EN BANC

A.M. No. 10-4-19-SC: RE: LETTER OF TONY Q. VALENCIANO, RE HOLDING OF RELIGIOUS RITUALS AT THE HALLS OF JUSTICE BUILDING IN QUEZON CITY

Promulgated:
March 7, 2017

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DISSENTING OPINION

"Imagine there's no countries, it isn't hard to do.
Nothing to kill or die for, and no religion, too.
Imagine all the people living life in peace..."

- Lennon, John. "Imagine." *Imagine*. Ascot, 1971. Vinyl.

"*But Jesus, aware of their malice, said, 'Why put me to the test, you hypocrites? Show me the money for the tax.' And they brought him a coin. And Jesus said to them, 'Whose likeness and inscription is this?' They said, 'Caesar's.' Then he said to them, '**Render therefore to Caesar the things that are Caesar's, and to God the things that are God's.' When they heard it, they marveled; and they left him and went away.**"*

- Matthew 22:15-22[1]

LEONEN, *J.*:

Tolerating and allowing court personnel to hold and celebrate daily masses within public Halls of Justice is a clear violation of the Constitutional prohibition against the State's establishment of a religion. It has no secular purpose other than to benefit and, therefore, promote a religion. It has the effect of imposing an insidious cultural discrimination against those whose beliefs may be different. Religious rituals should be done in churches, chapels, mosques, synagogues, and other private places of worship.

To provide that all faiths of all denominations may likewise avail of the same public space within courts of law is a painful illusion. Apart from

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[1] Revised Standard Version Catholic Edition

violating Sections 5 and 29 (2) of Article III of the Constitution, it is a privilege that is not available to those who profess non-belief in any god or whose conviction is that the presence or absence of god is unknowable. It likewise undermines religious faiths, which fervently believe that rituals that worship icons and symbols are contrary to their conception of god.

Furthermore, the majority opinion invites judges to excessively entangle themselves with religious institutions and worship. Decisions on the duration, frequency, decorations, and other facets of religious rituals are not judicial functions. This also should certainly not be a governmental one.

By holding daily Catholic masses or any religious ritual within court premises, courts unnecessarily shed their impartiality. It weakens our commitment to protect all religious beliefs.

I

Mr. Tony Q. Valenciano (Mr. Valenciano) wrote this Court in 2009[2] and again, in 2010,[3] questioning the practice of holding Roman Catholic masses at the basement of the Quezon City Hall of Justice. He submitted that the basement floor of the court of law was practically converted into a Roman Catholic chapel, with religious icons permanently displayed, in violation of the separation of church and State[4] and the constitutional prohibition on the appropriation of public money for the benefit of a sect, church, denomination, or any other system of religion.[5]

Mr. Valenciano's letters were indorsed to Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun, Jr.) of the Regional Trial Court and Executive Judge Caridad W. Lutero (Executive Judge Lutero) of the Metropolitan Trial Court of Quezon City for comment.[6] The Executive Judges shared the view that there was nothing constitutionally infirm in celebrating daily masses at the Quezon City Hall of Justice during lunch break.

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2 *Rollo,* pp. 20–22.
3 Id. at 34.
4 CONST., art. II, sec. 6.
5 CONST., art. VI, sec. 29(2) provides:
SECTION 29.
. . . .
(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.
6 *Rollo,* p. 8.

Executive Judge Sagun, Jr.'s Comment[7] discussed the measures already implemented to address Mr. Valenciano's specific complaints, such as the shortening of masses to 30 minutes. For her part, Executive Judge Lutero maintained that court personnel must be allowed to freely exercise their respective religions:

> The undersigned finds no reason to discontinue the masses being held at the basement since they do not disturb the proceedings of the court and are held during lunch break. **As we all know, the Roman Catholics express their worship through the holy mass and to stop these would be tantamount to repressing the right of those holding the masses to the free exercise of their religion. Our Muslim brethren who are government employees are allowed to worship their Allah even during office hours inside their own offices. The Seventh Day Adventists are exempted from rendering Saturday duty because their religion prohibits them from working on a Saturday. Even Christians have been allowed to conduct their own bible studies in their own offices. All these have been allowed in respect of the worker's right to the free exercise of their religion.** I therefore see no reason why we should stop our Catholic brethrens (sic) from exercising their religion during lunch breaks.[8] (Emphases provided)

The views of Executive Judges Sagun, Jr. and Lutero are inconsistent with the view of the Office of the Chief Attorney.

In a September 12, 2003 Memorandum for Chief Justice Hilario G. Davide, Jr., the Office of the Chief Attorney recommended to deny, on constitutional grounds, the request of Rev. Fr. Carlo M. Ilagan to hold a one-day vigil in honor of Our Lady of Caysasay within the premises of this Court. Said the Office of the Chief Attorney:

> [T]he Court is not an ordinary government department. It is the recognized bulwark of justice and the rule of law, with its much vaunted independence, impartiality, and integrity. It thus behooves the Court to consider the constitutional and legal issues surrounding the request for the conduct in its premises of vigil for a religious image.
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> Article II of the Constitution declares, as one of the policies of the State, the inviolability of the separation of Church and State.
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> In consonance therewith, the Bill of Rights of the Constitution states:
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> > Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or

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[7] Id. at 10–12.

[8] OCA Memorandum dated August 7, 2014, p. 11.

> preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision is a reproduction of Section 8, Article IV of the 1973 Constitution, and Section 1 (7) of the 1935 Constitution. Its basic principle regarding religions is the "establishment clause" provided for in the first sentence of the section. The "establishment clause" is reiterated in Section 29 (2) of Article VI of the Constitution in the form of a prohibition against the enactment of laws that support any religion. Thus:

> Sec. 29 (1) ....
>
> (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

The constitutional provision on religious freedom in the Bill of Rights has two aspects: freedom of conscience and freedom to exercise the chosen form of religion. Freedom to believe is absolute while freedom to act on the belief is not. Conduct remains subject to regulation and even prohibition for the protection of society.

In *Gerona v. Secretary of Educatio*n, the Court, holding that saluting the flag does not involve a religious ceremony and hence the requirement that students should attend the flag ceremony does not violate the religious freedom of Jehovah's Witnesses, likewise said:

> ...But between the freedom of belief and the exercise of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The Government steps in and either restrains said exercise or even prosecutes the one exercising it.

The overt acts in pursuit of religious belief are thus subject to regulation by the State.

No case has yet been filed in this Court to restrain an act similar to the subject of the instant request; neither has there been an instance when this Office was required to comment on a similar request. However, an American decision regarding the placing of a religious item in a courthouse is of persuasive effect as far as this jurisdiction is concerned.

In *G. County of Allegheny v. American Civil Liberties Union*, since 1981 the county of Allegheny had been permitting the Holy Name

Society, a Roman Catholic Church group, to display a crèche in the County Courthouse during the Christmas holiday season. The crèche, a visual representation of the nativity scene, was placed at the Grand Staircase, the most public part of the County Courthouse which was used as a setting for the county's annual Christmas carol program. In ruling that the display of the crèche had the effect of *endorsing religious beliefs* in violation of the Establishment Clause, the court said:

> ...There is no doubt, of course, that the crèche itself is capable of communicating a religious message.... Indeed, the crèche in this lawsuit uses words, as well as the picture of the nativity scene, to make its religious meaning unmistakably clear. "Glory to God in the Highest!" says the angel in the crèche – Glory to God because of the birth of Jesus. This praise to God in Christian terms is indisputable religious – indeed sectarian – just as it is when said in the Gospel or in a church service.
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> ....
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> Nor does the fact that the crèche was the setting for the county's annual Christmas carol-program diminish its religious meaning. First, the carol program in 1986 lasted only from December 3 to December 23 and occupied at most two hours a day.... The effect of the crèche on those who viewed it when the choirs were not singing – the vast majority of the time – cannot be negated by the presence of the choir program. Second, because some of the carols performed at the site of the crèche were religious in nature, those carols were more likely to augment the religious quality of the scene than to secularize it.
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> Furthermore, the crèche sits on the Grand Staircase, the "main" and "most beautiful part" of the building that is the seat of county government.... No viewer could reasonably think that it occupies this location without the support and approval of the government. Thus, by permitting the "display of the crèche in this particular physical setting,"... the county sends an unmistakable message that it supports and promotes the Christian praise to God that is the crèche's religious message.
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> The fact that the crèche bears a sign disclosing its ownership by a Roman Catholic organization does not alter this conclusion. On the contrary, the sign simply demonstrates that the government is endorsing the religious message of that organization, rather than communicating a message of its own. But *the Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations....* Indeed, the very concept of "endorsement" conveys the sense of promoting someone else's message. Thus, by prohibiting governmental endorsement of religion, the Establishment Clause prohibits precisely what occurred here: the government's lending its

> support to the communication of a religious organization's religious message.
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> Finally, the county argues that it is sufficient to validate the display of the crèche on the Grand Staircase that the display celebrates Christmas, and Christmas is a national holiday. *This argument obviously proves too much. It would allow the celebration of the Eucharist inside a courthouse on Christmas Eve. While the county may have doubts about the constitutional status of celebrating the Eucharist inside the courthouse under the government's auspices,... this Court does not.* The government may acknowledge Christmas as a cultural phenomenon, but under the First Amendment it may not observe it as a Christian holy day by suggesting that people praise God for the birth of Jesus.
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> In sum, *Lynch* teaches that government may celebrate Christmas in some manner and form, but not in a way that endorses Christian doctrine. Here, Allegheny County has transgressed this line. It has chosen to celebrate Christmas in a way that has the effect of endorsing a patently Christian message: Glory to God for the birth of Jesus Christ. Under Lynch, and the rest of our cases, nothing more is required to demonstrate a violation of the Establishment Clause. The display of the crèche in this context, therefore, must be permanently enjoined.

When the image of Our Lady of Manaoag was once brought to the Court, it was displayed at the lobby of the second floor of the Old Supreme Court Building. The choice of that area could not have been made without the permission of the Court and/or its proper officials. The vigil conducted entailed praying the rosary, a form of prayer of Roman Catholics, by groups of employees or by offices scheduled at an hourly basis. A vigil would thus involve not only the display of a religious image but the performance of a religious act. Hence, it is undeniable that the "visit" of the image of Our Lady of Caysasay would involve likewise the use of the Court's properties, resources, employees, and official working time.

There is likewise no denying that should the instant request be granted, the Court would "endorse" the Roman Catholic religion in violation of the Constitution. By allowing the "visit" of the image in the Court, it would convey the message that the Virgin Mother it represents is, in Fr. Ilagan's words, the "Advocate of Faith," specially the Roman Catholic Church.

Although it is true that other Christian groups or sects are allowed to hold Bible-reading and other similar activities within Court premises, it appears that other religious groups have not made similar requests for the conduct of their religious services. In the event that such requests are made, the Court would have to grant such requests and thus cater to the needs of all religious persuasions, lest it be charged with favoritism and partiality. Obviously, the grant of such requests would result in the sacrifice of services that are needed in the exercise of the Court's

> constitutional duties and responsibilities. It is thus high time that the Court clearly defines [a] policy statement founded on pertinent provisions of the Constitution, its position regarding the holding of religious practices and activities in Court premises.
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> The denial of the instant request on constitutional grounds is imperative but it must be stressed that such denial does not in any way reflect the religious fervor or lack of it of the Members of the Court and its officials and employees who are Roman Catholics. Their personal beliefs and official acts are distinct and separate.
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> The denial is likewise impelled by the need to prevent the cropping up of another issue against the Court that militant non-Catholics may pick up and raise publicly to the detriment of the Court, notwithstanding its good faith and intention.[9] (Emphasis in the original; citations omitted)

II

On the other hand, the Office of the Court Administrator argued for the dismissal of the complaints of Mr. Valenciano in an August 7, 2014 Memorandum addressed to Chief Justice Maria Lourdes P. A. Sereno.

The Office of the Court Administrator recommended that the daily Roman Catholic masses at the Quezon City Hall of Justice be allowed, subject to the close regulation and monitoring by the Quezon City Executive Judges and so long as "(a) the public is not unduly inconvenienced by the exercise thereof; (b) it does not adversely affect and interrupt the delivery of public service; and (c) display of religious icons are limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public."[10]

In making its recommendations, the Office of the Court Administrator cited *Estrada v. Escritor*[11] where this Court, speaking through Justice, subsequently Chief Justice, Reynato S. Puno, held that the religion clauses of our Constitution are to be read and interpreted using the benevolent neutrality approach. The Office of the Court Administrator explained:

> [T]he principle of Separation of Church and State, particularly with reference to the Establishment Clause, ought not to be interpreted according to the rigid standards of **Separation**. Rather, the state's *neutrality* on religion should be *benevolent* because religion is an ingrained part of society and plays an important role in it. The state therefore, instead of being belligerent (in the case of **Strict Separation**) or

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9 OCAT Memorandum dated September 12, 2013, pp. 2–5.
10 OCA Memorandum dated August 7, 2014, p. 16.
11 455 Phil. 411 (2003) [Per J. Puno, En Banc].

being aloof (in the case of **Strict Neutrality**) toward religion should instead interact and forbear.[12] (Emphasis in the original)

III

The majority essentially agrees with the recommendation of the Office of the Court Administrator. According to the majority, our State adopts the policy of accommodation; that despite the separation of church and State required by the Constitution, the State may take religion into account in forming government policies not to favor religion but only to allow its free exercise.[13] The majority cites as bases *Victoriano v. Elizalde Rope Workers Union*,[14] where this Court allowed the exemption of members of Iglesia ni Cristo from closed shop provisions; and *Ebralinag v. Division Superintendent of Schools of Cebu*,[15] where this Court allowed the exemption of members of Jehovah's Witnesses from observance of the flag ceremony.

In discussing the non-establishment clause, the majority cites Father Joaquin Bernas (Father Bernas), a Catholic priest:

> In effect, what non-establishment calls for is government neutrality in religious matters. Such government neutrality may be summarized in four general propositions: (1) Government must not prefer one religion over another religion or religion over irreligion because such preference would violate voluntarism and breed dissension; (2) Government funds must not be applied to religious purposes because this too would violate voluntarism and breed interfaith dissension; (3) Government action must not aid religion because this too can violate voluntarism and breed interfaith dissension; [and] (4) Government action must not result in excessive entanglement with religion because this too can violate voluntarism and breed interfaith dissension.[16]

The majority views the holding of daily Roman Catholic masses at the Quezon City Hall of Justice constitutionally permissible. They see no violation of the establishment clause because court personnel are not coerced to attend masses; no government funds are allegedly spent in the exercise of the religious ritual; the use of the basement for masses was not permanent; and other religions are allegedly not prejudiced.[17]

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12 OCA Memorandum dated August 7, 2014, p. 9.
13 *Ponencia*, pp. 12–13.
14 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc]. Members of Iglesia ni Cristo are not allowed to affiliate with labor organizations.
15 292 Phil. 267 (1993) [Per J. Griño-Aquino, En Banc]. Members of Jehovah's Witnesses believe that saluting the flag, singing the National Anthem, and reciting the patriotic pledge constitute acts of worship not due to the State.
16 *Ponencia*, p. 15.
17 Id. at 15–16

Thus, the majority disposes of this administrative matter in this wise:

> **WHEREFORE**, the Court resolves to:
>
> 1. **NOTE** the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010;
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> 2. **NOTE** the 1st Indorsement dated September 21, 2010, by the Office on Halls of Justice, containing photocopies and certified photocopies of previous actions made relative to the complaint;
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> 3. **NOTE** the Letter-Comment dated September 9, 2010, of Quezon City Regional Trial Court Executive Judge Fernando T. Sagun, Jr.;
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> 4. **NOTE** the undated Letter-Comment of Quezon City Metropolitan Trial Court Executive Judge Caridad M. Walse-Lutero;
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> 5. **DENY** the prayer of Tony Q. Valenciano to prohibit the holding of religious rituals in the QC Hall of Justice and in all halls of justice in the country; and
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> 6. **DIRECT** the Executive Judges of Quezon City to **REGULATE** and **CLOSELY MONITOR** the holding of masses and other religious practices within the Quezon City Hall of Justice by ensuring, among others, that:
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>   (a) it does not disturb or interrupt court proceedings;
>
>   (b) it does not adversely affect and interrupt the delivery of public service;
>
>   (c) it does not unduly inconvenience the public.

In no case shall a particular part of a public building be a permanent place for worship for the benefit of any and all religious groups. There shall also be no permanent display of religious icons in all Halls of Justice in the country. In case of religious rituals, religious icons and images may be displayed but their presentation is limited only during the celebration of such activities so as not to offend the sensibilities of members of other religious denominations or the non-religious public. After any religious affair, the icons and images shall be hidden or concealed from public view.

The disposition in this administrative matter shall apply to all halls of justice in the country. Other churches and religious denominations or sects are entitled to the same rights, privileges and practices in every hall of justice. In other buildings not owned or controlled by the Judiciary, the

> Executive Judges should coordinate and seek approval of the building owners/administrators accommodating their courts.[18]

IV

Allowing the exercise of religious rituals within government buildings violate both Section 5, Article III and Section 29(2), Article VI of the Constitution.

Section 5, Article III of the Constitution provides:

> Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

This provision articulates two fundamental duties of the State. The first is to respect the free exercise of any religious faith. The second is not to establish, endorse, or favor any religion.

The parameters of the duty to respect the free exercise of any religion manifest in the context of a continuum. On the one hand, freedom to believe is absolute. On the other, physical manifestations of one's faith in the form of rituals will largely be tolerated except if they will tend to encroach or impede into the rights of others.[19]

Among those who profess adherence to the Roman Catholic Church, the Holy Eucharist is not simply a ritual, it is an important sacrament. More than a symbolism or the occasion to display icons, it requires the active, collective and public participation of its believers. It will require the presence of a priest and, while the ritual is ongoing, the prayers and incantations will be heard beyond the vicinity of its participants.

The offensiveness of this ritual cannot be obvious to those who belong to this dominant majority religion. It will not be obvious to those who will continuously enjoy the privilege of consistently hosting this in a government building charged with the impartial adjudication of the rule of law. The inability to see how this practice will not square with those who believe

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[18] Id. at 19–20.

[19] *Re: Request of Muslim Employees in the Different Courts in Iligan City (Re: Office Hours),* 514 Phil. 31, 38-39 (2005) [Per J. Callejo, Sr., En Banc]; *Estrada v. Escritor,* 455 Phil. 411, 537-538 (2003) [Per J. Puno, En Banc]; *Centeno v. Villalon-Pornillos,* G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206-207 [Per J. Regalado, Second Division]; *German v. Barangan,* 220 Phil. 189, 202 (1985) [Per J. Escolin, En Banc]; *Gerona v. Secretary of Education,* 106 Phil. 2, 9-10 (1959) [Per J. Montemayor, En Banc].

otherwise will especially be because religion is a matter of faith. The stronger one's faith is, the more tenacious the belief in the conception of one's god and the correctness of his or her fundamental teachings.

It will take great strides in both humility and sensitivity to understand that religious practices within government buildings are offensive to those who do not believe in any of the denominations or sects of Christianity. Those who do believe in a god but do not practice any ritual that worships their supernatural being or their deity will also find the allowance of the full Catholic sacrament of the Holy Eucharist demeaning.

Definitely, the sponsorship of these rituals within the halls of justice will not be acceptable to atheists, who fervently believe that there is no god; or to agnostics, who fundamentally believe that the existence of a supernatural and divine being cannot be the subject of either reason or blind faith.

As correctly underscored by the Chief Attorney, courts are not simply venues for the resolution of conflict. Our Halls of Justice should symbolize our adherence to the majesty and impartiality of the rule of law. Unnecessary sponsorship of religious rituals undermines the primacy of secular law and its impartiality. It consists of physical manifestations of a specific kind of belief which can best be done in private churches and chapels, not in a government building. There is no urgency that it be done in halls of justice.

V

Justice Jardeleza is of the view that allowing the holding of religious rituals in our courts is an allowable accommodation under the freedom to worship clause. Accommodation, also termed "benevolent neutrality," was extensively discussed in *Estrada v. Escritor*.[20]

I disagree.

The precedent cited is inappropriate. It is also not a binding precedent.

Jurisprudence which provides for exceptions to State regulation is different from doctrinal support for endorsing a specific religion without a separate overarching compelling lawful and separate state interest.

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[20] 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc].

Escritor involved an administrative complaint for immorality against Soledad Escritor, a court interpreter in the Regional Trial Court of Las Piñas, who cohabited and had a son with a married man. Invoking her religious freedom, *Escritor* argued that her conjugal arrangement conformed to the teachings of the Jehovah's Witnesses, the religious sect to which she belonged.

After a review of religion cases, the Court in *Escritor* formulated a two-part test in resolving cases involving freedom to worship. First, "the spirit, intent, and framework underlying the religion clauses in our Constitution"[21] is benevolent neutrality or accommodation. Government actions must neither burden nor facilitate "the exercise of a person's or institution's religion"[22] and that the State should "exempt, when possible, from generally governmental regulation individuals, whose religious beliefs and practices would otherwise thereby be infringed, or to create without state involvement an atmosphere in which voluntary religious exercise may flourish."[23] Second, there must be a compelling state interest should religious liberty be burdened.[24]

Escritor was ultimately absolved of the immorality charge against her, but only because the State failed to prove the compelling state interest in overriding her religious freedom. *Escritor* therefore involved a state policy that was apparently neutral and the question as to whether its consistent application given the ambient facts specific to a religion would violate the adherent's freedom to worship.

This is not the situation in this administrative matter. Here, we are asked to create a policy to sponsor religious rituals. There is no neutral state policy we are asked to interpret. We are asked to create a policy to enable a specific religion, and others similarly situated, to conduct their rituals within government space.

Escritor involved accommodation or exceptions to a state policy. In this administrative matter, we create a policy that benefits a group of religions that have rituals. It will not benefit believers who do not have public rituals or a deity. It certainly will not benefit all beliefs including those who profess to atheism or agnosticism.

Escritor therefore is not the proper precedent.

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21 Id. at 137.
22 Id. at 148.
23 Id. at 148–149.
24 Id. at 137.

Since *Escritor*'s promulgation, benevolent neutrality has been constantly but erroneously quoted as a talisman to erase all legitimate constitutional objections to religious activity that impinges upon secular government policy. Yet, in the 2003 Decision, where the two-part test was formulated, only five Justices fully concurred with Justice Puno's *ponencia*.[25] Two other Justices wrote separate concurring opinions.[26] There were five other Justices who dissented, with Justice Carpio leading in the dissent.[27] That benevolent neutrality is even doctrine is, therefore, suspect.

More importantly, benevolent neutrality in reality may turn out to be an insidious means for those who believe in a majority decision to maintain their dominance in the guise of neutral tolerance of all religions.

Not all Buddhists have as active, collective, and public a ritual that requires a public space as Catholics. Agnostics do not practice any ritual. Opening space in our Halls of Justice for rituals such as the Holy Eucharist in effect provides further advantage to an already dominant religion. Since the number of Catholics in Quezon City far outnumbers any other denomination, the number of requests to make use of public spaces within the Halls of Justice will likely dwarf any other Christian denomination or religion. This is true in Quezon City. This is also true in most other Halls of Justice, including portions of the Supreme Court Compound. Catholic rituals dominate.

Benevolent neutrality in practice, thus, favors the already dominant.

VI

The proscription in Section 5, Article III of the Constitution against the State's establishment of a religion covers not only official government communication of its religious beliefs. It likewise generally prohibits support and endorsement of a religious organization or any of their activities or rituals.

The non-establishment clause can be appreciated in two basic ways. First, it can be a corollary to the Constitutional respect given to each individual's freedom of belief and freedom of exercise of one's religion. Second, it is also a restatement of the guarantee of equality of each citizen. That is, that no person shall be discriminated against on the basis of her or his creed or religious beliefs.

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[25] The *ponencia* was concurred in by the Chief Justice Davide, Jr., and Associate Justices Austria-Martinez, Corona, Azcuna, and Tinga.

[26] Associate Justices Bellosillo and Vitug.

[27] Associate Justices Ynares-Santiago and Carpio wrote their separate dissenting opinions. Associate Justices Panganiban, Carpio-Morales, and Callejo, Sr. joined the dissenting opinion of Associate Justice Carpio.

Congealed in this provision is the concept that the Constitution acknowledges the cultural power of the State. Government's resources, its reach, and ubiquity easily affect public consciousness. For example, actions of public officials are regular subjects of media in all its forms. The statements and actions of public officials easily pervade public deliberation. They also constitute frames for public debate on either personality or policy.

The rituals and symbolisms of government not only educate the public but also etch civic and constitutional values into mainstream culture. The flag for instance, reminds us of our colorful history. Flag ceremonies instill passionate loyalty to the republic and the values for which it stands. Halls of Justice consist of buildings to remind the public that their cases are given equal importance. The arrangement of bench and bar within our courtrooms exhibits the majesty of the law by allowing the judicial occupants to tower over the advocates to a cause. This arrangement instills the civic value that no one's cause will be above the law: that no matter one's creed or belief, all will be equal.

Any unnecessary endorsement, policy, or program that privileges, favors, endorses, or supports a religious practice or belief per se therefore would be constitutionally impermissible. It communicates a policy that contrary beliefs are not so privileged, not so favored, not so endorsed and unsupported by the Constitutional order. It implies that those whose creeds or whose faiths are different may not be as part of the political community as the other citizens who understand the rituals that are supported. It is to install discrimination against minority faiths or even against those who do not have any faith whatsoever.

There is no urgency in holding masses within the Halls of Justice. The Catholic Church owns many elegant places of worship. There are churches and chapels accessible to court personnel in the Quezon City Hall of Justice during their lunch hour. There are some, which are walking distance from their offices.

Allowing masses to be held within Halls of Justice therefore have no other purpose *except* to allow a sect, or religious denomination to express its beliefs. The primary purpose of the policy that is favored by the majority of this Court is not secular in nature, but religious. This is contrary to the existing canons of our Constitutional law.

Section 5, Article III does not allow the endorsement by the State of any religion. The only exception would be if such incidental endorsement of a religious exercise is in the context of a governmental act that satisfies the

following three-part test: it has a "secular legislative purpose";[28] "its primary effect [is] that [which] neither advances nor inhibits religion";[29] and that it "must not foster 'an excessive entanglement with religion.'"[30]

In *Aglipay v. Ruiz*,[31] this Court allowed the issuance of postage stamps with a Philippine map and an indication that the City of Manila was the seat of the Roman Catholic Church's Eucharistic Congress in 1937. The Court held that "while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government."[32] In *Aglipay,* the legitimate public purpose was to boost the country's tourism, not to celebrate religion. The Court found that the principal purpose was secular. The religious benefit was also considered to be incidental.

There is no duration, degree of convenience, or extent of following that justifies any express or implied endorsement of any religious message or practice. There is also no type of endorsement allowed by the provision. It is sufficient that the State, through its agents, favors expressly or impliedly a religious practice.

The majority opinion cites Father Bernas in discussing the non-establishment clause. Unfortunately, Father Bernas, even as a celebrated author in Constitutional law, is not the Supreme Court. Neither are his statements precedents for purposes of this Court. He is also a Catholic priest and therefore his opinions on the impact of law on religion should be taken with a lot of advisement.

Furthermore, directing our Executive Judges to regulate and closely monitor the holding of masses and other religious practices within our courts promotes excessive entanglements[33] between courts and various religions. This close monitoring will result in an unnecessary interaction between the church and the State. It will take time from our Executive Judges, who, instead of monitoring the holding of religious rituals, could otherwise be

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28 *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60, 83 (1974) [Per J. Zaldivar, En Banc] *citing Board of Education v. Allen,* 392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923. *See Aglipay v. Ruiz,* 64 Phil. 201 (1937) [Per J. Laurel, En Banc].

29 *Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60, 83 (1974) [Per J. Zaldivar, En Banc] *citing Board of Education v. Allen,* 392 U.S. 236, 20 L. ed. 2d, 1060, 88 S. Ct. 1923.

30 *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc] *citing Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971).

31 64 Phil. 201 (1937) [Per J. Laurel, First Division].

32 Id. at 209.

33 *Estrada v. Escritor*, 455 Phil. 411, 506 (2003) [Per J. Puno, En Banc]. In this case, this Court mentions the concept of "excessive entanglement" which appears in *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971). In *Lemon v. Kurtzman,* it was noted that the way to determine whether government entanglement with religion is excessive is by "[examining] the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority."

performing their secular functions such as reducing court dockets. They will be asked to arbitrate between religions.

VII

Justices De Castro[34] and Jardeleza[35] take a contrary view. For them, allowing our employees to hold religious rituals in our Halls of Justice serves "a human resource purpose"[36] in that "it renews in [our employees] daily their desire to achieve the highest principles of morality [which] can only better equip them to meet their secular obligation to be at all times accountable to the people."[37]

Unfortunately, this is a rationalization which benefits only those who are of the same faith for which the rituals will be conducted. It does not apply to those who do not share in the same beliefs. The non-establishment clause does not protect those that believe in the religion that is favored, privileged, endorsed, or supported. It is supposed to protect those that may be in the minority. The alleged secular purpose of the Holy Mass therefore only benefits Catholics. It does not apply to a Buddhist, a Taoist, an atheist, or an agnostic.

Any moralizing effect of religion notwithstanding, religion should correctly remain to be "a private matter for the individual, the family, and the institutions of private choice."[38] As Justice Jardeleza points out, setting and context determine whether the use of a religious symbol effectively endorses a religious belief.[39] There is no violation of the establishment clause if we allow an employee to privately pray the rosary within the confines of his or her workspace.[40]

The case is different, however, if the religious ritual is collectively and publicly performed. Our Halls of Justice were not built for religious purposes. Allowing the performance of religious rituals in our Halls of Justice runs roughshod over the rights of non-believing employees and other litigants who, for non-religious purposes, are present in the courthouse but are involuntarily exposed to the religious practice.

Moreover, the purpose and goal of our secular laws and service to our people should be enough motivation for all public officers to do their best in

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34 Justice de Castro's Concurring Opinion, p. 15, where Justice de Castro stated that "[i]s religion without any redeeming value or beneficial effect insofar as public service is concerned?"

35 Justice Jardeleza's Reflections, p. 19.

36 Id. at 20.

37 Id. at 19.

38 *Lemon v. Kurtzman,* 402 US 613, 625 (1971).

39 Justice Jardeleza's Reflections, p. 12, *citing County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

40 Justice de Castro's Concurring Opinion, p. 15.

their jobs. To provide the public space for a supposedly private matter like religion, in the name of morality, is not what the Constitution concedes.

If rituals for any religion serve any human resource incentive, so should any form of non-belief, be it in the form of atheism or agnosticism. It does not make sense for a state to favor any religious ritual yet at the same time accommodate citizens, who fervently believe that rituals should never be done.

VIII

More specific to the prohibition against the establishment of a religion are the provisions in the second paragraph of Section 29, Article VI of the Constitution:

> Section 29.
> . . . .
> (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. (Emphasis supplied)

The Constitution specifically prohibits public property from being "employed for the benefit or support of any sect, church, denomination, sectarian institution or system of religion."

This provision allows for no qualification. Allowing Catholic masses to be celebrated daily within the Halls of Justice definitely employs public property for the "benefit or support" of the Catholic religion. Catholicism is a "church," "denomination," and a "system of religion."

The majority believes that Section 29(2), Article VI of the Constitution "contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church."[41] In interpreting the provision, the majority deploys the statutory interpretative device labelled as *noscitur a sociis* – the doctrine of associated words – and examined the definitions of "appropriate" and "apply" mentioned before "use" and "employ" in the provision. Based on the definitions in Black's Law Dictionary, "appropriate" and "apply" are similarly done for a particular purpose.[42] The *ponencia* then concluded that "use" and "employ,"

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[41] Id. at 16.
[42] Id. The *ponencia* states:

associated with "appropriate" and "apply," must similarly be done for a particular purpose, specifically, to benefit a particular religion.[43]

I do not agree with this interpretation. It implies that the religious use or employment of public property is allowable so long as other religious groups may use or employ the property.

Section 29(2), Article VI of the Constitution is straightforward and needs no statutory construction. The religious use of public property is proscribed in its totality. This proscription applies to *any* religion. This is especially so if the accommodation for the use of public property is principally, primarily, and exclusively only for a religious purpose.

This holistic interpretation of the Constitution is more sensitive to those who disbelieve – the agonistics and the atheists – who are equally protected under the Constitution. It is also more sensitive to the concept that the state remains neutral in matters pertaining to faith: that no institutional religion, due to their dominance or resources, may have any form of advantage over another act of religious belief.

IX

The other cases cited by the majority do not involve the non-establishment clause. Rather, the cases involve exceptions to a secular policy.

Victoriano v. Elizalde Rope Workers Union[44] challenged the applicability of the closed shop provisions to Members of Iglesia ni Cristo. The closed shop provisions were meant to further the State's protection to labor through collective negotiations. The petitioner in that case alleged that the means through which the purpose was to be achieved interferes with the exercise of his religion. That case did not involve allowance for any religious ritual within public property for the convenience of its adherents.

Ebralinag v. Division Superintendent of Schools of Cebu[45] examined the plea of a group of students who adhered to the tenets of the Jehovah's Witnesses to be exempted from certain gestures during the flag ceremony. Like *Escritor* and *Victoriano*, Ebralinag pursued a secular governmental

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The word "apply" means "to use or employ for a particular purpose." "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand."

43 Id.

44 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

45 292 Phil. 267 (1993) [Per J. Griño-Aquino, En Banc].

interest. Religion, thus, only becomes significant as a basis to seek exemption to its application.

Allowing religious rituals within the Halls of Justice is not supported by these cases. Allowing the celebration of Roman Catholic masses within court premises definitely is not occasioned by a need to relieve their faithful from any burdensome effect. This case involves the State, through its employees, allowing the practice of religious rituals with *no other purpose except* to practice religious rituals in a public space. This cannot be done.

X

The Constitution guarantees liberty for those who choose to believe in a god. It does not, however, sanction insensibilities towards those who believe otherwise. The Constitution is also a guarantee that those who profess a dominant religion do not, in fact and in reality, further dominate our government spaces with their rituals or messages.

The non-establishment clause is the normative protection that ensures and mandates tolerance. It is meant to sharpen the sensitivity of those who are powerful so that they understand the point of view of others who have different beliefs. It is a sovereign command that those who hold important public offices – such as judges and justices – be conscious that their fervent personal and religious beliefs should not be mirrored in the doctrines and results of their cases.

Projecting the verses of Catholic prayers in a public building, using powerful sound systems to proclaim one's faith, selecting a space in the center of a Hall of Justice where the rituals resonate will not be obviously offensive to Catholics in the majority. However, it is utter callousness to say that it will offend no one. It causes discomfort to all those who will pass and do not share or have objections to the teachings broadcast in the Holy Eucharist. It offends those who believe that the State should endeavor to be neutral and impartial and avoid situations where this will be compromised.

Certainly, there is no urgent and compelling need to allow a certain sect to exercise their rituals within the Halls of Justice on a regular basis. There are churches, chapels, mosques, synagogues, and private spaces available for worship.

"Benevolent neutrality" to render state regulation impotent in a situation where a religion dominates becomes a painful illusion to those at the margins of our society. For this Court to adopt this façade is to reward the dominant. It is to maintain the status quo and reify the hegemony of

those who have power. This will not be lost to those that pass our Halls of Justice.

To reward the dominant would be to further ensure divisiveness, distrust, and intolerance. It will ultimately result in the accommodation of fundamentalist views embedded in popular religions. The marginalized will perceive no succor in the system. They will see no opening and no space for their own freedoms. Religious rituals in our Halls of Justice, no matter the justification, breed contempt for the impartiality of the Rule of Law.

The faiths which anchor our Constitution are diverse. It should not be the monopoly of any sect. The diversity mandated by our Constitution deepens our potentials as sovereigns. To favor a belief system in a divine being therefore, in any shape, form, or manner, is to undermine the very foundations of our legal order.

The Constitution does mention god. It may be that the divine is the the Judeo-Christian God. It may be that it is Allah of Islam or Yahweh of the Jews. The god may not be theistic and may simply be the Dharma of the Buddhists. It may also not be a divinity but reasoned secularism as advocated by the most militant Atheists.

It may also be a god that is so secure in itself that it does not require any kind of religious rituals, just the humility of not imposing one's belief on others.

Except for our own individual consciences, we are not competent to make these religious judgments as Supreme Court Justices. Certainly, it is not within our constitutional mandate to favor one over the other in any manner.

There is no reason for the Holy Eucharist to be celebrated in our Halls of Justice. Catholic churches are ubiquitous. Should the faithful among our judges and employees find the need to worship, I am of the belief that they should practice the compassion for others and the virtue for humble sacrifice taught by no less that Jesus Christ himself. Thus, they should muster the patience to walk to the closest church and there to fervently pray for more humility and a socially just and tolerant society.

The same doctrine applies for all other religions.

ACCORDINGLY, I vote to **NOTE** the letter-complaints of Mr. Valenciano, dated January 9, 2009, May 13, 2009, and March 23, 2010 and **GRANT** his request to disallow the holding of daily Roman Catholic

masses, or any other religious ritual, at the basement of the Quezon City Hall of Justice.

MARVIC M.V.F. LEONEN
Associate Justice