

FREE SPEECH:
THE BRIGHT AND CONSUMMATE FLOWER
OF ALL LIBERTY

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INTRODUCTION

The freedom which our very own Supreme Court once called as “the matrix, the indispensable condition of nearly every other freedom”¹ sprouted again in a controversial dispute between two of our country’s religious organizations, the Iglesia ni Cristo (INC) and the Church of God, also known as “Ang Dating Daan,” thanks to the participation of the government through the Movie and Television Review and Classification Board (MTRCB).

Since this cherished liberty was introduced to our islands in the early 1900s, it has already been the subject of many disputes or events which shaped Philippine jurisprudence, as well as our own history as a country. Now, in our high-tech and gizmo dominated world, without our country being subjected to another tyrannical rule, few would anticipate that a century-old right would still be involved in an ardently contested issue among our technology-buff citizens.

But an old thing does not mean that it can not anymore be “hot” or “in,” especially so if it is, in the words of Wendell Phillips, “the instrument

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¹ *Blo Umpar Adiong v. Commission on Elections*, 207 SCRA 712, 716 (1992).

and guarantee and the bright and consummate flower of all liberty,” or, to paraphrase our Supreme Court in one case,² the guarantee to which the other provisions of the Bill of Rights and the right to free elections may be guaranteed. In short, the mother of all liberties.

Moreover, this right should, with more reason, be the subject of more controversies considering the fact that with the advancement of technology, especially those related to communications like television, cell phones, and the internet, goes with it the broadening of the modes of communicating speeches, which is the very thing this right seeks to protect. And as the modes of conveying speeches increase, the government interest in, sort of, regulating these expressions also increases apparently pursuant to some of its state policies as the guardian of the welfare of the people.

Going back to the controversial dispute, the questions that would first bug our minds are: How did the freedom of speech get involved in the dispute between INC and Ang Dating Daan? Is it not that the usual issue or dispute between and among religious organizations is their differing and contradictory doctrinal stances, not to mention the common accusations of membership poaching since the game now depends on numbers, the more you have, the stronger is your organization, but definitely not free speech? What was the participation of the government in the controversy? Is it not more likely for the freedom of religion to be involved instead of the freedom of speech? To better understand how the right to free speech got caught up in the controversial dispute between the aforementioned religious organizations, a detailed statement of the facts becomes necessary.

I. THE FACTS:

The MTRCB Gag Order

The INC filed complaints for violation of PD 1986 against “Ang Dating Daan’s” Eliseo Soriano, et al., respondents herein, before the MTRCB alleging that the latter, with malice and bad intentions, have been

² *Id.*

referring to *“Iglesia ni Cristo”* as *“Iglesia ni Manalo”* in their television programs which *maligns, offends and destroys the good name and reputation of the INC as a religious organization*. The INC also claimed that Soriano, et al. have been indecently and indiscriminately throwing invectives such as “gago, tarantado, demonyo, and other words of similar import” against complainants.

Upon filing of the complaints, the Chairman of the MTRCB created an Adjudication Committee to handle the complaints. The Committee heard the parties who agreed to a sort of two-week truce. Unfortunately, the parties came again to the Board to inform the latter that there were apparent violations of the gentlemen’s agreement and agreed to submit the case for decision.

On April 14, 2005, the MTRCB rendered a decision decreeing that it has jurisdiction over the case (citing Section 3 (c) vi of PD 1986) and that the Soriano, et al. are enjoined from addressing complainant *“Iglesia ni Cristo”* as *“Iglesia ni Manalo”* and from using such other descriptions as are not in accordance with law, good customs and contemporary Filipino cultural values. The Board found that the admitted *references by Soriano et al. of “Iglesia ni Cristo” as “Iglesia ni Manalo” are indeed defamatory or at least destructive of the name and reputation of “Iglesia ni Cristo” as a duly registered religious organization*.

On April 21, 2005, Soriano et al. filed a motion for reconsideration of the Board’s decision dated April 14, 2005.

On April 28, 2005, INC filed an Urgent Motion for the Issuance of Suspension and/or Ban Order before the Board for respondents’ violations of the April 14 decision by addressing the complainant INC as *“Iglesia ni Manalo”* in their television programs “Itanong Mo Kay Soriano” and “Ang Dating Daan” on April 25 and 27, 2005.

On May 5, 2005, a hearing was held on the aforementioned motions. In support of its motion, INC presented two witnesses. The first witness testified that on May 2, 2005, he monitored the program “Itanong Mo Kay Soriano” of Eliseo F. Soriano and was able to make a list of the “biblical errors” committed by respondent Soriano and company. He likewise affirmed that he prepared a second list of the statements made by

respondents addressing complainant INC as “*Iglesia ni Manalo*.” The second witness testified that he caused the recording of the television program of the respondents on April 26 and 27, 2005. The Board admitted the complainant’s testimonial and documentary evidence and for the purpose/s for which they were offered.

On respondents’ part, their counsel manifested that they reserve their right to address their position in the Petition for Injunction with prayer for TRO filed by respondents before the RTC of QC. In addition, counsel pleaded that with the filing of a Petition for Injunction before the RTC, the Board should refrain from hearing the case. They also argued that the Board’s powers and functions are limited only to review and classification, and has no authority to approve or disapprove respondent’s television programs.

On May 7, 2005, the Board resolved to grant complainants’ Urgent Motion for the Issuance of Suspension and/or Ban Order. The Board found out that *respondents utterly disregarded the order of the Board enjoining them from addressing complainant “Iglesia ni Cristo” as “Iglesia ni Manalo” when they referred to the INC as “Iglesia ni Manalo” on various dates and time (April 26, April 27, May 2 and May 3, 2005) in their television programs “Itanong Mo Kay Soriano” and “Ang Dating Daan.”* Thus, the Board resolved: a) to permanently enjoin respondents from addressing, referring and/or alluding to INC as “*Iglesia ni Manalo*”; b) to suspend respondents’ television programs, specifically, “*Itanong Mo Kay Soriano*”, “*Ex Man*”, “*Ang Biblia*” and “*Ang Dating Daan*”, from being broadcasted and/or aired over free and/or cable television for a period of thirty (30) days from receipt of the Order; and c) to enjoin respondents from directly or indirectly causing the production, broadcast or airing of the *aforecited television programs or programs of similar nature or format over free and/or cable television for a period of thirty (30) days from receipt of the Order.*

On May 9, 2005, all parties through their respective counsels of record received copies of the May 7 Order. On the same day, MTRCB personnel, who were tasked earlier in the day by the Board to monitor respondents on television for possible violation/s of the said Order, reported that respondent UNTV-37 has been intermittently broadcasting programs of its co-respondents Eliseo Soriano and company. It was also reported

that on or about 11:30 pm of the same day until about 1:00 am of the following day, Eliseo Soriano and other respondents appeared on television over the station National Broadcasting Network.

On May 10, 2005, compelled by, in the words of the MTRCB, *respondents' fearless insolence* of the Board's order, the Board sought the assistance of the National Telecommunications Commission (NTC) for the enforcement and implementation of its May 7 Order.

On May 11, 2005, NTC Commissioner Ronaldo Solis issued a letter addressed to respondent Eliseo Soriano copy furnished respondent UNTV-37 requiring them to strictly comply with the Board's Order dated May 7. However, when the representatives of the MTRCB and NTC proceeded to respondents' television station at Ortigas Center, Pasig City, to serve the said letter, respondents refused to receive the same and further refused to identify themselves.

From May 9 to May 11, 2005, respondent UNTV-37 broadcasted or aired programs of respondent Eliseo Soriano.

On May 12, 2005, the MTRCB issued another Order indefinitely suspending the respondents Soriano et al. from appearing in any programs broadcasted or aired over any free and/or cable television.³

II. THE QUESTION:

MTRCB Order, a Prior Restraint?

After knowing the facts of the case, we would naturally ask the following questions: Is the order of the MTRCB indefinitely suspending respondents Eliseo Soriano et al. of Ang Dating Daan from appearing in any programs in television valid and legal? Is it not violative of the

³ On July 26, 2005, the MTRCB suspension order was lifted ("Censors lift 'Ang Dating Daan,'" *available at* http://beta.inq7.net/common/print.php?index=1&story_id=45101&site_id=23 [last accessed on December 31, 2005]) apparently to preclude any tribunal from ruling on the matter. Nevertheless, discussion of the merits of the case shall proceed in this paper as this is a mere academic exercise and considering the fact that it involves a paramount right in our hierarchy of civil liberties.

respondents' constitutional right to freedom of speech? Is it not a form of prior restraint abhorred by the Constitution?

In order to answer these questions, we have to go back first and review the history as well as the basic principles, doctrines, and concepts relating to the constitutional right of free speech.

III. HISTORY AND PHILOSOPHICAL BASIS

Freedom of speech was a concept unknown to Philippine jurisprudence prior to 1900.⁴ It is a common law doctrine, which was first elevated to a constitutional principle through the First Amendment of the American Federal Constitution.⁵ The First Amendment provides:

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 to peaceably assemble, and to petition the government for a redress of grievances.⁶

The U.S. Supreme Court speaking on the historical backdrop of the guarantee has this to say:

The First Amendment's guarantee of "the freedom of speech, or of the press" prohibits a wide assortment of governmental restraints upon expression but the core abuse against which it was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the "evils" of the printing press in 16th and 17th century England. The Printing Act of 1662 had "prescribed what could be printed, who could print, and who could sell." Mayton, *Toward a Theory of First Amendment Process: Injunctions of Speech, Subsequent Punishment, and the Costs of the Prior Restraint Doctrine*, 67

⁴ J. G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 203 (1996) [hereinafter BERNAS].

⁵ *Id.* at 204.

⁶ U.S. CONST, First Amendment. Emphases supplied.

Cornell L. Rev. 245, 248 (1982). It punished the publication of any book or pamphlet without a license and required that all works be submitted for approval to a government official, who wielded broad authority to suppress works that he found to be “heretical, seditious, schismatical, or offensive.” F. Siebert, *Freedom of the Press in England, 1476-1776*, p.240 (1952). The English licensing system expired at the end of the 17th century, but the memory of its abuses was still vivid enough in colonial times that Blackstone warned against the “restrictive power” of such a “licenser” – an administrative official who enjoyed unconfined authority to pass judgment on the content of speech. 4 W. Blackstone, *Commentaries on the Laws of England* 152 (1769).⁷

Although it was one of the burning issues during the Filipino campaign against Spain and was, in fact, a prime cause of the revolution, the privilege was not known by Filipinos until its guarantee was transplanted to the Philippines by President McKinley’s *Instruction* to the second Philippine Commission in the early 1900s.

The *Instruction*’s text, lifted bodily from the Federal Constitution of the United States and reproduced without alteration in both the Philippine Bill and the Autonomy Act, brought the guarantee to the Philippines weighted with all the applicable jurisprudence of American constitutional cases.⁸ The same guarantee, unaltered in form, became part of the 1935 Philippine Constitution. It remained unaltered in the 1973 Constitution, and remains unaltered in the 1987 Constitution, with the only addition of the phrase “of expression,” which was considered as a minor amendment. The reason for retaining the 1935 and 1973 texts was that the provision had become the subject of an extensive body of jurisprudence, both Philippine and American, and should be preserved.⁹

⁷ *Thomas v. Chicago Park District*, 534 U.S. 316 (2002).

⁸ BERNAS, at 204 citing *U.S. v. Bustos*, 37 Phil. 731 (1918).

⁹ See BERNAS, at 203-204.

The philosophical basis of the free speech was eloquently stated by Justice Holmes in his dissent in *Abrams v. United States*¹⁰ where he argued that “the ultimate good desired is better reached by free trade in ideas:”

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

IV. FREE SPEECH AND ITS SCOPE

“Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”¹¹

¹⁰ 250 U.S. 616 (1919).

¹¹ CONST., art. III.

The Free Speech clause is a guarantee against *prior restraint or censorship* and *subsequent punishment*. Consistent with its intended role in society, it means that the people are kept from any undue interference from the government in their thoughts and words. The guarantee basically flows from the philosophy that the authorities do not necessarily know what is best for the people.¹²

An eminent constitutionalist also said that the ideas that may be expressed under this freedom are not confined only to those that are sympathetic or acceptable to the majority.¹³ Otherwise, that would make the freedom more shadow than substance. Necessarily, the freedom must allow for disagreements and dissents. As Justice Holmes put it in his dissent in *U.S. v. Schwimmer*,¹⁴ “free thought-not free thought for those who agree with us but freedom for the thought that we hate.” Thus, as Justice Jackson wrote in *West Virginia Board of Education v. Barnette*,¹⁵ “Compulsory unification of opinion achieves only unanimity of the graveyard.”

The freedom is said to also include the right to be silent, the right to an audience, the right to listen as well as the right not to listen.¹⁶ Also, among the most cherished liberties in a free society, it is said that freedom of speech occupies a preferred and predominant status.¹⁷

¹² 1 R.B. GOROSPE, CONSTITUTIONAL LAW: NOTES AND READINGS ON THE BILL OF RIGHTS, CITIZENSHIP AND SUFFRAGE 442 (2004) [hereinafter GOROSPE].

¹³ I.A. CRUZ, CONSTITUTIONAL LAW 200 (2000) [hereinafter CRUZ].

¹⁴ 279 U.S. 644.

¹⁵ 319 U.S. 624 (1943).

¹⁶ CRUZ, at 200-201.

¹⁷ GOROSPE, at 440. But See *Movie and Television Review and Classification Board v. ABS-CBN*, G.R. No. 155282, January 17, 2005, where the Court, through Justice Sandoval-Gutierrez, said that “there has been no declaration at all by the framers of the Constitution that freedom of expression and of the press has a preferred status.” It concluded that it is “a freedom bearing no preferred status.”

Prior Restraint

This is the first prohibition of the free speech clause. *Prior restraint* means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.¹⁸ It conditions the exercise of the right to free speech upon the prior approval of the government. However, the restraint need not be a total suppression, even a partial one may be considered to be violative of the guarantee. Examples of prior restraint range from licensing systems administered by an executive officer to movie censorships, and even court injunctions. Hence, in *Ayer Productions Pty. Ltd. v. Capulong*,¹⁹ the Supreme Court held that an injunction stopping the production of a documentary film was an invalid prior restraint on freedom of speech and of expression.

It should also be noted that the freedom of broadcast media is lesser in scope than the press because of its pervasive presence in the lives of people and its accessibility to children. This is true to both radio and television.²⁰ Thus, it has been said that there is a preferential treatment in the matter of prior restraint given to the press that has not been extended with equal vigor to radio, television and motion pictures.

Subsequent Punishment

Free speech includes freedom after the speech. It also guarantees freedom from punishment after publication or dissemination of the speech. This is because an unrestrained threat of subsequent punishment itself would operate as a very effective prior restraint. As Cooley put it, “the mere exemption from previous restraint cannot be all that is secured by the constitutional provisions, inasmuch as of words to be uttered orally there can be no previous censorship, and the liberty of the *press might be rendered a mockery and a delusion*, and the phrase

¹⁸ BERNAS, at 205.

¹⁹ 160 SCRA 861 (1988).

²⁰ See *Far Eastern Broadcasting v. Dans, Jr.*, 137 SCRA 628 (1985) and *Gonzales v. Kalaw Katigbak*, 137 SCRA 717 (1985).

itself a byword if, while every man was at liberty to publish what he pleased, the public authorities might nevertheless punish him for harmless publications.”²¹

Furthermore, although the language of the Constitution appears to be absolute and unqualified, this is not so, because there are certain well-defined and narrowly limited exceptions. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words – those which, by their very utterance, inflict injury or tend to incite as immediate breach of peace.²² These exceptions are also known as the *unprotected speeches*.

In regulating the so-called unprotected speeches, there are three basic standards which the State may use – the “clear and present danger” test, the “dangerous tendency” test and the “balancing-of-interest” test.

Clear and Present Danger Test

The “clear and present danger” test, which is the most libertarian, requires that the evil consequence of the comment or utterance must be “extremely serious and the degree of imminence extremely high” before the utterance can be punished. This was formulated by Justice Holmes in *Schenck v. United States*,²³ “The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.” Our Supreme Court is now maintaining this test as first applied in the case of *Primicias v. Fugoso*.²⁴

²¹ COOLEY, CONSTITUTIONAL LIMITATIONS 421 (1808), as cited in BERNAS, at 205-206 (Emphases supplied).

²² *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

²³ 249 U.S. 47 (1919).

²⁴ 80 Phil. 71 (1948).

Dangerous Tendency Test

The “dangerous tendency” test, which is the rule used before the adoption of the “clear and present danger” test, requires that “if the words uttered create a dangerous tendency which the State has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms.”²⁵ This test is the one being used during the American occupation apparently to discourage attacks against the American Administration.

Balancing-of-Interest Test

The “balancing-of-interest” test requires a careful balancing of the interests and values of society in regard to the regulation of a particular expression. The principle requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.²⁶

V. COGNATE CONCEPTS

Chilling Effect Principle

This is a form of self-censorship that the Free Speech Clause seeks to prevent. As noted by an author in constitutional law, having people keep quiet out of their own self-induced fears society suffers as much as when their mouths are kept shut by the authorities for in both instances, society may never get to hear whatever the muted voices might have contributed for the betterment of their world.²⁷

²⁵ *Cabansag v. Fernandez*, 102 Phil. 152 (1957).

²⁶ GOROSPE, at 469 citing *Ayer Productions v. Capulong*, 160 SCRA 861 (1988), which cited the separate opinion of Justice Castro in *Gonzales v. Commission on Elections*, 27 SCRA 835 (1969).

²⁷ GOROSPE, at 445.

As stated by Justice Abad Santos in his dissent in *Babst v. National Intelligence Board*,²⁸ “Fear indeed can have a paralyzing effect.”

Facial Challenges and the Overbreadth Doctrine

Relevant to any discussion of free speech and the chilling effect principle are the concepts of “facial challenges” and the “overbreadth doctrine” which are rather peculiar with regulations affecting speech and the press.²⁹ “Facial challenge to a statute is allowed only when it operates in the area of freedom of expression... Invalidation of the statute ‘on its face’ rather than ‘as applied’ is permitted in the interest of preventing a chilling effect on freedom of expression.”³⁰

The overbreadth doctrine permits a party to challenge the validity of a statute even though as applied to him it is not unconstitutional but it might be if applied to others not before the Court whose activities are constitutionally protected.³¹ The showing that a law punishes a “substantial” amount of protected speech, “judged in relation to the statute’s plainly legitimate sweep,” suffices to invalidate all enforcement of that law, “until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.”³²

VI. ANALYSIS:

MTRCB’s Gag Order v. Ang Dating Daan’s Soriano and Other Respondents’ Right to Free Speech

Having these basic concepts, principles and doctrines governing the freedom of speech in mind, we now take up the main issue i.e.

²⁸ 132 SCRA 316 (1984).

²⁹ GOROSPE, at 445.

³⁰ Separate opinion of Justice Mendoza in *Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 128 (2000).

³¹ *Id.*

³² *Virginia v. Hicks*, 539 U.S. 113 (2003).

whether the Order of MTRCB indefinitely suspending “Ang Dating Daan’s” Eliseo Soriano and other respondents from appearing in any programs broadcasted or aired over any free and/or cable television is violative of their right to free speech. Based on the facts and the law governing the case, the answer must be in the affirmative. The MTRCB Order violates Soriano and other respondents’ right to free speech for the following reasons:

First, the MTRCB’s Order indefinitely suspending Soriano et al. from appearing on television is plain and simple a prior restraint to their exercise of free speech. The MTRCB did not only disapprove or ban any of the respondents’ television programs, but worse it gagged the respondents from appearing on television thereby effectively muzzling them of their right to speech. Settled in jurisprudence is that motion pictures, to which class we can say television programs or the right to appear on television logically belongs, come under the constitutional protection of free speech.³³ The MTRCB Order in effect restrained the respondents even before they could speak.

Second, the MTRCB Order indefinitely suspending Soriano et al. from appearing on television did not fall under any exception to the free speech clause (or the so-called unprotected speeches) like cases involving pornography, excessive violence, or danger to national security. Rather, the order was issued in response to the respondents’ defiance of an earlier ruling of the MTRCB prohibiting them from appearing on television. Hence, the MTRCB is clearly without any power to restrain respondents in their exercise of their right to free speech.

Moreover, the issuance of the assailed Order clearly goes beyond the powers of the MTRCB as enumerated under Section 3³⁴

³³ *Burstyn v. Wilson*, 343 U.S. 495 (1952).

³⁴ Section 3. Powers and Functions – The Board shall have the following functions, powers, and duties:

a) To promulgate such rules and regulations as are necessary or proper for the implementation of this Act, and the accomplishment of its purposes and objectives, including guidelines and standards for production, advertising and titles.

of Presidential Decree 1986, otherwise known as the MTRCB Charter. Perusal of the specific powers of the MTRCB would reveal that it does not have the power to suspend any person from appearing on television. What it does have is the power “to approve or disapprove...

Such rules and regulations shall take effect after fifteen (15) days following their publication in newspapers of general circulation in the Philippines;

b) To screen, review and examine all motion pictures as herein defined, television programs, including publicity materials such as advertisements, trailers and stills, whether such motion pictures and publicity materials be for theatrical or non-theatrical distribution, for television broadcast or for general viewing, imported or produced in the Philippines, and in the latter case, whether they be for local viewing or export;

c) To approve or disapprove, delete objectionable portions from and/or prohibit the importation, exportation, production, copying, distribution, sale, lease, exhibition and/or television broadcast of the motion pictures, television programs and publicity materials subject to the preceding paragraph, which in the judgment of the Board applying contemporary Filipino cultural values as standard, are objectionable for being immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines or its people, or with a dangerous tendency to encourage the commission of violence or of a wrong crime, such as but not limited to:

- i) Those which tend to incite subversion, insurrection, rebellion or sedition against the State, or otherwise threaten the economic and/or political stability of the State;
- ii) Those which tend to undermine the faith and confidence of the people in their government and/or the duly constituted authorities;
- iii) Those which glorify criminals or condone crimes;
- iv) Those which serve no other purpose but to satisfy the market for violence or pornography;
- v) Those which tend to abet the traffic in and use of prohibited drugs;
- vi) Those which are libelous or defamatory to the good name and reputation of any person, whether living or dead; and
- vii) Those which may constitute contempt of court or of any quasi-judicial tribunal, or pertain to matters which are sub-judice in nature

Provided, however, that deletions or cuts must not be made on the master negative of the films, and that such master negative shall be deposited with the Film Archives of the Philippines and shall be released for export purposes to the film owner only upon showing of the proper export permit; Provided, finally, that the film owner shall execute a sworn undertaking that such master negative shall be exclusively used for export purposes and not for local viewing;

xxx prohibit... xxx exhibition and or television broadcast of the motion pictures, television programs and publicity materials subject to the preceding paragraph, which, in the judgment of the Board applying contemporary Filipino cultural values as standard, are objectionable

d) To supervise, regulate, and grant, deny or cancel, permits for the importation, exportation, production, copying, distribution, sale, lease, exhibition, and/or television broadcast of all motion pictures, television programs and publicity materials, to the end that no such pictures, programs and materials as are determined by the Board to be objectionable in accordance with paragraph (c) hereof shall be imported, exported, produced, copied, reproduced, distributed, sold, leased, exhibited and/or broadcast by television;

e) To classify motion pictures, television programs and similar shows into categories such as "G" "For General Patronage" (all ages admitted), "P" or "Parental Guidance Suggested", "R" or "Restricted" (for adults only), "X" or "Not for Public Viewing", or such other categories as the Board may determine for the public interest;

f) To close moviehouses and other similar establishments engaged in the public exhibition of motion pictures and television programs which violate the provisions of this Act and the rules and regulations promulgated by the Board pursuant hereto;

g) To levy, assess and collect, and periodically adjust and revise the rates of, fees and charges for the work of review and examination and for the issuance of the licenses and permits which the Board is authorized to grant in the exercise of its powers and functions and in the performance of its duties and responsibilities;

h) To deputize representatives from the government and from various associations in the movie industry, whose main duties shall be to help ensure compliance with all laws relative to the importation, exportation, copying, distribution, sale, lease, exhibition and/or television broadcast of motion pictures, television programs, advertisements and publicity materials. For this purpose, the Board may constitute such regulatory council or councils composed of representatives from the government and the movie and television industry as may be appropriate to implement the purposes and objectives of this Act. The Board may also call on any law enforcement agency for assistance in the implementation and enforcement of its decisions, orders or awards;

i) To cause the prosecution, on behalf of the People of the Philippines, of violators of this Act, of anti-trust, obscenity, censorship and other laws pertinent to the movie and television industry;

j) To prescribe the internal and operational procedures for the exercise of its powers and functions as well as the performance of its duties and responsibilities,

for being immoral, indecent, contrary to law and/or good customs...”³⁵ There is no mention of the power to prohibit or suspend any person from appearing on television.

Also, the argument that the MTRCB may issue such suspension order against the respondents based on Section 3 (k) of P.D. 1986, which provides that the Board shall “exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act...,” is without merit, for to do so would again amount to a prior restraint on the respondents’ exercise of their right to free speech. What the MTRCB could have done is to exercise their power “*to cause the prosecution, on behalf of the People of the Philippines, of violators of this Act, of anti-trust, obscenity, censorship and other laws pertinent to the movie and television industry*” in a court of law.

Third, even assuming that the MTRCB Order indefinitely suspending Soriano et al. from appearing on television is based on the alleged libelous statement by the respondents where they referred to “*Iglesia ni Cristo*” as “*Iglesia ni Manalo*,” which the MTRCB declared as defamatory or at least destructive of the name and reputation of “*Iglesia Ni Cristo*” as a duly registered religious organization, that still does not warrant “prior restraint” or indefinite suspension of the respondents from appearing on television. The MTRCB should have been more circumspect before issuing the suspension order, which would definitely undermine a precious right in our hierarchy of civil liberties.

If the INC is of the view that such statements are defamatory or destructive to its name and reputation, then it should have filed a

including the creation and vesting of authority upon sub-committees of the Board for the work of review and other related matters; and

k) To exercise such other powers and functions as may be necessary or incidental to the attainment of the purposes and objectives of this Act, and to perform such other related duties and responsibilities as may be directed by the President of the Philippines.

³⁵ P.D. 1986, § 3 (c).

libel case against the respondents in our courts. The MTRCB is not the proper forum. Hence, the MTRCB is without any power to restrain or indefinitely suspend respondents from appearing on television. The dissent of Justice Mendoza in *Iglesia ni Cristo v. Court of Appeals*³⁶ is instructive, “Censorship (or prior restraint) may be allowed only in a narrow class of cases involving pornography, excessive violence, and danger to national security. Even in these cases, only courts can prohibit the showing of a film or the broadcast of a program. *In all other cases, the only remedy against speech which creates a clear and present danger to public interests is through subsequent punishment* (emphasis supplied).” Clearly, assuming that the statement of respondents calling “*Iglesia ni Cristo*” as “*Iglesia ni Manalo*” is libelous, the remedy is subsequent punishment, but not prior restraint or indefinite suspension.

Worth quoting also is the dissent of Justice Kapunan in *Iglesia ni Cristo*,³⁷ “Even if the exercise of the liberties protected by the speech, expression and religion clauses of our Constitution are regarded as neither absolute nor unlimited, there are appropriate laws which deal with such excesses. *The least restrictive alternative would be to impose subsequent sanctions for proven violations of laws, rather than inflict prior restraints on religious expression.*” Further he adds, “*Our penal law punishes libel, or acts or speeches offensive to other religions, and awards damages whenever warranted. In our legal scheme, courts essentially remain the arbiters of the controversies affecting the civil and political rights of persons. It is our courts which determine whether or not certain forms of speech and expression have exceeded the bounds of correctness, propriety or decency as to fall outside the area of protected speech.*” (Emphases supplied)

As ruled by the Court, through Justice Puno, in *Iglesia ni Cristo*,³⁸ “Deeply ensconced in our fundamental law is its hostility against all prior restraints on speech... Hence, any act that restrains speech is hobbled by the presumption of invalidity and should be

³⁶ 259 SCRA 529, 570-571 (1996).

³⁷ *Id* at 567.

³⁸ *Id* at 545-546.

greeted with furrowed brows. It is the burden of the respondent Board (the censor) to over-throw this presumption. If it fails to discharge this burden, its act of censorship will be struck down.” The MTRCB miserably failed to do so in the case at bar.

VII. SYMPTOMS OF UNCONSTITUTIONALITY OF THE MTRCB CHARTER

P.D. No 1986, also known as the MTRCB Charter, is said to have “symptoms of unconstitutionality” for being violative of the Free Speech Clause under the Constitution. But remaining judicially unchallenged since the martial law years, it is still a valid and effective law as of this precise moment of the writing of this piece. It would be educational to point out and discuss briefly the features of the MTRCB Charter which are apparently unconstitutional.

First, since the text of our free speech clause was lifted from its counterpart in the American Federal Constitution, it brought the guarantee to the Philippines weighted with all the applicable jurisprudence of American constitutional cases. And one of these cases in American constitutional law is the case of *Freedman v. Maryland*,³⁹ which laid down the strict standards and procedural safeguards for movie censorship. Apparently, however, the MTRCB Charter violates the strict standards and procedural safeguards in *Freedman*. In that case, the Court said:

Prior submission of a film to a censor avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate dangers of a censorship system. First, the burden of proving that the film is unprotected expression must rest on the censor... Second, ... the requirement cannot be administered in a manner which would lend an effect of finality to the censor’s determination... The teaching of our cases is that, because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose

³⁹ 380 U.S. 51 (1965).

a valid final restraint... To this end, the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film. Any restraint imposed in advance of a final judicial determination on the merits must similarly be limited to preservation of the status quo for the shortest fixed period compatible with sound judicial resolution. Moreover,... the procedure must also assure a prompt judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license.

Second, the power of the MTRCB to determine what can be shown or broadcasted and what cannot under P.D. No. 1986 also appears to be unconstitutional. It is contrary to the fundamental tenet of freedom of speech that until and unless speech is found by the courts to be unprotected its expression must be allowed. As explained by Justice Mendoza in his dissent in *Iglesia ni Cristo*.⁴⁰

The power to classify includes the power to censor. The Board can x-rate films and TV programs and thus ban their public exhibition or broadcast. And once it declares that a motion picture or television program is, for example, indecent or contrary to law, xxx... its declaration becomes the law. *Unless the producer or exhibitor is willing to go to court, shouldering not only the burden of showing that his movie or television program is constitutionally protected but also the cost of litigation, the ban stays. This is censorship in its baldest form.* This is contrary to the fundamental tenet of our law that until and unless speech is found by the courts to be unprotected its expression must be allowed (emphasis supplied).

Worth noting is the view of Justice Mendoza, following American law, that only judges may administer a system of prior restraint (in those cases where it may be validly imposed) appears to be sound. He gave three reasons, to wit: First is that the censor's bias is to censor. Second is that "only a judicial determination in an adversary proceeding ensures

⁴⁰ 259 SCRA 529, 575 (1996).

the necessary sensitivity to freedom of expression.” xxx Third, the members of the Board do not have the security of tenure and of fiscal autonomy necessary to secure their independence.⁴¹

Third, with respect to the grounds upon which the MTRCB may censor certain films and television programs, which included a disturbing proviso “such as but not limited to.”⁴² With this proviso, the MTRCB can ban any motion picture or television program according to its whims and caprices. This appears to be unconstitutional under the “void for vagueness doctrine” and the “overbreadth doctrine” in Constitutional Law. The vagueness doctrine states that if the government prohibits certain acts through a law and it does not define those acts clearly, then that law is unconstitutional, while the overbreadth doctrine provides that if a statute is so broadly written that it deters free expression, then it can be struck down on its face because of its chilling effect – even if it also prohibits acts that may legitimately be forbidden.⁴³

FINALE

Free speech is very important, if not indispensable, in a democratic and republican State. No wonder Wendell Phillips called it as “the instrument and guarantee and the bright and consummate flower of all liberty.” For without it, democracy fails. As noted by a well-known author in constitutional law, “this is the first right that is always curtailed when a free society falls under a repressive regime.”⁴⁴ Therefore, it is imperative that all of us must defend and protect it by any means necessary if we are to be true to the words of our Consti-

⁴¹ Dissenting Opinion in *Iglesia ni Cristo v. Court of Appeals*, 259 SCRA 529 (1996). However, the Majority Opinion, through Justice Puno, said, “While the thesis has a lot to commend itself, we are not ready to hold that it is unconstitutional for Congress to grant an administrative body quasi-judicial power to preview and classify TV programs and enforce its decision subject to review by our courts.

⁴² P.D. No. 1986, § 3 (c).

⁴³ BLACK’S LAW DICTIONARY (2nd pocket ed.-2001).

⁴⁴ CRUZ, at 198.

tution that “sovereignty resides in the people and all government authority emanates from them.”⁴⁵ In short, we should always vigorously assert our precious right to speak, just like the gallant dissenting opinions of the great jurists who once walked in the halls of our courts during darker years, unheard of, but now fill the pages of our legal treatises, unless we prefer to live anew under a dark oppressive regime. In closing, it is fitting to cite the realization of Justice Padilla in his dissent in *Iglesia ni Cristo*,⁴⁶ “*It is far better for the individual to live in a climate of free speech and free expression, devoid of prior restraints, even at the risk of occasional excesses of such freedoms than to exist in an ambiance of censorship which is always a step closer to autocracy and dictatorship.*”

⁴⁵ CONST., art. II, § 1.

⁴⁶ 259 SCRA 529, 555 (1996).