAL DEPARTMENT
>
> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. (Emphasis and underscoring supplied)

Case law explains that the present Constitution has "expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable."[25]

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23 See id. at 243-248.
24 *Araullo v. Aquino III*, 737 Phil. 457, 525 (2014).
25 Id.

In *Araullo v. Aquino III*,[26] it was held that petitions for *certiorari* and prohibition filed before the Court "are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution."[27] It was explained that "[w]ith respect to the Court, x x x the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also **to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions***. This application is expressly authorized by the text of the second paragraph of Section 1, [Article VIII of the 1987 Constitution cited above]."[28]

In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*,[29] it was expounded that "[m]eanwhile that no specific procedural rule has been promulgated to enforce [the] 'expanded' constitutional definition of judicial power and because of the commonality of 'grave abuse of discretion' as a ground for review under Rule 65 and the courts' expanded jurisdiction, the Supreme Court – based on its power to relax its rules – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction[.]"[30]

In this case, petitioners question the issuance of the Curfew Ordinances by the legislative councils of Quezon City, Manila, and Navotas in the exercise of their delegated legislative powers on the ground that these ordinances violate the Constitution, specifically, the provisions pertaining to the right to travel of minors, and the right of parents to rear their children. They also claim that the Manila Ordinance, by imposing penalties against minors, conflicts with RA 9344, as amended, which prohibits the imposition of penalties on minors for status offenses. It has been held that "[t]here is grave abuse of discretion when an act is (1) done contrary to the Constitution, the law or jurisprudence or (2) executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias."[31] In light of the foregoing, petitioners correctly availed of the remedies of *certiorari* and prohibition, although these governmental actions were not made pursuant to any judicial or quasi-judicial function.

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26 Id.
27 Id. at 528.
28 Id. at 531; emphasis and underscoring supplied.
29 See G.R. Nos. 207132 and 207205, December 6, 2016.
30 See id.
31 See *Ocampo v. Enriquez*, G.R. Nos. 225973, 225984, 226097, 226116, 226117, 226120, and 226294, November 8, 2016.

B. Direct Resort to the Court.

Since petitions for *certiorari* and prohibition are allowed as remedies to assail the constitutionality of legislative and executive enactments, the next question to be resolved is whether or not petitioners' direct resort to this Court is justified.

The doctrine of hierarchy of courts "[r]equires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. While this jurisdiction is shared with the Court of Appeals [(CA)] and the [Regional Trial Courts], **a direct invocation of this Court's jurisdiction is allowed when there are special and important reasons therefor, clearly and especially set out in the petition**[.]"[32] This Court is tasked to resolve "**the issue of constitutionality of a law or regulation at the first instance [if it] is of paramount importance and immediately affects the social, economic, and moral well-being of the people**,"[33] as in this case. Hence, petitioners' direct resort to the Court is justified.

C. Requisites of Judicial Review.

"The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (*a*) there must be an **actual case or controversy** calling for the exercise of judicial power; (*b*) the person challenging the act must have the **standing** to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case."[34] In this case, respondents assail the existence of the first two (2) requisites.

1. Actual Case or Controversy.

"Basic in the exercise of judicial power — whether under the traditional or in the expanded setting — is the presence of an actual case or controversy."[35] "[A]n actual case or controversy is one which 'involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference

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32 *Arroyo v. Department of Justice*, 695 Phil. 302, 334 (2012); emphasis and underscoring supplied.
33 Id. at 335; emphasis and underscoring supplied.
34 *Belgica v. Ochoa, Jr.*, 721 Phil. 416, 518-519 (2013).
35 See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 29.

or dispute.' In other words, '**there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence**.'" [36] According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified "**by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act**."[37]

"Corollary to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. **For a case to be considered ripe for adjudication, it is a prerequisite that something has then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action**. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of."[38]

Applying these precepts, this Court finds that there exists an actual justiciable controversy in this case given the evident clash of the parties' legal claims, particularly on whether the Curfew Ordinances impair the minors' and parents' constitutional rights, and whether the Manila Ordinance goes against the provisions of RA 9344. Based on their asseverations, petitioners have – as will be gleaned from the substantive discussions below – conveyed a *prima facie* case of grave abuse of discretion, which perforce impels this Court to exercise its expanded jurisdiction. The case is likewise ripe for adjudication, considering that the Curfew Ordinances were being implemented until the Court issued the TRO[39] enjoining their enforcement. The purported threat or incidence of injury is, therefore, not merely speculative or hypothetical but rather, real and apparent.

2. Legal Standing.

"The question of *locus standi* or legal standing focuses on the determination of whether those assailing the governmental act have the right of appearance to bring the matter to the court for adjudication. [Petitioners] must show that they have **a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, some direct injury as a consequence of the enforcement of the**

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36 *Belgica v. Ochoa, Jr.*, supra note 34, at 519; emphasis and underscoring supplied.

37 See *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, supra note 29; emphasis and underscoring supplied.

38 *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 123-124 (2014); emphasis and underscoring supplied.

39 See TRO dated July 26, 2016 issued by Clerk of Court Felipa B. Anama; *rollo*, pp. 67-70.

challenged governmental act."[40] "'[I]nterest' in the question involved must be material — an interest that is in issue and will be affected by the official act — as distinguished from being merely incidental or general."[41]

"The gist of the question of [legal] standing is whether a party alleges **such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions**. Unless a person is injuriously affected in any of his constitutional rights by the operation of statute or ordinance, he has no standing."[42]

As abovementioned, the petition is anchored on the alleged breach of two (2) constitutional rights, namely: (**1**) the right of minors to freely travel within their respective localities; and (**2**) the primary right of parents to rear their children. Related to the first is the purported conflict between RA 9344, as amended, and the penal provisions of the Manila Ordinance.

Among the five (5) individual petitioners, only Clarissa Joyce Villegas (Clarissa) has legal standing to raise the issue affecting the minor's right to travel,[43] because: (*a*) she was still a minor at the time the petition was filed before this Court,[44] and, hence, a proper subject of the Curfew Ordinances; and (*b*) as alleged, she travels from Manila to Quezon City at night after school and is, thus, in imminent danger of apprehension by virtue of the Curfew Ordinances. On the other hand, petitioners Joanne Rose Sace Lim, John Arvin Navarro Buenaagua, Ronel Baccutan (Ronel), and Mark Leo Delos Reyes (Mark Leo) admitted in the petition that they are all of legal age, and therefore, beyond the ordinances' coverage. Thus, they are not proper subjects of the Curfew Ordinances, for which they could base any direct injury as a consequence thereof.

None of them, however, has standing to raise the issue of whether the Curfew Ordinances violate the parents' right to rear their children as they have not shown that they stand before this Court as parent/s and/or guardian/s whose constitutional parental right has been infringed. It should be noted that Clarissa is represented by her father, Julian Villegas, Jr. (Mr. Villegas), who could have properly filed the petition for himself for the alleged violation of his parental right. But Mr. Villegas did not question the Curfew Ordinances based on his primary right as a parent as he only stands as the representative of his minor child, Clarissa, whose right to travel was supposedly infringed.

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40 *Saguisag v. Ochoa, Jr.*, G.R. Nos. 212426 and 212444, January 12, 2016, 779 SCRA 241, 327-328; emphasis and underscoring supplied.

41 Id. at 328.

42 *Belgica v. Ochoa, Jr.*, supra note 34, at 527; emphasis and underscoring supplied.

43 *Rollo*, p. 5.

44 Clarissa was seventeen (17) years old (see Certificate of Live Birth; id. at 63) at the time the petition was filed on July 22, 2016 (see id. at 3).

As for SPARK, it is an unincorporated association and, consequently, has no legal personality to bring an action in court.[45] Even assuming that it has the capacity to sue, SPARK still has no standing as it failed to allege that it was authorized by its members who were affected by the Curfew Ordinances, *i.e.,* the minors, to file this case on their behalf.

Hence, save for Clarissa, petitioners do not have the required personal interest in the controversy. More particularly, Clarissa has standing only on the issue of the alleged violation of the minors' right to travel, but not on the alleged violation of the parents' right.

These notwithstanding, this Court finds it proper to relax the standing requirement insofar as all the petitioners are concerned, in view of the transcendental importance of the issues involved in this case. "In a number of cases, this Court has taken a liberal stance towards the requirement of legal standing, especially when paramount interest is involved. **Indeed, when those who challenge the official act are able to craft an issue of transcendental significance to the people, the Court may exercise its sound discretion and take cognizance of the suit**. It may do so in spite of the inability of the petitioners to show that they have been personally injured by the operation of a law or any other government act."[46]

This is a case of first impression in which the constitutionality of juvenile curfew ordinances is placed under judicial review. Not only is this Court asked to determine the impact of these issuances on the right of parents to rear their children and the right of minors to travel, it is also requested to determine the extent of the State's authority to regulate these rights in the interest of general welfare. Accordingly, this case is of overarching significance to the public, which, therefore, impels a relaxation of procedural rules, including, among others, the standing requirement.

That being said, this Court now proceeds to the substantive aspect of this case.

II.

A. Void for Vagueness.

Before resolving the issues pertaining to the rights of minors to travel and of parents to rear their children, this Court must first tackle petitioners' contention that the Curfew Ordinances are void for vagueness.

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[45] *Association of Flood Victims v. Commission on Elections (COMELEC)*, G.R. No. 203775, August 5, 2014, 732 SCRA 100, 106.

[46] *Saguisag v. Ochoa, Jr.*, supra note 40, at 335-336; emphasis and underscoring supplied.

In particular, petitioners submit that the Curfew Ordinances are void for not containing sufficient enforcement parameters, which leaves the enforcing authorities with unbridled discretion to carry out their provisions. They claim that the lack of procedural guidelines in these issuances led to the questioning of petitioners Ronel and Mark Leo, even though they were already of legal age. They maintain that the enforcing authorities apprehended the suspected curfew offenders based only on their physical appearances and, thus, acted arbitrarily. Meanwhile, although they conceded that the Quezon City Ordinance requires enforcers to determine the age of the child, they submit that nowhere does the said ordinance require the law enforcers to ask for proof or identification of the child to show his age.[47]

The arguments are untenable.

"A statute or act suffers from the defect of vagueness 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 (2) 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.**"[48]

In this case, petitioners' invocation of the void for vagueness doctrine is improper, considering that they do not properly identify any provision in any of the Curfew Ordinances, which, because of its vague terminology, fails to provide fair warning and notice to the public of what is prohibited or required so that one may act accordingly.[49] **The void for vagueness doctrine is premised on due process considerations**, which are absent from this particular claim. In one case, it was opined that:

> [T]he vagueness doctrine is a specie of "unconstitutional uncertainty," which may involve "procedural due process uncertainty cases" and "substantive due process uncertainty cases." "Procedural due process uncertainty" involves cases where the statutory language was so obscure that it failed to give adequate warning to those subject to its prohibitions as well as to provide proper standards for adjudication. Such a definition encompasses the vagueness doctrine. This perspective rightly integrates the vagueness doctrine with the due process clause, a necessary interrelation since there is no constitutional provision that explicitly bars statutes that are "void-for-vagueness."[50]

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47 See *rollo*, pp. 19-21.

48 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 488 (2010); emphases and underscoring supplied.

49 See *Smith v. Goguen*, 415 U.S. 566; 94 S. Ct. 1242; 39 L. Ed. 2d 605 (1974) U.S. LEXIS 113.

50 Dissenting Opinion of Retired Associate Justice Dante O. Tinga in *Spouses. Romualdez v. COMELEC*, 576 Phil. 357, 432 (2008).

Essentially, petitioners only bewail the lack of enforcement parameters to guide the local authorities in the proper apprehension of suspected curfew offenders. **They do not assert any confusion as to what conduct the subject ordinances prohibit or not prohibit but only point to the ordinances' lack of enforcement guidelines**. The mechanisms related to the implementation of the Curfew Ordinances are, however, matters of policy that are best left for the political branches of government to resolve. Verily, the objective of curbing unbridled enforcement is not the sole consideration in a void for vagueness analysis; rather, petitioners must show that this perceived danger of unbridled enforcement stems from an ambiguous provision in the law that allows enforcement authorities to second-guess if a particular conduct is prohibited or not prohibited. In this regard, that ambiguous provision of law contravenes due process because agents of the government cannot reasonably decipher what conduct the law permits and/or forbids. In *Bykofsky v. Borough of Middletown*,[51] it was ratiocinated that:

> A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on *ad hoc* and subjective basis, and vague standards result in erratic and arbitrary application based on individual impressions and personal predilections.[52]

As above-mentioned, petitioners fail to point out any ambiguous standard in any of the provisions of the Curfew Ordinances, but rather, lament the lack of detail on how the age of a suspected minor would be determined. Thus, without any correlation to any vague legal provision, the Curfew Ordinances cannot be stricken down under the void for vagueness doctrine.

Besides, petitioners are mistaken in claiming that there are no sufficient standards to identify suspected curfew violators. While it is true that the Curfew Ordinances do not explicitly state these parameters, law enforcement agents are still bound to follow the prescribed measures found in statutory law when implementing ordinances. Specifically, RA 9344, as amended, provides:

> Section 7. *Determination of Age.* – x x x 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. (Emphases supplied)

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[51] 401 F. Supp. 1242 (1975) U.S. Dist. LEXIS 16477.
[52] Id., citation omitted.

This provision should be read in conjunction with the Curfew Ordinances because RA 10630 (the law that amended RA 9344) repeals all ordinances inconsistent with statutory law.[53] Pursuant to Section 57-A of RA 9344, as amended by RA 10630,[54] **minors caught in violation of curfew ordinances are children at risk** and, therefore, covered by its provisions.[55] It is a long-standing principle that "**[c]onformity with law is one of the essential requisites for the validity of a municipal ordinance**."[56] Hence, by necessary implication, ordinances should be read and implemented in conjunction with related statutory law.

Applying the foregoing, any person, such as petitioners Ronel and Mark Leo, who was perceived to be a minor violating the curfew, may therefore prove that he is beyond the application of the Curfew Ordinances by simply presenting any competent proof of identification establishing their majority age. In the absence of such proof, the law authorizes enforcement authorities to conduct a visual assessment of the suspect, which – needless to state – should be done ethically and judiciously under the circumstances. Should law enforcers disregard these rules, the remedy is to pursue the appropriate action against the erring enforcing authority, and not to have the ordinances invalidated.

All told, petitioners' prayer to declare the Curfew Ordinances as void for vagueness is denied.

B. Right of Parents to Rear their Children.

Petitioners submit that the Curfew Ordinances are unconstitutional because they deprive parents of their natural and primary right in the rearing of the youth without substantive due process. In this regard, they assert that this right includes the right to determine whether minors will be required to go home at a certain time or will be allowed to stay late outdoors. Given that

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53 Section 16 of RA 10630 provides:

> Section. 16. *Repealing Clause.* – All laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

54 Section 11 of RA 10630 provides:

> Section. 57-A. *Violations of Local Ordinances.* – Ordinances enacted by local governments concerning juvenile status offenses such as, but not limited to, curfew violations, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, shall be for the protection of children. x x x **The child shall also be recorded as a 'child at risk' and not as a 'child in conflict with the law**.' x x x. (Emphasis and underscoring supplied)

55 Section 1. *Short Title and Scope.* – This Act shall be known as the "Juvenile Justice and Welfare Act of 2006." It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

56 *People v. Chong Hong*, 65 Phil. 625, 628 (1938); emphasis and underscoring supplied.

the right to impose curfews is primarily with parents and not with the State, the latter's interest in imposing curfews cannot logically be compelling.[57]

Petitioners' stance cannot be sustained.

Section 12, Article II of the 1987 Constitution articulates the State's policy relative to the rights of parents in the rearing of their children:

> 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**. (Emphasis and underscoring supplied.)

As may be gleaned from this provision, the rearing of children (*i.e.*, referred to as the "youth") for civic efficiency and the development of their moral character are characterized not only as parental rights, but also as parental duties. This means that parents are not only given the privilege of exercising their authority over their children; they are equally obliged to exercise this authority conscientiously. The duty aspect of this provision is a reflection of the State's independent interest to ensure that the youth would eventually grow into free, independent, and well-developed citizens of this nation. For indeed, it is during childhood that minors are prepared for additional obligations to society. "**[T]he duty to prepare the child for these [obligations] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship**."[58] "This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens."[59]

By history and tradition, "the parental role implies a substantial measure of authority over one's children."[60] In *Ginsberg v. New York*,[61] the Supreme Court of the United States (US) remarked that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is **basic in the structure of our society**."[62] As in our Constitution, the right and duty of parents to rear their children is not only described as "natural," but also as "primary." **The qualifier "primary" connotes the parents' superior right**

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57 See *rollo*, pp. 26-28.

58 *Wisconsin v. Yoder*, 406 U.S. 205; 92 S. Ct. 1526; 32 L. Ed. 2d 15 (1972) U.S. LEXIS 144; emphasis and underscoring supplied.

59 *Bellotti v. Baird*, 443 U.S. 622; 99 S. Ct. 3035; 61 L. Ed. 2d 797 (1979) U.S. LEXIS 17.

60 Id.

61 390 U.S. 629; 88 S. Ct. 1274; 20 L. Ed. 2d 195 (1968) U.S. LEXIS 1880; 1 Media L. Rep. 1424; 44 Ohio Op. 2d 339.

62 Id; emphasis and underscoring supplied.

over the State in the upbringing of their children.[63] The rationale for the State's deference to parental control over their children was explained by the US Supreme Court in *Bellotti v. Baird* (*Bellotti*),[64] as follows:

> [T]he guiding role of parents in their upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. **But an additional and more important justification for state deference to parental control over children is that "the child is not [a] mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.**"[65] (Emphasis and underscoring supplied)

While parents have the primary role in child-rearing, it should be stressed that "**when actions concerning the child have a relation to the public welfare or the well-being of the child, the [S]tate may act to promote these legitimate interests.**"[66] Thus, "**[i]n cases in which harm to the physical or mental health of the child or to public safety, peace, order, or welfare is demonstrated, these legitimate state interests may override the parents' qualified right to control the upbringing of their children**."[67]

As our Constitution itself provides, the State is mandated to **support** parents in the exercise of these rights and duties. **State authority is therefore, not exclusive of, but rather, complementary to parental supervision**. In *Nery v. Lorenzo,*[68] this Court acknowledged the State's role as *parens patriae* in protecting minors, *viz.*:

> **[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 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. As was set forth in an opinion of the United States Supreme Court: "**This prerogative of *parens patriae* is inherent in the supreme power of every State**, x x x."[69] (Emphases and underscoring supplied)

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63 See *Spouses Imbong v. Ochoa, Jr.*, supra note 38, at 192 and 195.
64 *Bellotti v. Baird*, supra note 59.
65 See id.
66 *Bykofsky v. Borough of Middletown*, supra note 51; emphasis supplied.
67 Id.; emphasis and underscoring supplied.
68 150-A Phil. 241 (1972).
69 Id. at 248, citing *Mormon Church v. US*, 136 U.S. 1 (1890).

As *parens patriae*, the State has the inherent right and duty to aid parents in the moral development of their children,[70] and, thus, assumes a supporting role for parents to fulfill their parental obligations. In *Bellotti*, it was held that "[l]egal restriction on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding. **Under the Constitution, the State can properly conclude that parents and others, teachers for example, who have the primary responsibility for children's well-being are entitled to the support of the laws designed to aid discharge of that responsibility**."[71]

The Curfew Ordinances are but examples of legal restrictions designed to aid parents in their role of promoting their children's well-being. As will be later discussed at greater length, these ordinances further compelling State interests (particularly, the promotion of juvenile safety and the prevention of juvenile crime), which necessarily entail limitations on the primary right of parents to rear their children. Minors, because of their peculiar vulnerability and lack of experience, are not only more exposed to potential physical harm by criminal elements that operate during the night; their moral well-being is likewise imperiled as minor children are prone to making detrimental decisions during this time.[72]

At this juncture, it should be emphasized that the Curfew Ordinances apply only when the minors are not – whether actually or constructively (as will be later discussed) – accompanied by their parents. This serves as an explicit recognition of the State's deference to the primary nature of parental authority and the importance of parents' role in child-rearing. Parents are effectively given unfettered authority over their children's conduct during curfew hours when they are able to supervise them. Thus, in all actuality, **the only aspect of parenting that the Curfew Ordinances affects is the parents' prerogative to allow minors to remain in public places without parental accompaniment during the curfew hours**.[73] In this respect, **the ordinances neither dictate an over-all plan of discipline for the parents to apply to their minors nor force parents to abdicate their authority to influence or control their minors' activities**.[74] As such, the Curfew Ordinances only amount to a minimal – albeit reasonable – infringement upon a parent's right to bring up his or her child.

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70 See *Spouses Imbong v. Ochoa, Jr.*, supra note 38, at 195-196.

71 *Bellotti*, supra note 59, citing See *Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their "Rights,"* 1976 B. Y. U. L. Rev. 605 and *Ginsberg v. New York*, supra note 61; emphasis and underscoring supplied.

72 See *Schleifer v. City of Charlottesville*, 159 F.3d 843 (1998) U.S. App. LEXIS 26597.

73 See *Qutb v. Strauss*, 11 F.3d 488 (1993) U.S. App. LEXIS 29974.

74 See *Bykofsky v. Borough of Middletown*, supra note 51; and *City of Panora v. Simmons*, 445 N.W.2d 363; 1989 Iowa Sup. LEXIS 254; 83 A.L.R. 4th 1035.

Finally, it may be well to point out that the Curfew Ordinances positively influence children to spend more time at home. Consequently, this situation provides parents with better opportunities to take a more active role in their children's upbringing. In *Schleifer v. City of Charlottesvillle* (*Schleifer*),[75] the US court observed that the city government "was entitled to believe x x x that a nocturnal curfew would promote parental involvement in a child's upbringing. A curfew aids the efforts of parents who desire to protect their children from the perils of the street but are unable to control the nocturnal behavior of those children."[76] Curfews may also aid the "efforts of parents who prefer their children to spend time on their studies than on the streets."[77] Reason dictates that these realities observed in *Schleifer* are no less applicable to our local context. Hence, these are additional reasons which justify the impact of the nocturnal curfews on parental rights.

In fine, the Curfew Ordinances should not be declared unconstitutional for violating the parents' right to rear their children.

C. Right to Travel.

Petitioners further assail the constitutionality of the Curfew Ordinances based on the minors' right to travel. They claim that the liberty to travel is a fundamental right, which, therefore, necessitates the application of the strict scrutiny test. Further, they submit that even if there exists a compelling State interest, such as the prevention of juvenile crime and the protection of minors from crime, there are other less restrictive means for achieving the government's interest.[78] In addition, they posit that the Curfew Ordinances suffer from overbreadth by proscribing or impairing legitimate activities of minors during curfew hours.[79]

Petitioner's submissions are partly meritorious.

At the outset, the Court rejects petitioners' invocation of the overbreadth doctrine, considering that petitioners have not claimed any transgression of their rights to free speech or any inhibition of speech-related conduct. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council* (*Southern Hemisphere*),[80] this Court explained that "the application of the overbreadth doctrine is limited to a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases,"[81] *viz.*:

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75 Supra note 72.
76 Id.
77 Id.
78 See *rollo*, pp. 23-25.
79 See id. at 21-23.
80 Supra note 48.
81 Id. at 490; emphasis in the original omitted, citation omitted.

> **By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech**, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.
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> The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. **The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit**. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." **An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties**.[82] (Emphases and underscoring supplied)

In the same case, it was further pointed out that "[i]n restricting the overbreadth doctrine to free speech claims, the Court, in at least two [(2)] cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment,[83] and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks*,[84] it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the 'transcendent value to all society of constitutionally protected expression.'"[85]

In the more recent case of *Spouses Imbong v. Ochoa, Jr.*,[86] it was opined that "**[f]acial challenges can only be raised on the basis of overbreadth** and not on vagueness. *Southern Hemisphere* demonstrated

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82 Id. at 490-491.

83 First Amendment (US Constitution). Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

84 539 U.S. 113; 123 S. Ct. 2191; 156 L. Ed. 2d 148 (2003) U.S. LEXIS 4782; 71 U.S.L.W. 4441; 2003 Cal. Daily Op. Service 5136; 16 Fla. L. Weekly Fed. S 347.

85 *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, supra note 48, at 491.

86 Supra note 38.

how vagueness relates to violations of due process rights, **whereas facial challenges are raised on the basis of overbreadth and limited to the realm of freedom of expression**."[87]

That being said, this Court finds it improper to undertake an overbreadth analysis in this case, there being no claimed curtailment of free speech. On the contrary, however, this Court finds proper to examine the assailed regulations under the strict scrutiny test.

The right to travel is recognized and guaranteed as a fundamental right[88] under Section 6, Article III of the 1987 Constitution, to wit:

> 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**. (Emphases and underscoring supplied)

Jurisprudence provides that this right refers to the right to move freely from the Philippines to other countries or within the Philippines.[89] It is a right embraced within the general concept of liberty.[90] Liberty - a birthright of every person - includes the power of locomotion[91] and the right of citizens to be free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life.[92]

The right to travel is essential as it enables individuals to access and exercise their other rights, such as the rights to education, free expression, assembly, association, and religion.[93] The inter-relation of the right to travel with other fundamental rights was briefly rationalized in *City of Maquoketa v. Russell*,[94] as follows:

> Whenever the First Amendment rights of freedom of religion, speech, assembly, and association require one to move about, such movement must necessarily be protected under the First Amendment.

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87 See Associate Justice Marvic M.V. F. Leonen's Dissenting Opinion; id. at 583-584; emphases and underscoring supplied.

88 See *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino, Jr. v. Enrile*, 158-A Phil. 1 (1974); *Kwong v. Presidential Commission on Good Government*, 240 Phil. 219 (1987).

89 In *Marcos v. Manglapus*, 258 Phil. 479, 497-498 (1989), the Court ruled that the right to travel under our Constitution refer to right to move within the country, or to another country, but not the right to return to one's country. The latter right, however, is provided under the Universal Declaration of Human Rights to which the Philippines is a signatory.

90 UP Law Center Constitutional Revision Project 61 (1970). See *Kent v. Dulles*, 357 U.S. 116; 78 S. Ct. 1113; 2 L. Ed. 2d 1204 (1958) U.S. LEXIS 814. See also *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 705-706 (1919), where the Court stated that the right of locomotion is one of the chief elements of the guaranty of liberty.

91 See *Duran v. Abad Santos*, 75 Phil. 410, 431-432 (1945).

92 See Salvador H Laurel. Proceedings of the Philippine Constitutional Convention. As Faithfully Reproduced from the Personal Record of Jose P. Laurel, Vol. III, 652 (1966). See also *Rubi v. Provincial Board of Mindoro*, supra note 90, at 705.

93 See *City of Maquoketa v. Russell*, 484 N.W.2d 179 (1992) Iowa Sup. LEXIS 91.

94 Id.

> **Restricting movement** in those circumstances **to the extent that First Amendment Rights cannot be exercised without violating the law is equivalent to a denial of those rights**. One court has eloquently pointed this out:
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> > **We would not deny the relatedness of the rights guaranteed by the First Amendment to freedom of travel and movement.** If, for any reason, people cannot walk or drive to their church, their freedom to worship is impaired. If, for any reason, people cannot walk or drive to the meeting hall, freedom of assembly is effectively blocked. If, for any reason, people cannot safely walk the sidewalks or drive the streets of a community, opportunities for freedom of speech are sharply limited. **Freedom of movement is inextricably involved with freedoms set forth in the First Amendment.** (Emphases supplied)

Nevertheless, grave and overriding considerations of public interest justify restrictions even if made against fundamental rights. Specifically on the freedom to move from one place to another, jurisprudence provides that this right is not absolute.[95] As the 1987 Constitution itself reads, the State[96] may impose limitations on the exercise of this right, provided that they: **(1) serve the interest of national security, public safety, or public health**; and **(2) are provided by law**.[97]

The stated purposes of the Curfew Ordinances, specifically the promotion of juvenile safety and prevention of juvenile crime, inarguably serve the interest of public safety. The restriction on the minor's movement and activities within the confines of their residences and their immediate vicinity during the curfew period is perceived to reduce the probability of the minor becoming victims of or getting involved in crimes and criminal activities. As to the second requirement, *i.e.*, that the limitation "be provided by law," our legal system is replete with laws emphasizing the State's duty to afford special protection to children, *i.e.*, RA 7610,[98] as amended, RA 9775,[99] RA 9262,[100] RA 9851,[101] RA 9344,[102] RA 10364,[103] RA 9211,[104] RA 8980,[105] RA 9288,[106] and Presidential Decree (PD) 603,[107] as amended.

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95 See *Leave Division, Office of Administrative Services-Office of the Court Administrator (OAS-OCA) v. Heusdens*, 678 Phil. 328, 399 (2011) and *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 752 (2006). See also *Marcos v. Manglapus*, supra note 89, at 504. In *Silverio v. CA* (273 Phil. 128, 133 [1991]), the Court held that "the [State is] not armed with arbitrary discretion to impose limitations [on this right]," and in *Rubi v. Provincial Board of Mindoro* (supra note 90, at 716), it was held that "citizens [do] not possess an absolute freedom of locomotion."

96 The State under Section 6, Article III of the 1987 Constitution pertains to executive officers or administrative authorities (see *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651).

97 *Silverio v. CA*, supra note 95, at 133.

98 See Section 2 of RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," otherwise known as "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT" (July 27, 1992).

99 See Section 2 of RA 9775, entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES," otherwise known as the "ANTI-CHILD PORNOGRAPHY ACT OF 2009," approved on November 17, 2009.

100 See Sections 2 and 4 of RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR,

Particularly relevant to this case is Article 139 of PD 603, which explicitly authorizes local government units, through their city or municipal councils, to set curfew hours for children. It reads:

> Article 139. *Curfew Hours for Children.* – **City or municipal councils may prescribe such curfew hours for children as may be warranted by local conditions**. The duty to enforce curfew ordinances shall devolve upon the parents or guardians and the local authorities.
>
> x x x x (Emphasis and underscoring supplied)

As explicitly worded, city councils are authorized to enact curfew ordinances (as what respondents have done in this case) and enforce the same through their local officials. In other words, PD 603 provides sufficient statutory basis – as required by the Constitution – to restrict the minors' exercise of the right to travel.

The restrictions set by the Curfew Ordinances that apply solely to minors are likewise constitutionally permissible. In this relation, this Court recognizes that minors do possess and enjoy constitutional rights,[108] **but the exercise of these rights is not co-extensive as those of adults**.[109] They are

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AND FOR OTHER PURPOSES," otherwise known as the "ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004" (March 27, 2004).

101 See Section 2 of RA 9851, entitled "AN ACT DEFINING AND PENALIZING CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE AND OTHER CRIMES AGAINST HUMANITY, ORGANIZING JURISDICTION, DESIGNATING SPECIAL COURTS, AND FOR RELATED PURPOSES" otherwise known as the "PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY," approved on December 11, 2009.

102 See Section 2 of RA 9344.

103 See Sections 3 (a) and (b) of RA 10364, entitled "AN ACT EXPANDING REPUBLIC ACT NO. 9208, ENTITLED 'AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES," OTHERWISE KNOWN AS THE "EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2012," approved on February 6, 2013.

104 See Section 32 (b) of RA 9211, entitled "AN ACT REGULATING THE PACKAGING, USE, SALE, DISTRIBUTION AND ADVERTISEMENTS OF TOBACCO PRODUCTS AND FOR OTHER PURPOSES," otherwise known as "TOBACCO REGULATION ACT OF 2003"(September 2, 2003).

105 See Sections 2 and 3 of RA 8980, entitled "AN ACT PROMULGATING A COMPREHENSIVE POLICY AND A NATIONAL SYSTEM FOR EARLY CHILDHOOD CARE AND DEVELOPMENT (ECCD), PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES," otherwise known as "ECCD ACT" (May 22, 2001).

106 See Sections 2 and 3 of RA 9288, entitled "AN ACT PROMULGATING A COMPREHENSIVE POLICY AND A NATIONAL SYSTEM FOR ENSURING NEWBORN SCREENING," otherwise known as the "NEWBORN SCREENING ACT OF 2004" (May 10, 2004).

107 See Articles 1, 3, and 8 of PD 603, entitled "THE CHILD AND YOUTH WELFARE CODE," approved on December 10, 1974.

108 See *Bellotti*, supra note 59. See also Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution 97 Harv. L. Rev. 1163 (March 1984), stating that minors enjoy a myriad of constitutional rights shared with adults. Indeed, the Bill of Rights under the Constitution is not for adults alone; hence, the State should not afford less protection to minors' right simply because they fall below the age of majority.

109 See *Hutchins v. District of Columbia*, 188 F.3d 531; 338 U.S. App. D.C. 11 (1999) U.S. App. LEXIS 13635; *Schleifer v. City of Charlottesville*, supra note 72, citing *Bethel School District No. 403 v. Fraser*, 478 U.S. 675; 106 S. Ct. 3159; 92 L. Ed. 2d 549 (1986) U.S. LEXIS 139; 54 U.S.L.W. 5054; *Bellotti*, supra note 59; *Ginsberg v. New York*, supra note 61; and *Prince v. Massachusetts*, 321 U.S. 804; 64 S. Ct. 784; 88 L. Ed. 1090 (1944) U.S. LEXIS 942.

always subject to the authority or custody of another, such as their parent/s and/or guardian/s, and the State.[110] As *parens patriae*, the State regulates and, to a certain extent, restricts the minors' exercise of their rights, such as in their affairs concerning the right to vote,[111] the right to execute contracts,[112] and the right to engage in gainful employment.[113] With respect to the right to travel, minors are required by law to obtain a clearance from the Department of Social Welfare and Development before they can travel to a foreign country by themselves or with a person other than their parents.[114] These limitations demonstrate that the State has broader authority over the minors' activities than over similar actions of adults,[115] and overall, reflect the State's general interest in the well-being of minors.[116] Thus, the State may impose limitations on the minors' exercise of rights even though these limitations do not generally apply to adults.

In *Bellotti*,[117] the US Supreme Court identified three (3) justifications for the differential treatment of the minors' constitutional rights. These are: ***first*, the peculiar vulnerability of children**; ***second*, their inability to make critical decisions in an informed and mature manner**; and ***third*, the importance of the parental role in child rearing**:[118]

> [On the first reason,] our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, **the State is entitled to adjust its legal system to account for children's vulnerability** and their needs for 'concern, ...sympathy, and ... paternal attention. x x x.
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> [On the second reason, this Court's rulings are] grounded [on] the recognition that, during the formative years of childhood and adolescence, **minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them**. x x x.
>
> x x x x
>
> [On the third reason,] the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. x x x.

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110 See *Vernonia School District 47J v. Acton*, 515 U.S. 646; 115 S. Ct. 2386; 132 L. Ed. 2d 564 (1995) U.S. LEXIS 4275; 63 U.S.L.W. 4653; 95 Cal. Daily Op. Service 4846; 9 Fla. L. Weekly Fed. S 229.

111 1987 CONSTITUTION, Article V, Section 1.

112 Civil Code of the Philippines, Article 1327.

113 Labor Code of the Philippines, as renumbered, Articles 137 and 138.

114 See Section 8 (a) of RA 7610 and Section 5 (f) of RA 8239, entitled "PHILIPPINE PASSPORT ACT OF 1996," approved on November 22, 1996.

115 *Schleifer v. City of Charlottesville*, supra note 72, citing *Prince v. Massachusetts*, supra note 109.

116 *Schleifer v. City of Charlottesville* ; id.

117 Supra note 59.

118 *Bellotti*, id.; to wit: "The unique role in our society of the family x x x requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. **We have recognized three [(3)] reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: [1] the peculiar vulnerability of children; [2] their inability to make critical decisions in an informed, mature manner; and [3] the importance of the parental role in child rearing**." (Emphases and underscoring supplied)

x x x x

x x x **Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity** that make eventual participation in a free society meaningful and rewarding. [119] (Emphases and underscoring supplied)

Moreover, in *Prince v. Massachusetts,* [120] the US Supreme Court acknowledged the heightened dangers on the streets to minors, as compared to adults:

A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, more especially in public places, and the **possible harms arising from other activities subject to all the diverse influences of the [streets].** It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power, whether against the parent's claim to control of the child or one that religious scruples dictate contrary action.

It is true children have rights, in common with older people, in the primary use of highways. But even in such use **streets afford dangers for them not affecting adults. And in other uses, whether in work or in other things, this difference may be magnified**.[121] (Emphases and underscoring supplied)

For these reasons, the State is justified in setting restrictions on the minors' exercise of their travel rights, provided, they are singled out on reasonable grounds.

Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications.[122] The **strict scrutiny test** applies when a classification either (*i*) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (*ii*) burdens suspect classes.[123] The **intermediate**

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119 Id.

120 Supra note 109.

121 Id., citations omitted.

122 See *Central Bank Employees Association, Inc. v. BSP (BSP)*, 487 Phil. 531 (2004); *White Light Corporation v. City of Manila*, 596 Phil. 444 (2009); *Ang Ladlad LGBT Party v. COMELEC*, 632 Phil. 32, 77 (2010), citing Joaquin Bernas, S.J. The 1987 Constitution of the Philippines: A Commentary 139-140 (2009). See also Concurring Opinion of Associate Justice Teresita J. Leonardo-De Castro in *Garcia v. Drilon*, 712 Phil. 44, 124-127 (2013); and *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 97-98 (2014).

123 In *Central Bank Employees Association, Inc. v. BSP* (id. at 693-696, citations omitted), it was opined that, "in the landmark case of *San Antonio Independent School District v. Rodriguez* (411 U.S. 1; 93 S. Ct. 1278; 36 L. Ed. 2d 16 [1973] U.S. LEXIS 91), the U.S. Supreme Court in identifying a 'suspect class' as a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process, articulated that suspect classifications were not limited to classifications based on race, alienage or national origin but could also be applied to other

scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy.[124] Lastly, the **rational basis test** applies to all other subjects not covered by the first two tests.[125]

Considering that the right to travel is a fundamental right in our legal system guaranteed no less by our Constitution, the strict scrutiny test[126] is the applicable test.[127] At this juncture, it should be emphasized that minors enjoy the same constitutional rights as adults; the fact that the State has broader authority over minors than over adults does not trigger the application of a lower level of scrutiny.[128] In *Nunez v. City of San Diego* (*Nunez*),[129] the US court illumined that:

> Although many federal courts have recognized that juvenile curfews implicate the fundamental rights of minors, the parties dispute whether strict scrutiny review is necessary. **The Supreme Court teaches that rights are no less "fundamental" for minors than adults, but that the analysis of those rights may differ:**
>
> Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. **Minors, as well as adults, are protected by the Constitution and possess constitutional rights.** The Court[,] indeed, however, [has long] recognized that the State

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criteria such as religion. Thus, the U.S. Supreme Court has ruled that suspect classifications deserving of Strict Scrutiny include those based on race or national origin, [alienage], and religion while classifications based on gender, illegitimacy, financial need, conscientious objection and age have been held not to constitute suspect classifications." See also *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*, G.R. Nos. 189185 and 189305, August 16, 2016. See further *White Light Corporation v. City of Manila* (id. at 463), where it was held that "[s[trict 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 [US] Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access, and interstate travel."

124 See Dissenting Opinion of Retired Chief Justice Artemio V. Panganiban in *Central Bank Employees Association, Inc. v. BSP*, id. at 648.

125 See id.

126 See *White Light Corporation v. City of Manila*, id.

127 In the US, courts have made several, albeit conflicting, rulings in determining the applicable level of scrutiny in cases involving minors' constitutional rights, specifically on the right to travel (see *Bykofsky v. Borough of Middletown*, supra note 51; *Johnson v. City of Opelousas*, 658 F.2d 1065 [1981] U.S. App. LEXIS 16939; 32 Fed. R. Serv. 2d [Callaghan] 879; *McCollester v. City of Keene*, 586 F. Supp. 1381 [1984] U.S. Dist. LEXIS 16647; *Waters v. Barry*, 711 F. Supp. 1125 [1989] U.S. Dist. LEXIS 5707; *Qutb v. Strauss*, supra note 73; *Hutchins v. District of Columbia*, supra note 109; *Nunez v. City of San Diego*, 114 F.3d 935 [1997] U.S. App. LEXIS 13409; 97 Cal. Daily Op. Service 4317, 97 Daily Journal DAR 7221; *Schleifer v. City of Charlottesville*, supra note 72; *Ramos v. Town of Vernon*, 353 F.3d 171 [2003] U.S. App. LEXIS 25851; and *Hodgkins v. Peterson*, 355 F.3d 1048 [2004] U.S. App. LEXIS 910). These conflicting rulings spring from the uncertainty on whether the right to interstate travel under US laws is a fundamental right (see *US v. Wheeler*, 254 U.S. 281; 41 S. Ct. 133; 65 L. Ed. 270 [1920] U.S. LEXIS 1159; and *Shapiro v. Thompson*, 394 U.S. 618; 89 S. Ct. 1322; 22 L. Ed. 2d 600 [1969] U.S. LEXIS 3190). **In contrast, the right to travel is clearly a fundamental right under Philippine law; thus, the strict scrutiny test is undeniably the applicable level of scrutiny**.
See also *In Re Mosier*, 59 Ohio Misc. 83; 394 N.E.2d 368 [1978] Ohio Misc. LEXIS 94; citing earlier cases involving curfew ordinances on minors; *People in the Interest of J.M.*, 768 P.2d 219 [1989] Colo. LEXIS 10; 13 BTR 93; *City of Panora v. Simmons*, supra note 74; and *City of Maquoketa v. Russell*, supra note 93.

128 See *In Re Mosier*, id. citing *People v. Chambers*, 32 Ill. App. 3d 444; 335 N.E.2d 612 (1975) Ill. App. LEXIS 2993.

129 *Nunez v. City of San Diego*, supra note 127.

> has somewhat broader authority to regulate the activities of children than of adults. x x x. Thus, minors' rights are not coextensive with the rights of adults because the **state has a greater range of interests that justify the infringement of minors' rights.**
>
> The Supreme Court has articulated three specific factors that, when applicable, warrant differential analysis of the constitutional rights of minors and adults: x x x. **The *Bellotti* test [however] does not establish a lower level of scrutiny for the constitutional rights of minors in the context of a juvenile curfew.** Rather, the *Bellotti* framework enables courts to determine whether the state has a compelling state interest justifying greater restrictions on minors than on adults. x x x.
>
> x x x **Although the state may have a compelling interest in regulating minors differently than adults, we do not believe that [a] lesser degree of scrutiny is appropriate to review burdens on minors' fundamental rights**. x x x.
>
> Accordingly, we apply strict scrutiny to our review of the ordinance. x x x.[130] (Emphases supplied)

The strict scrutiny test as applied to minors entails a consideration of the peculiar circumstances of minors as enumerated in *Bellotti* vis-à-vis the State's duty as *parens patriae* to protect and preserve their well-being with the compelling State interests justifying the assailed government act. Under the strict scrutiny test, a legislative classification that interferes with the exercise of a fundamental right or operates to the disadvantage of a suspect class is presumed unconstitutional.[131] **Thus, the government has the burden of proving that the classification (*i*) is necessary to achieve a compelling State interest, and (*ii*) is the least restrictive means to protect such interest or the means chosen is narrowly tailored to accomplish the interest.**[132]

a. Compelling State Interest.

Jurisprudence holds that compelling State interests include constitutionally declared policies.[133] **This Court has ruled that children's welfare and the State's mandate to protect and care for them as *parens patriae* constitute compelling interests to justify regulations by the State.**[134] It is akin to the paramount interest of the state for which some individual liberties must give way.[135] As explained in *Nunez*, the *Bellotti*

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130 Id.

131 *Disini, Jr. v. Secretary of Justice*, supra note 122, at 98. See also *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 282 (2009).

132 *Disini, Jr. v. Secretary of Justice*, id. See also Dissenting Opinion of Ret. Chief Justice Panganiban and Senior Associate Justice Antonio T. Carpio in *Central Bank Employees Association, Inc. v. BSP*, supra note 122, at 644 and 688-689, respectively.

133 See *The Diocese of Bacolod v. COMELEC*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 97-98, citing 1987 CONSTITUTION, Art. II, Secs. 12 and 13 and *Soriano v. Laguardia*, 605 Phil. 43, 106 (2009).

134 Id.

135 *Serrano v. Gallant Maritime Services, Inc.*, supra note 131, at 298.

framework shows that the State has a compelling interest in imposing greater restrictions on minors than on adults. The limitations on minors under Philippine laws also highlight this compelling interest of the State to protect and care for their welfare.

In this case, respondents have sufficiently established that the ultimate objective of the Curfew Ordinances is to keep unsupervised minors during the late hours of night time off of public areas, so as to reduce – if not totally eliminate – their exposure to potential harm, and to insulate them against criminal pressure and influences which may even include themselves. As denoted in the "whereas clauses" of the Quezon City Ordinance, the State, in imposing nocturnal curfews on minors, recognizes that:

> [b] x x x children, particularly the minors, appear to be neglected of their proper care and guidance, education, and moral development, which [lead] them into exploitation, drug addiction, and become vulnerable to and at the risk of committing criminal offenses;
>
> x x x x
>
> [d] 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;
>
> x x x x
>
> [f] 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;
>
> [g] 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 or cruelty and exploitation, and other conditions prejudicial or detrimental to their development;
>
> [h] to strengthen and support parental control on these minor children, there is a need to put a restraint on the tendency of growing number of youth spending their nocturnal activities wastefully, especially in the face of the unabated rise of criminality and to ensure that the dissident elements of society are not provided with potent avenues for furthering their nefarious activities[.][136]

The US court's judicial demeanor in *Schleifer*,[137] as regards the information gathered by the City Council to support its passage of the curfew ordinance subject of that case, may serve as a guidepost to our own

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[136] *Rollo*, pp. 48-49.
[137] Supra note 72.

treatment of the present case. Significantly, in *Schleifer*, the US court recognized the entitlement of elected bodies to implement policies for a safer community, in relation to the proclivity of children to make dangerous and potentially life-shaping decisions when left unsupervised during the late hours of night:

> Charlottesville was constitutionally justified in believing that its curfew would materially assist its first stated interest—that of reducing juvenile violence and crime. The City Council acted on the basis of information from many sources, including records from Charlottesville's police department, a survey of public opinion, news reports, data from the United States Department of Justice, national crime reports, and police reports from other localities. **On the basis of such evidence, elected bodies are entitled to conclude that keeping unsupervised juveniles off the streets late at night will make for a safer community. The same streets may have a more volatile and less wholesome character at night than during the day. Alone on the streets at night children face a series of dangerous and potentially life-shaping decisions**. Drug dealers may lure them to use narcotics or aid in their sale. Gangs may pressure them into membership or participation in violence. "[D]uring the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." **Those who succumb to these criminal influences at an early age may persist in their criminal conduct as adults**. Whether we as judges subscribe to these theories is beside the point. Those elected officials with their finger on the pulse of their home community clearly did. In attempting to reduce through its curfew the opportunities for children to come into contact with criminal influences, **the City was directly advancing its first objective of reducing juvenile violence and crime**.[138] (Emphases and underscoring supplied; citations omitted)

Similar to the City of Charlottesville in *Schleifer*, the local governments of Quezon City and Manila presented statistical data in their respective pleadings showing the alarming prevalence of crimes involving juveniles, either as victims or perpetrators, in their respective localities.[139]

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[138] Id.

[139] In its Comment dated August 18, 2016 (see *rollo*, pp. 270-313), the local government of Quezon City attached statistical data on "Children in Conflict with Law" (CICL) incidents from the various *barangays* of its six (6) districts for the years 2013, 2014, and 2015 (see id. at 330-333). The information is summarized as follows:

YEAR	NUMBER OF CICL
2013	2677
2014	5106
2015	4778

In 2014 and 2015, most of the reported CICL incidents were related to Theft, Curfew violations, and Physical Injury. The local government claimed that the decline of CICL incidents in 2015 was due to the enforcement of the curfew ordinance (id. at 298).

Also, together with its Comment dated August 16, 2016 (id. at 85-111), the local government of Manila submitted data reports of the Manila Police District (MPD) on CICL incidents, in Manila from 2014, 2015, and half of the year 2016 (id. at 116-197), as follows:

YEAR	NUMBER OF CICL

Based on these findings, their city councils found it necessary to enact curfew ordinances pursuant to their police power under the general welfare clause.[140] In this light, the Court thus finds that **the local governments have not only conveyed but, in fact, attempted to substantiate legitimate concerns on public welfare, especially with respect to minors**. As such, a compelling State interest exists for the enactment and enforcement of the Curfew Ordinances.

With the first requirement of the strict scrutiny test satisfied, the Court now proceeds to determine if the restrictions set forth in the Curfew Ordinances are narrowly tailored or provide the least restrictive means to address the cited compelling State interest – the second requirement of the strict scrutiny test.

b. Least Restrictive Means/ Narrowly Drawn.

The second requirement of the strict scrutiny test stems from the fundamental premise that citizens should not be hampered from pursuing legitimate activities in the exercise of their constitutional rights. While rights may be restricted, the restrictions must be minimal or only to the extent necessary to achieve the purpose or to address the State's compelling interest. **When it is possible for governmental regulations to be more narrowly drawn to avoid conflicts with constitutional rights, then they must be so narrowly drawn**.[141]

2014	74*
2015	30
January to July 2016	75**

* It includes a minor who violated RA 4136 or the "Land Transportation and Traffic Code" (June 20, 1964) and RA 10586 or the "Anti-Drunk and Drugged Driving Act of 2013," approved on May 27, 2013.

* It includes the number of minors who violated curfew hours.

A number from these reports involve incidents of Robbery (43), Theft (43), Physical Injuries (12), Rape (9), and Frustrated Homicide (6).

The local government of Manila likewise attached the Department of Social Welfare and Development's (DSWD) report on CICL for the years 2015 and half of the year 2016, summed as follows (id. at 198-199):

YEAR	NUMBER OF CICL
2015	845
January to June 2016	524

Further, it attached DSWD's report on minors who were at risk of running in conflict with law and CICL as a result of the local government of Manila's Campaign on Zero Street Dwellers in the City of Manila for the year 2016 (id. at 200-202):

Reached out Cases	2,194
**Reached out Cases with Offenses (CICL)	480

**For the period January to August 2016 only.

See also id. at 98-99 and 298.

140 See id. at 296-298.

141 See *In Re Mosier*, supra note 127.

Although treated differently from adults, the foregoing standard applies to regulations on minors as they are still accorded the freedom to participate in any legitimate activity, whether it be social, religious, or civic.[142] Thus, in the present case, each of the ordinances must be narrowly tailored as to ensure minimal constraint not only on the minors' right to travel but also on their other constitutional rights.[143]

In *In Re Mosier*,[144] a US court declared a curfew ordinance unconstitutional impliedly for not being narrowly drawn, resulting in unnecessary curtailment of minors' rights to freely exercise their religion and to free speech.[145] It observed that:

> The ordinance **prohibits the older minor from attending alone Christmas Eve Midnight Mass at the local Roman Catholic Church or Christmas Eve services at the various local Protestant Churches.** It would likewise prohibit them from attending the New [Year's] Eve watch services at the various churches. Likewise it would prohibit grandparents, uncles, aunts or adult brothers and sisters from taking their minor relatives of any age to the above mentioned services. x x x.
>
> x x x x
>
> Under the ordinance, during nine months of the year a minor **could not even attend the city council meetings** if they ran past 10:30 (which they frequently do) **to express his views** on the necessity to repeal the curfew ordinance, **clearly a deprivation of his First Amendment right to freedom of speech.**
>
> x x x x

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142 See *People in Interest of J.M.*, supra note 127.

143 Assessing the Scope of Minors' Fundamental Rights: Juvenile Curfews and the Constitution, 97 Harv. L. Rev. 1163 (March 1984).

144 Note that the court in this US case used "no compelling interest" as the ground to declare the ordinance unconstitutional. The reasons set forth in its discussion, however, relates to the failure of the ordinance to be narrowly drawn as to infringe on constitutional rights (see supra note 127).

145 See *Qutb v. Strauss* (supra note 73), wherein a US court ruled that the assailed curfew ordinance employed the least restrictive means of accomplishing its objectives as it **contained various defenses or exceptions that narrowly tailored the ordinance and allowed the local government to meet its goals while respecting the rights of minors.** In effect, the ordinance placed only minimal burden on the minors' constitutional rights. It held:

> Furthermore, we are convinced that this curfew ordinance also **employs the least restrictive means of accomplishing its goals.** The ordinance **contains various "defenses"** that allow affected minors to remain in public areas during curfew hours. x x x **To be sure, the defenses are the most important consideration in determining whether this ordinance is narrowly tailored.**
>
> x x x x
>
> x x x It is true, of course, that the curfew ordinance would restrict some late-night activities of juveniles; if indeed it did not, then there would be no purpose in enacting it. **But when balanced with the compelling interest sought to be addressed— protecting juveniles and preventing juvenile crime—the impositions are minor.** x x x. Thus, after carefully examining the juvenile curfew ordinance enacted by the city of Dallas, **we conclude that it is narrowly tailored to address the city's compelling interest and any burden this ordinance places upon minors' constitutional rights will be minimal.** (Emphases supplied)

> [In contrast, the ordinance in *Bykofsky v. Borough of Middletown* (supra note 52)] was [a] very narrowly drawn ordinance of many pages with eleven exceptions and was very carefully drafted in an attempt to pass constitutional muster. **It specifically excepted [the] exercise of First Amendment rights, travel in a motor vehicle and returning home by a direct route from religious, school, or voluntary association activities.** (Emphases supplied)

After a thorough evaluation of the ordinances' respective provisions, this Court finds that only the Quezon City Ordinance meets the above-discussed requirement, while the Manila and Navotas Ordinances do not.

The Manila Ordinance cites only four (4) exemptions from the coverage of the curfew, namely: (*a*) minors accompanied by their parents, family members of legal age, or guardian; (*b*) those running lawful errands such as buying of medicines, using of telecommunication facilities for emergency purposes and the like; (*c*) night school students and those who, by virtue of their employment, are required in the streets or outside their residence after 10:00 p.m.; and (*d*) those working at night.[146]

For its part, the Navotas Ordinance provides more exceptions, to wit: (*a*) minors with night classes; (*b*) those working at night; (*c*) those who attended a school or church activity, in coordination with a specific barangay office; (*d*) those traveling towards home during the curfew hours; (*e*) those running errands under the supervision of their parents, guardians, or persons of legal age having authority over them; (*f*) those involved in accidents, calamities, and the like. It also exempts minors from the curfew during these specific occasions: Christmas eve, Christmas day, New Year's eve, New Year's day, the night before the barangay fiesta, the day of the fiesta, All Saints' and All Souls' Day, Holy Thursday, Good Friday, Black Saturday, and Easter Sunday.[147]

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[146] *Rollo*, pp. 44.

Sec. 2. During curfew hours, no children and youths below eighteen (18) years of age shall be allowed in the streets, commercial establishments, recreation centers, malls or any other area outside the immediate vicinity of their residence, EXCEPT:

(a) those accompanied by their parents, family members of legal age, or guardian;
(b) those running lawful errands such as buying of medicines, using of telecommunication facilities for emergency purposes and the like;
(c) students of night schools and those who, by virtue of their employment, are required to stay in the streets or outside their residence after 10:00 P.M.; and
(d) those working at night: *PROVIDED*, That children falling under categories c) and d) shall secure a certification from their *Punong Barangay* exempting them from the coverage of this Ordinance, or present documentation/identification proving their qualification under such category.

[147] Id. at 38.

Tuntunin 3. *Mga Eksemsyon*

a. *Eksemsyon dahil sa Gawain*[:]

a.1 *Mga mag-aaral na may klase sa gabi;*
a.2 *Mga kabataang naghahanapbuhay sa gabi;*
a.3 *Mga kabataang dumalo sa gawain/pagtitipon ng paaralan o simbahan na may pakikipag-ugnayan sa Tanggapan ng Sangguniang Barangay.*

This Court observes that these two ordinances are not narrowly drawn in that their exceptions are inadequate and therefore, run the risk of overly restricting the minors' fundamental freedoms. To be fair, both ordinances protect the rights to education, to gainful employment, and to travel at night from school or work.[148] However, even with those safeguards, the Navotas Ordinance and, to a greater extent, the Manila Ordinance still do not account for the reasonable exercise of the minors' rights of association, free exercise of religion, rights to peaceably assemble, and of free expression, among others.

The exceptions under the Manila Ordinance are too limited, and thus, unduly trample upon protected liberties. The Navotas Ordinance is apparently more protective of constitutional rights than the Manila Ordinance; nonetheless, it still provides insufficient safeguards as discussed in detail below:

First, although it allows minors to engage in school or church activities, it hinders them from engaging in legitimate non-school or non-church activities in the streets or going to and from such activities; thus, their freedom of association is effectively curtailed. It bears stressing that participation in legitimate activities of organizations, other than school or church, also contributes to the minors' social, emotional, and intellectual development, yet, such participation is not exempted under the Navotas Ordinance.

Second, although the Navotas Ordinance does not impose the curfew during Christmas Eve and Christmas day, it effectively prohibits minors

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Ang lahat ng kabataan sa sakop ng Bayan ng Navotas, Kalakhang Maynila na nag-aaral o naghahanapbuhay na ang oras ng pagpasok o pag-uwi ay sakop ng "curfew" *ay kailangang kumuha ng katibayan* (certification) mula sa paaralan/tanggapan/pagawaan na pinapasukan ng may pagpapatunay ng *Punong Barangay na sumasakop sa mga kinauukulan, upang ito ay magamit sa oras ng* "curfew" *sa kanilang pag-uwi o pagpasok.*

b. *Eskemsyong* [sic] *Insidental:*

b.1 *Mga kabataang may mga gawain sa ilalim ng superbisyon o pamamahala ng kanilang mga magulang/tagapag-alaga o mga indibiduwal na nasa hustong gulang* (18 *taon at pataas*) *na may awtoridad sa kanila.*
b.2 *Mga kabataang napasama sa mga aksidente, kalamidad at mga tulad nito.*

k. *Eksemsyong tuwing may okasyon:*

k.1 *Bisperas at Araw ng Pasko*;
k.2 *Bisperas at Araw ng Bagong Taon*;
k.3 *Bisperas at Araw ng Pistang Barangay*;
k.4 *Araw ng Santo/Araw ng mga Kaluluwa*;
k.5 *Huwebes Santo*;
k.6 *Biyernes Santo*;
k.7 *Sabado de Gloria*; *at*
k.8 *Pasko ng Pagkabuhay.*

[148] The Curfew Ordinances exempt minors from the curfews when they are engaged in night school, night work, or emergency situations (see id. at 38, 44, and 53-54).

from attending traditional religious activities (such as *simbang gabi*) at night without accompanying adults, similar to the scenario depicted in *Mosier*.[149] This legitimate activity done pursuant to the minors' right to freely exercise their religion is therefore effectively curtailed.

Third, the Navotas Ordinance does not accommodate avenues for minors to engage in political rallies or attend city council meetings to voice out their concerns in line with their right to peaceably assemble and to free expression.

Certainly, minors are allowed under the Navotas Ordinance to engage in these activities outside curfew hours, but the Court finds no reason to prohibit them from participating in these legitimate activities during curfew hours. Such proscription does not advance the State's compelling interest to protect minors from the dangers of the streets at night, such as becoming prey or instruments of criminal activity. These legitimate activities are merely hindered without any reasonable relation to the State's interest; hence, the Navotas Ordinance is not narrowly drawn. More so, the Manila Ordinance, with its limited exceptions, is also not narrowly drawn.

In sum, the Manila and Navotas Ordinances should be completely stricken down since their exceptions, which are essentially determinative of the scope and breadth of the curfew regulations, are inadequate to ensure protection of the above-mentioned fundamental rights. While some provisions may be valid, the same are merely ancillary thereto; as such, they cannot subsist independently despite the presence[150] of any separability clause.[151]

The Quezon City Ordinance stands in stark contrast to the first two (2) ordinances as it sufficiently safeguards the minors' constitutional rights. It provides the following exceptions:

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149 Supra note 127.

150 See *Tuntunin 4* of the Navotas Ordinance (*rollo*, p. 42); and Section 12 of the Manila Ordinance (*rollo*, p. 46).

151 The *general rule* is that where part of a statute is void as repugnant to the Constitution, while another part is valid, the valid portion, if separable from the invalid, may stand and be enforced. The presence of a separability clause in a statute creates the presumption that the legislature intended separability, rather than complete nullity of the statute. To justify this result, the valid portion must be so far independent of the invalid portion that it is fair to presume that the legislature would have enacted it by itself if it had supposed that it could not constitutionally enact the other. Enough must remain to make a complete, intelligible and valid statute, which carries out the legislative intent. x x x.

The *exception to the general rule* is that when the parts of a statute are so mutually dependent and connected, as conditions, considerations, inducements, or compensations for each other, as to warrant a belief that the legislature intended them as a whole, the nullity of one part will vitiate the rest. In making the parts of the statute dependent, conditional, or connected with one another, the legislature intended the statute to be carried out as a whole and would not have enacted it if one part is void, in which case if some parts are unconstitutional, all the other provisions thus dependent, conditional, or connected must fall with them. (*Tatad v. The Secretary of the Department of Energy*, 346 Phil. 321, 371 [1997], citing Agpalo, Statutory Construction, 1986 Ed., pp. 28-29.)

> 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 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 [a] 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.[152] (Emphases and underscoring supplied)

As compared to the first two (2) ordinances, the list of exceptions under the Quezon City Ordinance is more narrowly drawn to sufficiently protect the minors' rights of association, free exercise of religion, travel, to peaceably assemble, and of free expression.

Specifically, the inclusion of items (*b*) and (*g*) in the list of exceptions guarantees the protection of these aforementioned rights. **These items uphold the right of association by enabling minors to attend both official and extra-curricular activities not only of their school or church but also of other legitimate organizations**. **The rights to peaceably assemble and of free expression are also covered by these items given that the minors' attendance in the official activities of civic or religious organizations are allowed during the curfew hours**. Unlike in the Navotas Ordinance, the right to the free exercise of religion is sufficiently safeguarded in the Quezon City Ordinance **by exempting attendance at religious masses even during curfew hours**. In relation to their right to

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[152] *Rollo*, pp. 53-54.

travel, the ordinance **allows the minor-participants to move to and from the places where these activities are held**. Thus, with these numerous exceptions, **the 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.**

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.

Ultimately, it is important to highlight that this Court, in passing judgment on these ordinances, is dealing with the welfare of minors who are presumed by law to be incapable of giving proper consent due to their incapability to fully understand the import and consequences of their actions. In one case it was observed that:

> A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The 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. Those of tender years deserve its protection.[153]

Under our legal system's own recognition of a minor's inherent lack of full rational capacity, and balancing the same against the State's compelling interest to promote juvenile safety and prevent juvenile crime, this Court finds that the curfew imposed under the Quezon City Ordinance is reasonably justified with its narrowly drawn exceptions and hence, constitutional. Needless to say, these exceptions are in no way limited or restricted, as the State, in accordance with the lawful exercise of its police power, is not precluded from crafting, adding, or modifying exceptions in similar laws/ordinances for as long as the regulation, overall, passes the parameters of scrutiny as applied in this case.

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[153] *Malto v. People*, 560 Phil. 119, 139-140 (2007).

D. Penal Provisions of the Manila Ordinance.

Going back to the Manila Ordinance, this Court deems it proper – as it was raised – to further discuss the validity of its penal provisions in relation to RA 9344, as amended.

To recount, the Quezon City Ordinance, while penalizing the parent/s or guardian under Section 8 thereof,[154] does not impose any penalty on the minors. For its part, the Navotas Ordinance requires the minor, along with his or her parent/s or guardian/s, to render social civic duty and community service either in lieu of – should the parent/s or guardian/s of the minor be unable to pay the fine imposed – or in addition to the fine imposed therein.[155] **Meanwhile, the Manila Ordinance imposed various sanctions to the minor based on the age and frequency of violations**, to wit:

> SEC. 4. Sanctions and Penalties for Violation. Any child or youth violating this ordinance shall be sanctioned/punished as follows:
>
> (a) If the offender is Fifteen (15) years of age and below, **the sanction shall consist of a REPRIMAND for the youth offender** and ADMONITION to the offender's parent, guardian or person exercising parental authority.

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[154] *Rollo*, p. 57-59.

[155] See amended Navotas Ordinance; id. at 41-42.

Tuntunin 1. *PAMPATAKARANG KAPARUSAHAN AT MULTA.*

a) *Unang Paglabag – ang mahuhuli ay dadalhin sa Tanggapan ng Kagalingang Panlipunan at Pagpapaunlad* (MSWDO). *Ipapatawag ang magulang o tagapag-alaga sa kabataang lumabag at pagkuha ng tala hinggil sa pagkatao nito (Pangalan, Edad, Tirahan, Pangalan ng Magulang o Tagapag-alaga), at pagpapaalala, kasunod ang pagbabalik sa kalinga ng magulang o tagapagalaga ng batang nahuli.*

b) *Pangalawang Paglabag – Ang batang lumabag ay* [*dadalhin*] *sa MSWDO, pagmumultahin ang magulang/tagapag-alaga ng halagang* ₱300.00 *piso, dahil sa kapabayaan* ***o apat (4) na oras na gawaing sibiko-sosyal o pangkomunidad*** *ng magulang/tagapag-alaga* ***at ang batang nahuli.***

k) *Ikatlong Paglabag – pagmumulta ng magulang/tagapag-alaga ng halagang* ₱300.00 *piso dahil sa kapabayaan* ***at apat (4) na oras ng gawaing sibiko-sosyal o pangkomunidad*** *ng magulang/tagapag-alaga* ***at ang batang nahuli.***

d) *Para sa pang-apat at paulit-ulit na lalabag ay papatawan ng kaparusahang doble sa itinakda ng Tuntuning* 1.k *ng ordinansang ito.*

1.1. *Sa pagkakataong walang multang* [maibibigay] *ang magulang/tagapag-alaga ng kabataang* [*nahuli*], *ang Tanggapan ng Kagalingang Panlipunan at Pagpapaunlad* (MSDWO) *ay* ***magpapataw ng gawaing sibiko-social o pangkomunidad sa magulang at ang batang nahuli*** *katumbas ng nasabing multa tulad ng mga sumusunod*:

a. *Apat* (4) *na oras na paglilinis ng kanal o lansangan na itinakda ng nasabing tanggapan.*
b. *Apat* (4) *na oras na pagtatanim ng puno sa lugar na itatakda ng nasabing tanggapan.*
c. *Apat* (4) *na oras na gawaing pagpapaganda ng komunidad bilang suporta sa programang* "Clean and Green" *ng Pamahalaang Bayan.* (Emphases and underscoring supplied.)

> (b) If the offender is Fifteen (15) years of age and under Eighteen (18) years of age, the sanction/penalty shall be:
>
> 1. For the FIRST OFFENSE, **Reprimand and Admonition**;
>
> 2. For the SECOND OFFENSE, **Reprimand and Admonition**, and a warning about the legal impostitions in case of a third and subsequent violation; and
>
> 3. For the THIRD AND SUBSEQUENT OFFENSES, **Imprisonment of one (1) day to ten (10) days, or a Fine of TWO THOUSAND PESOS (Php2,000.00), or both at the discretion of the Court**, *PROVIDED*, That the complaint shall be filed by the *Punong Barangay* with the office of the City Prosecutor. [156] (Emphases and underscoring supplied).

Thus springs the question of whether local governments could validly impose on minors these sanctions – *i.e.*, (*a*) community service; (*b*) reprimand and admonition; (*c*) fine; and (*d*) imprisonment. **Pertinently, Sections 57 and 57-A of RA 9344, as amended, prohibit the imposition of penalties on minors for status offenses such as curfew violations**, *viz.*:

> SEC. 57. *Status Offenses.* — **Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child**.
>
> SEC. 57-A. *Violations of Local Ordinances.* — **Ordinances enacted by local governments concerning juvenile status offenses such as**, but not limited to, **curfew violations**, truancy, parental disobedience, anti-smoking and anti-drinking laws, as well as light offenses and misdemeanors against public order or safety such as, but not limited to, disorderly conduct, public scandal, harassment, drunkenness, public intoxication, criminal nuisance, vandalism, gambling, mendicancy, littering, public urination, and trespassing, **shall be for the protection of children**. **No penalty shall be imposed on children for said violations**, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. **Appropriate intervention programs shall be provided for in such ordinances**. The child shall also be recorded as a "child at risk" and not as a "child in conflict with the law." The ordinance shall also provide for intervention programs, such as counseling, attendance in group activities for children, and for the parents, attendance in parenting education seminars. (Emphases and underscoring supplied.)

To clarify, these provisions do not prohibit the *enactment of regulations* that curtail the conduct of minors, when the similar conduct of adults are not considered as an offense or penalized (*i.e.*, status offenses). Instead, what they prohibit is the *imposition of* ***penalties*** on minors for violations of these regulations. Consequently, the enactment of curfew

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[156] *Rollo*, p. 45.

ordinances on minors, without penalizing them for violations thereof, is not violative of Section 57-A.

"Penalty"[157] is defined as "[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine";[158] "[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act."[159] Punishment, in turn, is defined as "[a] sanction – such as fine, penalty, confinement, or loss of property, right, or privilege – assessed against a person who has violated the law."[160]

The provisions of RA 9344, as amended, should not be read to mean that all the actions of the minor in violation of the regulations are without legal consequences. Section 57-A thereof empowers local governments to adopt appropriate intervention programs, such as **community-based programs**[161] recognized under Section 54[162] of the same law.

In this regard, requiring the minor to perform community service is a valid form of intervention program that a local government (such as Navotas City in this case) could appropriately adopt in an ordinance to promote the welfare of minors. For one, the community service programs provide minors an alternative mode of rehabilitation as they promote accountability for their delinquent acts without the moral and social stigma caused by jail detention.

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[157] Penalties (as punishment) are imposed either: (1) to "satisfy the community's retaliatory sense of indignation that is provoked by injustice" (Black's Law Dictionary, 8th Ed., p. 1270) – or for retribution following the classical or juristic school of thought underlying the criminal law system (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 9); (2) to "change the character of the offender" (Black's Law Dictionary, Eight Ed., p. 1270) – or for reformation pursuant to the positivist or realistic school of thought (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., pp. 9-10); (3) to "prevent the repetition of wrongdoing by disabling the offender" (Black's Law Dictionary, 8th Ed., p. 1270) – following the utilitarian theory (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 11); or (4) for both retribution and reformation pursuant to the eclectic theory (Boado, Notes and Cases on the Revised Penal Code, 2012 Ed., p. 11).

[158] Black's Law Dictionary, 8th Ed., p. 1168.

[159] Philippine Law Dictionary, 3rd Ed., p. 688.

[160] Black's Law Dictionary, 8th Ed., p. 1269.

[161] Section 4 (f) of RA 9344 reads:

> Section 4. Definition of Terms – x x x.
>
> x x x x
>
> (f) "Community-based Programs" refers to the programs provided in a community setting developed for purposes of intervention and diversion, as well as rehabilitation of the child in conflict with the law, for reintegration into his/her family and/or community.

[162] Section 54 of RA 9344 reads:

> Section 54. Objectives of Community-Based Programs. — The objectives of community-based programs are as follows:
>
> (a) Prevent disruption in the education or means of livelihood of the child in conflict with the law in case he/she is studying, working or attending vocational learning institutions;
> (b) Prevent separation of the child in conflict with the law from his/her parents/guardians to maintain the support system fostered by their relationship and to create greater awareness of their mutual and reciprocal responsibilities;
> (c) Facilitate the rehabilitation and mainstreaming of the child in conflict with the law and encourage community support and involvement; and
> (d) Minimize the stigma that attaches to the child in conflict with the law by preventing jail detention.

In the same light, these programs help inculcate discipline and compliance with the law and legal orders. More importantly, they give them the opportunity to become productive members of society and thereby promote their integration to and solidarity with their community.

The sanction of **admonition** imposed by the City of Manila is likewise consistent with Sections 57 and 57-A of RA 9344 as it is merely a formal way of giving warnings and expressing disapproval to the minor's misdemeanor. Admonition is generally defined as a "gentle or friendly reproof" or "counsel or warning against fault or oversight."[163] The Black's Law Dictionary defines admonition as "[a]n authoritatively issued warning or censure";[164] while the Philippine Law Dictionary defines it as a "gentle or friendly reproof, a mild rebuke, warning or reminder, [counseling], on a fault, error or oversight, an expression of authoritative advice or warning."[165] Notably, the Revised Rules on Administrative Cases in the Civil Service (RRACCS) and our jurisprudence in administrative cases explicitly declare that "a warning or admonition shall not be considered a penalty."[166]

In other words, the disciplinary measures of community-based programs and admonition are clearly not penalties – as they are not punitive in nature – and are generally less intrusive on the rights and conduct of the minor. To be clear, their objectives are to formally inform and educate the minor, and for the latter to understand, what actions must be avoided so as to aid him in his future conduct.

A different conclusion, however, is reached with regard to reprimand and fines and/or imprisonment imposed by the City of Manila on the minor. **Reprimand** is generally defined as "a severe or formal reproof."[167] The Black's Law Dictionary defines it as "a mild form of lawyer discipline that does not restrict the lawyer's ability to practice law";[168] while the Philippine Law Dictionary defines it as a "public and formal censure or severe reproof, administered to a person in fault by his superior officer or body to which he belongs. It is more than just a warning or admonition."[169] In other words, reprimand is a formal and public pronouncement made to denounce the error

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163 <https://www.merriam-webster.com/dictionary/admonition> (last accessed on March 14, 2017).

164 8th Ed., p. 52.

165 3rd Ed., p. 36.

166 See Section 52 (g), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) (promulgated on November 18, 2011), which states that: "[a] warning or admonition shall not be considered a penalty." See also *In the Matter of the Contempt Orders Against Lt. Gen. Calimlim*, 584 Phil. 377, 384 (2008), citing *Tobias v. Veloso*, 188 Phil. 267, 274-275 (1980); *Re: Anonymous Complaint Against Ms. Bayani for Dishonesty*, 656 Phil. 222, 228 (2011); and *Dalmacio-Joaquin v. Dela Cruz,* 690 Phil. 400, 409 (2012), to name a few.

See also Section 58 (i), Rule IV of Memorandum Circular No. 19, Series of 1999 or the "Revised Uniform Rules on Administrative Cases in the Civil Service" (RURACCS) (September 27, 1999). The RRACCS (Section 46 (f), Rule 10) and its predecessor RURACCS (Section 52 (c), Rule IV), however, consider reprimand (or censure) as a penalty imposed for light offenses.

167 <https://www.merriam-webster.com/dictionary/reprimand> (last accessed on March 14, 2017).

168 8th Ed., p. 1329.

169 3rd Ed., p. 818.

or violation committed, to sharply criticize and rebuke the erring individual, and to sternly warn the erring individual including the public against repeating or committing the same, and thus, may unwittingly subject the erring individual or violator to unwarranted censure or sharp disapproval from others. In fact, the RRACCS and our jurisprudence explicitly indicate that reprimand is a penalty,[170] hence, prohibited by Section 57-A of RA 9344, as amended.

Fines and/or imprisonment, on the other hand, undeniably constitute penalties – as provided in our various criminal and administrative laws and jurisprudence – that Section 57-A of RA 9344, as amended, evidently prohibits.

As worded, the prohibition in Section 57-A is clear, categorical, and unambiguous. It states that "**[n]o penalty shall be imposed on children for x x x violations [of] juvenile status offenses]**." Thus, for imposing the sanctions of reprimand, fine, and/or imprisonment on minors for curfew violations, portions of Section 4 of the Manila Ordinance directly and irreconcilably conflict with the clear language of Section 57-A of RA 9344, as amended, and hence, invalid. On the other hand, the impositions of community service programs and admonition on the minors are allowed as they do not constitute penalties.

CONCLUSION

In sum, while the Court finds that all three Curfew Ordinances have passed the first prong of the strict scrutiny test – that is, that the State has sufficiently shown a compelling interest to promote juvenile safety and prevent juvenile crime in the concerned localities, only the Quezon City Ordinance has passed the second prong of the strict scrutiny test, as it is the only issuance out of the three which provides for the least restrictive means to achieve this interest. In particular, the Quezon City Ordinance provides for adequate exceptions that enable minors to freely exercise their fundamental rights during the prescribed curfew hours, and therefore, narrowly drawn to achieve the State's purpose. Section 4 (a) of the said ordinance, *i.e.*, "[t]hose accompanied by their parents or guardian", has also been construed to include parental permission as a constructive form of accompaniment and hence, an allowable exception to the curfew measure; the manner of enforcement, however, is left to the discretion of the local government unit.

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[170] See Section 52 (f) Rule 10 of the RRACCS: "[t]he *penalty* of reprimand x x x." See also *Tobias v. Veloso*, supra note 166, at 275.

In fine, the Manila and Navotas Ordinances are declared unconstitutional and thus, null and void, while the Quezon City Ordinance is declared as constitutional and thus, valid in accordance with this Decision.

For another, the Court has determined that the Manila Ordinance's penal provisions imposing reprimand and fines/imprisonment on minors conflict with Section 57-A of RA 9344, as amended. Hence, following the rule that ordinances should always conform with the law, these provisions must be struck down as invalid.

WHEREFORE, the petition is **PARTLY GRANTED**. The Court hereby declares Ordinance No. 8046, issued by the local government of the City of Manila, and *Pambayang Ordinansa Blg.* No. 99-02, as amended by *Pambayang Ordinansa Blg.* 2002-13 issued by the local government of Navotas City, **UNCONSTITUTIONAL** and, thus, **NULL** and **VOID**; while Ordinance No. SP-2301, Series of 2014, issued by the local government of the Quezon City is declared **CONSTITUTIONAL** and, thus, **VALID** in accordance with this Decision.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
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

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice
See separate opinion

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M. V. F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL G. TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT