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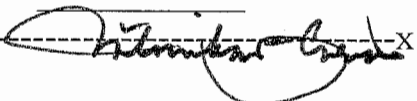
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G.R. No. 263590 (*Atty. Romulo B. Macalintal, Petitioner v. Commission on Elections and the Office of The President through Executive Secretary Lucas P. Bersamin, Respondents.*)

G.R. No. 263673 (*Atty. Alberto N. Hidalgo, Atty. Aluino O. Ala, Atty. Agerico A. Avila, Atty. Ted Cassey B. Castello, Atty. Joyce Ivy C. Macasa, and Atty. Frances May C. Realino, Petitioners v. Executive Secretary Lucas P. Bersamin, The Senate of the Philippines, duly represented by its Senate President, Juan Miguel Zubiri, The House of Representatives, duly represented by its Speaker of the House, Ferdinand Martin Romualdez, and The Commission on Elections, duly represented by its Chairman, George Erwin M. Garcia, Respondents.*)

Promulgated:

June 27, 2023

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SEPARATE CONCURRING OPINION

**DIMAAMPAO, J.:**

The pith of the controversy in the case at bench is whether Republic Act (RA) No. 11935,<sup>1</sup> which postponed the *Barangay* and *Sangguniang Kabataan* Elections (BSKE) scheduled on December 5, 2022 to the last Monday of October 2023, is unconstitutional.

In ruling that the enactment of RA No. 11935 was attended with patent grave abuse of discretion amounting to lack or excess of jurisdiction, the *ponencia* maintains the position that the intermediate scrutiny test is *apropos* since any law or rule deferring or postponing the BSKE may not necessarily constitute a direct and undue burden on the right of suffrage so as to require a strict scrutiny analysis. Particularly, the restriction on the right may be deemed incidental and regulating only the *time* of the exercise of the right to vote in the BSKE.<sup>2</sup>

While I agree in the result, I humbly offer a divergent viewpoint as to the proper level of scrutiny in resolving these consolidated cases. On this score, I join Senior Associate Justice Marvic M.V.F. Leonen, and Associate Justices Alfredo Benjamin S. Caguioa, Mario V. Lopez, and Maria Filomena D. Singh in their elucidation as to why the **strict scrutiny** test must apply in

<sup>1</sup> An Act Postponing the December 2022 *Barangay* and *Sangguniang Kabataan* Elections, Amending for the Purpose Republic Act No. 9164, as Amended, Appropriating Funds Therefor, and for Other Purposes, approved on October 10, 2022.

<sup>2</sup> *Ponencia*, pp. 106-110.

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cases where the validity of laws postponing elections is questioned, for the reasons explicated hereunder.

Philippine jurisprudence has formulated three tests of judicial scrutiny to determine the reasonableness of classifications. *First*, 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. *Second*, the intermediate 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. *Third*, the rational basis test applies to all other subjects not covered by the first two tests.<sup>3</sup>

Apart from the cases of *Samahan ng mga Progresibong Kabataan v. Quezon City*<sup>4</sup> and *Kabataan Party-List v. Commission on Elections*,<sup>5</sup> assiduously cited by Associate Justice Amy C. Lazaro-Javier, wherein the strict scrutiny test was applied given that fundamental rights were affected by the relevant statutes in each case, it is also worth noting that the same test has been applied in *Imbong v. Ochoa*<sup>6</sup> where the free exercise of religion by conscientious objectors was purportedly burdened by government legislation, and in *Philippine Stock Exchange, Inc. v. Secretary of Finance*,<sup>7</sup> involving regulations which were alleged to be violative of the fundamental right to privacy.

From the foregoing, it is plain as day that in the determination of the applicable level of scrutiny in cases involving the validity of laws postponing the BSKE, the focal query is **whether the exercise of a fundamental right has been interfered with by reason of the passage and implementation of such legislation**. Should the response be in the affirmative, then prevailing jurisprudence unambiguously dictates that the strict scrutiny test shall apply.

Upon careful reading, laws postponing the BSKE may appear facially neutral and incidental to the exercise of the right of suffrage, for they purport to regulate only the time when the right to vote shall be exercised. However, such regulation already constitutes an adequate interference or infringement on the right of suffrage that would suffice to warrant strict scrutiny. Moreover, what constitutes “an undue and unjustifiably prolonged restriction on the

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<sup>3</sup> See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113-1114 (2017).

<sup>4</sup> *Id.*

<sup>5</sup> 775 Phil. 523 (2015).

<sup>6</sup> 732 Phil. I (2014).

<sup>7</sup> G.R. No. 213860, July 5, 2022.

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exercise of the right of suffrage”<sup>8</sup> that would subject the State measure to strict scrutiny appears to be a nebulous standard, open to various interpretations as to what constitutes a “prolonged restriction.” In the same vein, the *ponencia* appears to propose a separate sub-test to determine when the strict scrutiny and intermediate scrutiny tests would apply in resolving challenges against statutes postponing elections.

Contrariwise, our case law has consistently laid down when the three tests of judicial scrutiny shall apply. They do not distinguish as to the level or intensity—be it direct or merely incidental—of the restriction on the fundamental right in question. Based on the doctrinal teachings enunciated by the Court, it is enough that the issuance “interferes with the exercise of a fundamental right.”<sup>9</sup> Upon this point, I agree with Associate Justice Alfredo Benjamin S. Caguioa that “any impingement, **even if temporary**, of the sovereign people’s constitutional right of suffrage demands that the Court review the legislation with strict scrutiny.”<sup>10</sup>

In epitome, the right to vote is a most precious political right, as well as a bounden duty of every citizen, enabling and requiring him or her to participate in the process of government so as to ensure that the government can truly be said to derive its power solely from the consent of the governed.<sup>11</sup> Perforce, the exercise of such fundamental right falls within the Court’s duty to safeguard and preserve through, *inter alia*, the application of the strict scrutiny test.

**JAPAR B. DIMAAMPAO**  
*Associate Justice*

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<sup>8</sup> *Ponencia*, p. 107.

<sup>9</sup> *Supra* note 3, at 1116.

<sup>10</sup> Reflections of Associate Justice Alfredo Benjamin S. Caguioa, p. 24.

<sup>11</sup> See *Romualdez v. RTC, Branch 7, Tacloban City*, 297 Phil. 455 (1993).

