

Republic of the Philippines
SUPREME COURT
Manila

En Banc

**JESS DEL PRADO, WILSON FORTALEZA,
LEODY DE GUZMAN, PEDRO PINLAC,
CARMELITA MORANTE, RASTI
DELIZO, PAUL BANGAY, MARIE JO OCAMPO,
LILIA DELA CRUZ, CRISTETA RAMOS,
ADELAIDA RAMOS, MARY GRACE GONZALES,
MICHAEL TORRES, RENDO SABUSAP,
PRECIOUS BALUTE, ROXANNE MAGBOO,
ERNIE BAUTISTA, JOSEPH DE JESUS,
MARGARITA ESCOBER, DJOANNALYN
JANIER, MAGDALENA SELLOTE, MANNY
QUIAZON, ERICSON DIZON, NENITA CRUZAT,
LEONARDO DELOS REYES, PEDRITO
FADRIGON,**

Petitioners,

- versus -

G.R. No.

For: Prohibition,
Injunction, Restraining
Order and Other Just and
Equitable Reliefs

**EDUARDO ERMITA, in his official capacity
as The Executive Secretary and in his personal
capacity, ANGELO REYES, in his official
capacity as Secretary of the Interior and
Local Governments, ARTURO LOMIBAO,
in his official capacity as the Chief, Philippine
National Police, VIDAL QUEROL, in his official
capacity as the Chief, National Capital Regional
Police Office (NCRPO), PEDRO BULAONG, in
his official capacity as the Chief, Manila Police District
(MPD) AND ALL OTHER PUBLIC OFFICERS
AND PRIVATE INDIVIDUALS ACTING UNDER
THEIR CONTROL, SUPERVISION AND
INSTRUCTION,**

Respondents.

X ----- X

PETITION

“It must always be remembered that (the right to peaceably assembly) likewise provides for a safety valve, allowing parties the opportunity to give vent to their views, even if contrary to the prevailing climate of opinion. **For if the peaceful means of communication cannot be availed of, resort to non-peaceful means may be the only alternative.**”

- *JBL Reyes v. Bagatsing*, 125 SCRA 553, 562 (1983)

“Freedom is not a gift received from a State or a leader but a possession to be won every day by the effort of each and the union of all.”

- Camus, *Bread and Freedom*

PETITIONERS, by counsel, humbly state that:

THE PARTIES

1. Petitioners --

1.1. **JESS DEL PRADO** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; he is the National Chairperson of the League of Urban Poor for Action (LUPA).

1.2. **PEDRO PINLAC** is a Filipino, of legal age, with address at 22 Libertad Street, Mandaluyong City; he is the National Chairperson of the *Kilusan para sa Pambansang Demokrasya* (KPD).

1.3. **CARMELITA MORANTE** is a Filipino, of legal age, with address at 78C K6th Street, Kamias, Quezon City; she is

the Secretary General of the *Kilusan para sa Pambansang Demokrasya* (KPD).

1.4. **WILSON FORTALEZA** is a Filipino, of legal age, with address at No. 150 K6th St. East Kamias, Quezon City; he is the President of *Sanlakas*.

1.5. **RASTI DELIZO** is a Filipino, of legal age, with address at No. 150 K6th St. East Kamias, Quezon City; he is a member of *Sanlakas*.

1.6. **PAUL BANGAY** is a a Filipino, of legal age, with address at No. 5 Matiyaga St., Bgy. Central, Diliman Quezon City; he is a member of *Partido Manggagawa*.

1.7. **MARIE JO OCAMPO** is a Filipino, of legal age, with address at 23 F. Ocampo Avenue, Las Piñas City; she is a member of the KPD.

1.8. **LILIA DELA CRUZ** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; she is the President of the LUPA-Manila Chapter.

1.9. **CRISTETA RAMOS** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; she is a member of the LUPA-Manila Chapter.

1.10. **ADELAIDA RAMOS** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; she is a member of the LUPA-Manila Chapter.

1.11. **MARY GRACE GONZALES** is a Filipino, 16 years

old, with address at 78C K6th Street, Kamias, Quezon City; she is a member of the Youth for National Democracy (YND).

1.12. **MICHAEL TORRES** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; he is a member of the LUPA-Manila Chapter.

1.13. **RENDO SABUSAP** is a Filipino, of legal age, with address at 78C K6th Street, Kamias, Quezon City; he is a member of the Youth for National Democracy (YND).

1.14. **PRECIOUS BALUTE** is a Filipino, 16 years old, with address at 78C K6th Street, Kamias, Quezon City; she is a member of the Youth for National Democracy (YND).

1.15. **ROXANNE MAGBOO** is a Filipino, 15 years old, with address at 78C K6th Street, Kamias, Quezon City; she is a member of the Youth for National Democracy (YND).

1.16. **ERNIE BAUTISTA** is a Filipino, of legal age; **at all times material to the events leading to this *Petition*, he was a bystander and not part of any mass actions being conducted.**

1.17. **JOSEPH DE JESUS** is a Filipino, of legal age, with address at 78C, K6th Street, Kamias, Quezon City; he is the spokesperson of the *Teatrong Bayan* (TB).

1.18. **MARGARITA ESCOBER** is a Filipino, of legal age, with address at Block 16, Lot 49, Sugartowne Homes, Batasan Hills, Quezon City; she is a member of the *Pagkakaisa ng Kababaihan* (KAISA KA).

1.19. **DJOANNALYN JANIER** is a Filipino, of legal age, with address at Block 28, Lot 38, Queens Row Subdivision, Bacoor, Cavite; she is the National Chairperson of the YND.

1.20. **MAGDALENA SELLOTE** is a Filipino, of legal age, with address at 474 Gate 54, Parola Compound, Manila; she is a member of the LUPA-Manila Chapter.

1.21. **MANNY QUIAZON** is a Filipino, of legal age, with address at No. 5 Matiyaga St., Bgy. Central, Diliman Quezon City; he is a member of the *Partido ng Manggagawa* (PM).

1.22. **LEODY DE GUZMAN** is a Filipino, of legal age, with address at 63 Unrubia St., Bgy. Marilag, Proj. 4, Quezon City; he is the Secretary-General of the *Bukluran ng Manggagawang Pilipino* (BMP).

1.23. **ERICSON DIZON** is a Filipino, of legal age, with address at 63 Unrubia St., Bgy. Marilag, Proj. 4, Quezon City; he is a member of the *Bukluran ng Manggagawang Pilipino* (BMP).

1.24. **NENITA CRUZAT** is a Filipino, of legal age, with address at 63 Unrubia St., Bgy. Marilag, Proj. 4, Quezon City; she is a member of the *Bukluran ng Manggagawang Pilipino* (BMP).

1.25. **LEONARDO DELOS REYES** is a Filipino, of legal age, with address at No. 101 Matahimik St., Teachers Village West, Diliman Quezon City; he is a member of the AKBAYAN Youth.

1.26. **PEDRITO FADRIGON** is a Filipino, of legal age, with address at No. 5 Matiyaga St., Bgy. Central, Diliman Quezon

City; he is a member of the *Kongreso ng Maralitang Lunsod* (KPML).

All petitioners may be served with pertinent notices through counsel at **FREE LEGAL ASSISTANCE GROUP (FLAG)**, 2nd Floor, Transorient Maritime Building, 66 Timog Avenue, Quezon City.

2. Respondents –

2.1. **EDUARDO ERMITA** is a Filipino, of legal age, and is currently discharging the powers of The Executive Secretary and holding office at the New Executive Building, *Malaca ang* Palace, Manila, where he may be served with pertinent notices and processes.

2.2. **ANGELO REYES** is a Filipino, of legal age, and is currently discharging the powers of The Secretary, Department of the Interior and Local Governments; he is the Cabinet Secretary and public officer vested with control and supervision over the Philippine National Police as well as the local government units. He is officially stationed at the Department of the Interior and Local Government (DILG), Francisco Building, EDSA corner Kamias, Quezon City, where he may be served with pertinent notices and processes.

2.3. **ARTURO LOMIBAO** is a Filipino, of legal age and is currently the Chief of the Philippine National Police (PNP) holding the rank of Director-General and is the public officer vested with over-all control and supervision over the entire PNP. He is stationed at Camp Crame, Cubao, Quezon City, where he may be served with pertinent notices and processes.

2.4. **VIDAL QUEROL** is a Filipino, of legal age, and is

currently the Chief of the PNP National Capital Regional Police Office (NCRPO) holding the rank of Director and is the public officer directly vested with operational control and supervision over all PNP elements in the National Capital Region. He is stationed at Camp *Bagong Diwa*, Bicutan, Taguig, where he may be served with pertinent notices and processes.

2.5. **PEDRO BULAONG** is a Filipino, of legal age and is currently The Chief, Manila Police District (MPD) holding the rank of Director and is the public officer directly vested with operational control and supervision over police officers and elements operating in the City of Manila. He is stationed at the Manila Police District Headquarters, United Nations Avenue, Manila, where he may be served with notices and other pertinent processes.

2.6. **All other public officers and private persons acting under the supervision, control and/or instructions of any of the respondents named *supra*.** are impleaded as respondents but cannot be named individually because these are either police officers or civilians acting under the orders of respondents *supra* who, during the incidents that gave rise to this *Petition*, were unidentified, unidentifiable (because they were not in uniform or were not wearing their nametags, if they were in uniform) or too numerous to identify. For purposes of this *Petition*, they are to be notified through their superiors named *supra*, namely: Ermita, Reyes, Lomibao, Querol, and Bulaong.

MATERIAL ANTECEDENTS

3. On September 21, 2005, respondent Ermita issued the following press statement, which was picked up over mass media:

In view of intelligence reports pointing to credible plans of anti-government groups to inflame the political situation, sow disorder and incite people against the duly constituted authorities, we have instructed the PNP as well as the local government units to strictly enforce a "no permit, no rally" policy, disperse groups that run afoul of this standard, and arrest all persons violating the laws of the land as well as ordinances on the proper conduct of mass actions and demonstrations.

The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand aside while those with ill intent are herding a witting or unwitting mass of people and inciting them into actions that are inimical to public order, and the peace of mind of the national community.

Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.

We appeal to the detractors of the government to engage in lawful and peaceful conduct befitting of a democratic society.

The President's call for unity and reconciliation stands, based on the rule of law.¹

4. The day after, the **FREE LEGAL ASSISTANCE GROUP (FLAG)**, through its Secretary-General **Ms. Ma. Socorro I. Diokno**, wrote² the Executive Secretary to clarify his statement on the metes and bounds of the new rule now called "**Calibrated Pre-emptive Response**" ("CPR") Specifically, FLAG "requested clarification on (his) public announcement . . . declaring the enforcement of the "rule calibrated pre-emptive response." In particular, FLAG asked the following questions:

¹ Petitioners, through counsel, sought officially to obtain and secure a certified true copy of this press statement for purposes of complying with the requirements under Rule 65. However, the Office of the Executive Secretary as well as the Office of the Press Secretary have both informed petitioners' counsel that they cannot issue a certified true copy of the press statement. For this reason, petitioners cannot submit a certified true copy of the press statement; a photocopy of the same is attached as **Annex A**, which considering the circumstances may be considered substantial compliance.

² A copy of FLAG's letter to the Executive Secretary is attached as **Annex B**.

- [a] What is the definition of the new “rule?”
- [b] What is the legal basis of the new “rule?”
- [c] What conduct is allowed under the new “rule” and what conduct is not allowed?
- [d] What specific directives have been issued to law enforcement officers to implement the new “rule?”

5. On September 29, 2005, FLAG received a response from the Office of the Executive Secretary, through Undersecretary Edwin Enrile, to wit:

This refers to your letter dated September 22, 2005 where you requested to be clarified on the “rule of calibrated preemptive response.”

At the outset, allow us to emphasize that calibrated preemptive response is **not** an exercise of any emergency power by the Executive. Rather, it is the responsible and judicious use of means allowed by **existing laws and ordinances** to protect public interest and restore public order. An example would be the strict implementation of the “no permit, no rally” rule. Or the more active enforcement of existing warrants of arrest issued by the courts of law. Thus, it is not accurate to call “calibrated preemptive response” a new rule but rather a more pro-active and dynamic enforcement of existing laws, regulations and ordinances to prevent chaos in the streets.³

6. On September 26, 2005, a peaceful mass action was pre-empted and met by violent dispersal from the police.

6.1. At around 10:30 in the morning, approximately 50 members of the *Kilusan para sa Pambansang Demokrasya* (KPD) were assembling at Mendiola corner Legarda Street when around 100 policemen from the Western Police District proceeded to violently disperse the rallyists without first inquiring from among

³ A copy of the response of Undersecretary Enrile is attached as **Annex C**.

the leaders whether a permit had been secured and without allowing sufficient time and opportunity for voluntary dispersal if a permit had not been obtained.

6.2. Rallyists were beaten and some were arrested. Among these were petitioners Del Prado, Morante, Pinlac, Ocampo, Dela Cruz, Cristeta Ramos, Adelaida Ramos, Gonzales, Cadasio, Sabusap, Batute, and Magboo. A bystander, petitioner Ernie Bautista, was also arrested even if he was not part of KPD or any of the other groups and was not even part of the protest action.

6.3. As a result of the violent dispersal, most of the petitioners suffered cuts, bruises and some suffered concussions. Those arrested were brought to WPD headquarters and detained until midnight.

6.4. Video footage of the dispersal is available but due to time constraints, could not be secured in time to become part of this *Petition*. The video footage will demonstrate the various means by which the CPR was enforced during this rally. Reservation is made to present the video footage before this Court at the proper time.

7. On October 5, 2005, another mass action was violently dispersed.

7.1. At around 10:15 in the morning, a group of protesters led by *Laban ng Masa!* Coalition President Franciso Nemenzo and Party-List Representative for *Partido Manggagawa* Renato Magtubo and some of the petitioners herein marched to *Malaca ang* to protest what was termed “undeclared martial rule” imposed by Mrs. Gloria Macapagal-Arroyo through Executive Order No. 464

as well as the CPR.

7.2. Predictably, the protest was dispersed violently. The police used the edges of their anti-riot shields **not to push away the protesters but to bludgeon toes, arms and other parts of the body**. Some policemen were seen to have brass knuckles on their fists.

7.3. Among those arrested and injured were petitioners Dela Cruz, Morante, Escobar, Javier, Sellote, Fortaleza, Delizo, Bangay, Quiazon, De Guzman, Dizon, Cruz, Delos Reyes and Fadrigon.

7.4. Video footage of the dispersal is available but due to time constraints, could not be secured in time to become part of this *Petition*. The video footage will demonstrate the various means by which the CPR was enforced during this rally. Reservation is made to present the video footage before this Court at the proper time.

8. Notably, in both instances, the enforcement of the CPR was markedly different from “maximum tolerance”--the manner prescribed by *Batas Pambansa Blg. 880* for dispersal of rallies. This is contrary to what Undersecretary Enrile stated in his reply to FLAG.

SUFFICIENCY OF REQUIREMENTS FOR JUDICIAL REVIEW

A. Personality and Legal Standing to Sue

Petitioners are all citizens of the Philippines with a clear and undisputed right to peaceably assemble and petition the government for redress of grievance. They have all been injured, arrested or detained because of the

operation of the CPR. Those arrested stand to be charged with violating *Batas Pambansa Blg. 880* and other offenses.

For these reasons and others discussed *infra*, petitioners have *locus standi* to bring this suit challenging the “No Permit, No Rally” policy under *Batas Pambansa Blg. 880* and the enforcement of the rule on “Calibrated Pre-emptive Response.”

B. Constitutional Questions are *Lis Mota*

Petitioners were all directly affected by the “No Permit, No Rally” policy in the law as well as the enforcement of the CPR. In order to resolve the legal question of the primacy of petitioners’ right to peaceably assemble, the constitutional questions have to be resolved. Thus, they are the *lis mota* of this case and judicial review is imperative.

C. Compliance with Requirements

As explained *supra*, there is **no official issuance that would define, explain or set forth any guidelines on the CPR**. For this reason, attaching a Certified True Copy of the CPR or the Press Statement of respondent Ermita is not possible. As for *Batas Pambansa Blg. 880*, considering that it is part of the law of the land and a fact that this Court may take notice of, it is submitted that a copy thereof is not indispensable.

Moreover, considering the importance of the questions presented and the reliefs sought, petitioners submit that technical requirements should not impede substantive justice.

Finally, there is no other plain, speedy and adequate remedy in the ordinary course of law, save for this *Petition* and the reliefs it prays for.

REASONS WARRANTING RELIEFS

- I -

BATAS PAMBANSA BLG. 880 IS UNCONSTITUTIONAL FOR BEING A CURTAILMENT OF THE RIGHT TO PEACEABLY ASSEMBLE AND PETITION FOR REDRESS OF GRIEVANCES WHERE IT REQUIRES A PERMIT AS A CONDITION FOR THE VALID EXERCISE OF SUCH RIGHT, CHARACTERIZES PUBLIC ASSEMBLIES WITHOUT PERMITS AS ILLEGAL, PENALIZES WITH CRIMINAL LIABILITY ANY FAILURE TO OBTAIN SUCH A PERMIT, AND ALLOWS DISPERSAL OF SUCH PUBLIC ASSEMBLIES WITHOUT PERMIT BY THE POLICE.

- II -

BATAS PAMBANSA BLG. 880 IS UNCONSTITUTIONAL WHERE IT DELEGATES TO THE MAYOR, WITHOUT CLEAR STANDARDS, THE DISCRETION TO DENY A PERMIT BASED ON TWO CONFLICTING STANDARDS: THE EXISTENCE OF A “CLEAR AND PRESENT DANGER TO PUBLIC ORDER, PUBLIC SAFETY, PUBLIC CONVENIENCE, PUBLIC MORALS OR PUBLIC HEALTH” OR AN “IMMINENT AND GRAVE DANGER OF A SUBSTANTIVE EVIL.”

- III -

RESPONDENT ERMITA ACTED WITH GRAVE ABUSE OF DISCRETION AND POWER AND CLEARLY IN AN *ULTRA VIRES* MANNER WHEN HE ANNOUNCED AND ORDERED THE ENFORCEMENT OF THE RULE OF “CALIBRATED PRE-EMPTIVE RESPONSE” IN PLACE OF THE STATUTORY STANDARD OF “MAXIMUM TOLERANCE” CONTAINED IN *BATAS PAMBANSA BLG. 880* AND RESPONDENTS REYES, LOMIBAO, QUEROL, BULAONG AND ALL OTHER PUBLIC OFFICERS AND PRIVATE INDIVIDUALS ACTING UNDER THEIR CONTROL, SUPERVISION AND INSTRUCTION ACTED IN GRAVE ABUSE OF DISCRETION IN ENFORCING THE CPR AS THE

SAME IS NOT A LAW, EXECUTIVE OR ADMINISTRATIVE ORDER OR ANY OTHER ISSUANCE WITH THE FORCE AND EFFECT OF LAW.

- IV -

THE CPR UNDULY AND UNLAWFULLY DELEGATES TO POLICE AUTHORITIES THE DISCRETION TO DETERMINE WHAT “CALIBRATED PRE-EMPTIVE RESPONSE” MEANS WITHOUT CLEAR AND DISCERNIBLE STANDARDS.

- V -

THE CPR, BEING A RULE THAT AFFECTS ADVERSELY CONSTITUTIONAL RIGHTS AND CIVIL LIBERTIES, CANNOT BECOME EFFECTIVE UNLESS PUBLISHED IN ACCORDANCE WITH LAW.

- VI -

UNLESS RESTRAINED, RESPONDENTS WILL CONTINUE TO ENFORCE A LAW AND A RULE THAT IS UNCONSTITUTIONAL, ILLEGAL AND VIOLATIVE OF PETITIONERS’ RIGHTS TO PEACEABLY ASSEMBLE AND PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES.

DISCUSSION

- I -

BATAS PAMBANSA BLG. 880 IS UNCONSTITUTIONAL FOR BEING A CURTAILMENT OF THE RIGHT TO PEACEABLY ASSEMBLE AND PETITION FOR REDRESS OF GRIEVANCES WHERE IT REQUIRES A PERMIT AS A CONDITION FOR THE VALID EXERCISE OF SUCH RIGHT, CHARACTERIZES PUBLIC ASSEMBLIES WITHOUT PERMITS AS ILLEGAL, PENALIZES WITH CRIMINAL LIABILITY ANY FAILURE TO OBTAIN SUCH A PERMIT, AND ALLOWS DISPERSAL OF SUCH PUBLIC ASSEMBLIES

WITHOUT PERMIT BY THE POLICE.

The 1987 Constitution provides, in no uncertain terms, for the right to peaceable assembly thus:

SEC.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.⁴

There is no uncertainty in its language, much more in its meaning. The right, as expressed in Article III, section 4 is almost absolute and quite evidently preferred.

In the landmark case of **J.B.L. Reyes v. Bagatsing**,⁵ this Court characterized the right to assembly in these words:

Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. **It is not to be limited, much less denied, except upon a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the State has a right to prevent.**

xxx

The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate public interest.⁶

It is settled that the State has no power to prohibit the exercise of the right to peaceable assembly and that its only power is to regulate the exercise of

⁴ Const. (1987), art. III, sec. 4;

⁵ 125 SCRA 553 (1983);

⁶ 125 SCRA at 561, emphasis added;

this right. Thus, this Court in **Reyes** spoke of “limitation on the exercise of (the) right” and, thus, regulation--not a prohibition. Clearly, any law that prohibits and not merely regulates is a violation of the Constitution.

Moreover, **because of the preferred nature of the right to assembly, any law that purports to restrict, limit or regulate the exercise of such right carries with it the burden of showing reasonableness in the regulation.** The *onus* lies not on petitioners but on the State to show that the regulation is reasonable and that it does not transgress the Constitution.

Batas Pambansa Blg. 880, so ironically and so inaptly titled AN ACT ENSURING THE FREE EXERCISE BY THE PEOPLE OF THEIR RIGHT PEACEABLY TO ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES AND FOR OTHER PURPOSES, provides for the “no permit, no rally” policy thus:

SEC. 4. *Permit when required and when not required.* – **A written permit shall be required for any person or persons to organize and hold a public assembly in a public place.** However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required.⁷

This provision makes any public assembly conducted without a permit an illegal public assembly and makes it subject to dispersal.⁸ What is more, the law provides criminal sanctions for leaders and organizers of a public assembly without a permit.⁹

⁷ B.P. Blg. 880, sec. 4, emphasis added;

⁸ B.P. Blg. 880, sec. 12;

⁹ B.P. Blg. 880, sec. 13(a) *vis* sec. 14(a); the penalty provided is one (1) month and one (1) day to six (6) months or the equivalent of *arresto menor* under the Revised Penal Code.

The clear net effect of the “no permit, no rally” policy contained in *Batas Pambansa Blg. 880* is **not regulation but prohibition**. Not only does the law abridge the right of the people to peaceably assemble but it also criminalizes the exercise of a right guaranteed by the Constitution, in the case of a leader or organizer. Quite clearly, the “no permit, no rally” policy in section 4 of the law, when taken in relation to sections 12, 13(a) and 14(a), not only constitutes impermissible “prior restraint” but also the equally impermissible “subsequent punishment” for the exercise of a right guaranteed by the Constitution.

In ***Primicias v. Fugoso***,¹ this Court ruled that an ordinance “conferring upon the Mayor power to grant or refuse to grant the permit. . . would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or processions. . . (this) would make the ordinance invalid and void or violative of the constitutional limitations.”²

For these reasons, *Batas Pambansa Blg. 880*, particularly secs. 4, 12, 13(a) and 14(a) constitute unconstitutional abridgment of the right to peaceable assembly and petition for redress of grievances and must be struck down.

- II -

BATAS PAMBANSA BLG. 880 IS UNCONSTITUTIONAL WHERE IT DELEGATES TO THE MAYOR, WITHOUT CLEAR STANDARDS, THE DISCRETION TO DENY A PERMIT BASED ON TWO CONFLICTING STANDARDS: THE EXISTENCE OF A “CLEAR AND PRESENT DANGER TO PUBLIC ORDER, PUBLIC SAFETY, PUBLIC CONVENIENCE, PUBLIC MORALS OR PUBLIC HEALTH” OR AN “IMMINENT AND GRAVE DANGER OF A SUBSTANTIVE EVIL.”

¹ 80 Phil. 71 (1948);

² *See* 80 Phil. at 85;

Batas Pambansa Blg. 880 provides that it is the **duty** of the Mayor to grant a permit for a public assembly “unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.”¹⁰ In a later part, the law provides for this standard for the denial of a permit, “**imminent and grave danger of a substantive evil** warranting the denial . . . of the permit”¹¹

It must be noted that the two standards are different and inconsistent with each other and applying either (not both) will lead to great confusion and also great arbitrariness. Moreover, the Mayor is granted unfettered discretion in denying a permit. Finally, the power in section 6 to deny the permit based on either of the two (2) conflicting standards set forth therein is an impermissible delegation of legislative powers as it leaves the determination of the “substantive evil” or the “clear and present danger” to the Mayor of each city or municipality without discernible standards to guide him in the determination.

It must be emphasized that the test set forth in **Reyes v. Bagatsing** for permissible limitation of the right to assemble is the “Clear and Present Danger Test.” This test, formulated by Justice Oliver Wendell Holmes, is stated thus: “*(t)he question in every case is whether the words 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.*”¹²

Evidently, the “Clear and Present Danger Test” applies squarely to content-based restrictions on freedom of expression or speech and not to content-neutral or content-independent restrictions. It cannot be otherwise as

¹⁰ B.P. Blg. 880, sec. 6(a), emphasis added;

¹¹ B.P. Blg. 880, sec. 6[c], emphasis added;

¹² *Schenck v. U.S.*, 249 U.S. 47 (1919);

the formulation of the test depends on the effect of the words uttered in relation to the substantive evils sought to be prevented by Congress.

Batas Pambansa Blg. 880 applies what appears to be the “Clear and Present Danger Test” to public assemblies, independent of the content of any words that may be spoken. In allowing a Mayor to deny a permit based on the law’s re-statement of the “Clear and Present Danger Test”, the law amounts to a gag order on free expression by disallowing the assembly at which any such expression may be made. It must be emphasized that no law may abridge the right to peaceably assemble and any regulation to such right carries with it the burden of proving its reasonableness. The “Clear and Present Danger Test” or the variant thereof embodied in *Batas Pambansa Blg. 880* abridges the right to peaceably assemble because it makes the duty of the Mayor subject to a standard that would allow prior restraint.

Moreover, the law provides for two separate standards—first, the “clear and present danger to public order, public safety, public convenience, public morals or public health” and second, the “imminent and grave danger of a substantive evil.” While they appear to be derivatives of the “Clear and Present Danger Test”, the tests as set forth in the law reveal that they are actually separate, distinct and conflicting.

The first standard in section 6[a] contemplates that: (1) the danger must be both “clear and present” before the permit may be denied and, (2) the danger must relate to “public order, public safety, public convenience, public morals or public health.” This first standard hews very closely to the “Clear and Present Danger Test” and requires that the danger must be both clear and present before a permit may be denied. Considering, however, that a permit may be denied even before a single word is spoken at the public assembly, the burden of reasonableness of such a restriction cannot pass muster; again, applying this standard to the denial of a permit for a public assembly, independent of the content of any words or expression that may be made

therein, would amount to a wholesale prohibition—not regulation—of the rights to free expression as well as free and peaceable assembly.

The second standard, on the other hand, in section 6[c] contemplates that the danger must be “imminent and grave” and must relate to “a substantive evil.” Unlike the “Clear and Present Danger Test”, this standard allows a permit to be denied even if the danger is not yet present but is only “imminent.” Not only does it allow for prior restraint, it allows for prior restraint long before any single word is spoken and on the basis simply of the Mayor’s personal “view.” What is more, there is no discernible standard to guide the Mayor in determining what is a “substantive evil” that may justify the denial of the permit; again, this matter is left entirely to the Mayor. The law itself allows for arbitrariness as the law may be applied unevenly and inconsistently from city to city, depending on a particular Mayor’s appreciation or “view” of what is a “substantive evil” and whether a danger thereof is “imminent and grave.”

Batas Pambansa Blg. 880 provides that a Mayor may deny a permit to conduct a public assembly as long as either standard is present, even if they are conflicting and inconsistent with each other. Under these circumstances, the power given to the Mayor to deny a permit cannot be considered reasonable as it leads to great arbitrariness and unfettered discretion. Section 6 [a] and [c] of the law must be struck down for being unconstitutional.

- III -

RESPONDENT ERMITA ACTED WITH GRAVE ABUSE OF DISCRETION AND POWER AND CLEARLY IN AN *ULTRA VIRES* MANNER WHEN HE ANNOUNCED AND ORDERED THE ENFORCEMENT OF THE RULE OF “CALIBRATED PRE-EMPTIVE RESPONSE” IN PLACE OF THE STATUTORY STANDARD OF “MAXIMUM TOLERANCE” CONTAINED IN *BATAS PAMBANSA BLG.* 880 AND RESPONDENTS REYES, LOMIBAO, QUEROL, BULAONG AND ALL OTHER PUBLIC OFFICERS AND

PRIVATE INDIVIDUALS ACTING UNDER THEIR CONTROL, SUPERVISION AND INSTRUCTION ACTED IN GRAVE ABUSE OF DISCRETION IN ENFORCING THE CPR AS THE SAME IS NOT A LAW, EXECUTIVE OR ADMINISTRATIVE ORDER OR ANY OTHER ISSUANCE WITH THE FORCE AND EFFECT OF LAW.

Respondent Ermita's press statement¹³ announcing the enforcement of the CPR is quite precise, to wit:

The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand aside while those with ill intent are herding a witting or unwitting mass of people and inciting them into actions that are inimical to public order, and the peace of mind of the national community.

Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.¹⁴

The CPR was clearly intended to be a standard of dealing with mass actions and public assemblies that is different from "maximum tolerance." The use of the phrase "in lieu" in respondent Ermita's press statement clearly conveys this.

Petitioners' actual experience on September 26 and October 5, 2005 with the CPR clearly demonstrates as well that the CPR is not the same as "maximum tolerance" notwithstanding Undersecretary Enrile's statement that "it is the responsible and judicious use of means allowed by **existing laws and ordinances** to protect public interest and restore public order."

The difficulty with the CPR is that it is not law, administrative rule, executive order, administrative order or any other issuance that has

¹³ See Annex A.

¹⁴ Emphasis added;

the force and effect of law. As such, it cannot amend, repeal, modify or affect any laws or any standards provided by law and respondent Ermita has no power or authority to promulgate any issuance that would replace a standard established by law.

The “Maximum Tolerance” policy which the CPR replaced is a statutory standard. *Batas Pambansa Blg. 880*, section 3[c] provides:

[c] “Maximum tolerance” means the highest degree of restraint that the military, police and other peace-keeping authorities shall observe during a public assembly or in the dispersal of the same.

Pertinently, section 10 (a) provides what “maximum tolerance” means concretely.

SEC. 10. *Police assistance when requested.* – It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right to peaceably assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

[a] Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of “maximum tolerance” as herein defined:

[b] The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

[c] Tear gas, smoke grenades, water cannons, or any similar anti-riot devise shall not be used unless the public assembly is attended by actual violence or serious threat of violence or deliberate destruction of property.

Only Congress, through a specific law, can replace the “Maximum Tolerance” standard in dealing with public assemblies under *Batas Pambansa Blg. 880*. Respondent Ermita’s press statement is not law and has no legal force and effect; thus, it cannot do away with or replace the “maximum tolerance” standard. It is also an illegal policy as it manifestly contradicts the law.

For this reason, respondent Ermita gravely and manifestly abused his discretion and authority when he issued the press statement announcing and “enforcing” the CPR *in lieu* of the maximum tolerance standard in the law. Similarly, respondent Reyes gravely and manifestly abused his discretion and reneged on his duty when he tolerated the enforcement of the CPR, despite the clear illegality of the rule.⁰

In like manner, respondents Lomibao, Querol, Bulaong and all public officers and private individuals under their control, supervision, and/or instructions in relation to the enforcement of the “No Permit, No Rally” policy and the CPR acted in grave abuse of discretion in enforcing the “No Permit, No Rally” policy and the CPR.

The CPR is grossly violative of the law which provides for “maximum tolerance.” It has no place in the constitutional and legal scheme of things. As such, it cannot and should not be enforced and any such enforcement must be declared illegal.

Moreover, the manner by which respondents Lomibao and Querol and all police officers acting under their control, supervision and instruction have enforced the CPR clearly demonstrates that it must be declared void for being in violation of petitioners’ rights.

BEING AN UNDUE AND UNLAWFUL DELEGATION OF DISCRETION TO DETERMINE WHAT “CALIBRATED PRE-EMPTIVE RESPONSE” MEANS WITHOUT CLEAR AND DISCERNIBLE STANDARDS.

While respondent Ermita’s intention to replace “maximum tolerance” with CPR is clear, the nature, definition, and consequences of CPR are not as clear.

Based on respondent Ermita’s press statement and Undersecretary Enrile’s “clarification”, the CPR itself is not defined. Unlike section 10 of BP Blg. 880 which defines “maximum tolerance” in concrete terms, CPR is undefined and ambiguous. For this reason, it must be considered void for vagueness.

The rule on CPR also allows unfettered discretion for police officers to define, for themselves, in each situation what CPR means. The two issuances by respondent Ermita and Undersecretary Enrile do not provide any clear indications or guidelines for police to act in relation to public assemblies, with or without permits. This constitutes impermissible and undue delegation of discretion.

- V -

THE CPR, BEING A RULE THAT AFFECTS ADVERSELY CONSTITUTIONAL RIGHTS AND CIVIL LIBERTIES, CANNOT BECOME EFFECTIVE UNLESS PUBLISHED IN ACCORDANCE WITH LAW.

Article 2 of The Civil Code provides that “laws take effect following the completion of their publication in the *Official Gazette*, unless it is otherwise provided.” Subsequent to this, Executive Order No. 200 provides for an additional mode of publication—which is in two (2) newspapers of general circulation.

It is beyond dispute that the CPR was **never** published before it took effect. While it is not a law or an issuance that has the force and effect of law, the Philippine National Police have already enforced it, based simply on respondent Ermita's announcement. Petitioners have been dispersed, deprived of their right to peaceably assemble on at least two specific occasions, injured, arrested, and detained—all pursuant to the CPR.

In **Tañada v. Tuvera**,¹⁵ this Court has ruled that presidential issuances of a public nature or general applicability must be published; failure to publish such issuances would offend due process.

The CPR is an issuance of doubtful provenance as it is not a law, presidential issuance, executive order, administrative order, rule or any other issuance with the force or compulsion of law. Yet, its effects are so all-pervading and so all-encompassing.

This Court may take notice of the violent dispersals that have followed the issuance of the CPR—on an almost daily basis. Each of the dispersals has seen citizens being injured, arrested and detained. All these is being done without the benefit of a law or any issuance that would compel obedience; all these is being done only on the strength of a press statement by the Executive Secretary, presumably with the consent of Mrs. Gloria Macapagal-Arroyo.¹⁶

Without publication, the CPR cannot take effect. It has not been published as required by law. For this reason, respondents have acted in grave abuse of discretion in enforcing it.

- VI -

UNLESS RESTRAINED, RESPONDENTS WILL

¹⁵ 136 SCRA 27 (1985);

¹⁶ As shown by her contemporaneous statements on the CPR over the media and in various public fora.

CONTINUE TO ENFORCE A LAW AND A RULE THAT IS UNCONSTITUTIONAL, ILLEGAL AND VIOLATIVE OF PETITIONERS' RIGHT TO PEACEABLY ASSEMBLE AND PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES.

Petitioners have been subjected to violent dispersals, arrested, detained and charged for violation of law by reason solely of the CPR and the “no permit, no rally” policy under BP Blg. 880. As demonstrated above, both the “no permit, no rally” policy in the law and the CPR are both unconstitutional, illegal and violative of petitioners’ right to peaceably assemble and petition government for redress of grievances.

There is, therefore, an urgent need to restrain the enforcement of the “no permit, no rally” policy under B.P. Blg. 880 and the CPR otherwise the right guaranteed to petitioners under the Constitution would continue to be violated with impunity.

There is no other speedy, adequate and available *interim* remedy other than the writs of restraint (restraining order or injunction) that are sought from this Court.

RELIEFS

WHEREFORE, petitioners pray that judgment be rendered in their favor, to wit:

1. Upon receipt of this *Petition*, a TEMPORARY RESTRAINING ORDER be issued ENJOINING, RESTRAINING AND STOPPING the enforcement of the “No Permit, No Rally” policy under *Batas Pambansa Blg. 880* and the rule of “Calibrated Pre-emptive Response” or CPR;

2. After notice and Comment, a *Decision* be promulgated, thus:
 - 2.1. ISSUING the writ of Prohibition against respondents ENJOINING them from enforcing the “No Permit, No Rally” policy under *Batas Pambansa Blg.* 880 and the rule of “Calibrated Pre-emptive Response, and
 - 2.2. DECLARING the “No Permit, No Rally” policy in *Batas Pambansa Blg.* 880 and the rule of “Calibrated Pre-emptive Response” as UNCONSTITUTIONAL and VOID.

All other just and equitable reliefs—to include, in the discretion of the Court, appropriate sanctions against the respondents—are also prayed for.

Quezon City for Manila; 12 October 2005.

**FREE LEGAL ASSISTANCE GROUP
[FLAG]**

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**VERIFICATION AND CERTIFICATION
AGAINST FORUM SHOPPING**

WE, **JESS DEL PRADO, CARMELITA MORANTE, WILSON FORTALEZA, JOSE ELEUTERIO PINLAC, RASTI DELIZO, POL BANGAY, MARIE JO OCAMPO, LILIA DELA CRUZ, CRISTETA RAMOS, ADELAIDA RAMOS, MARY GRACE GONZALES, MICHAEL CADASIO, RENDO SABUSAP, PRECIOUS BATUTE, ROXANNE MAGBOO, ERNIE BAUTISTA, JOSEPH DELA CRUZ, MARGARITA ESCOBER, DJOANNALYN JAVIER, MAGDALENA SELLOTE, MANNY QUIAZON, LEODY DE GUZMAN, ERICSON DIZON, NENITA CRUZ, LEONARDO DELOS REYES, PEDRITO FADRIGON**, do hereby state under oath that: we are the petitioners in this case; we have caused the preparation of the foregoing *Petition* and have read and understood all its contents; we hereby affirm that they are true and correct to the best of our own personal knowledge (as far as the factual averments are concerned) and based on records at hand (as far as the legal averments are concerned); we certify that we have not commenced any other case involving the same parties and the same issues before any other court nor is any such case pending; should we discover any such case, we undertake to notify the Court within five (5) days from our actual knowledge thereof.

TO THE TRUTH OF THE FOREGOING, witness our hand this ___ day of October 2005.

JESS DEL PRADO

CARMELITA MORANTE

WILSON FORTALEZA

JOSE ELEUTERIO PINLAC

RASTI DELIZO

POL BANGAY

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MAGDALENA SELLOTE

MANNY QUIAZON

LEODY DE GUZMAN

ERICSON DIZON

NENITA CRUZ

LEONARDO DELOS REYES

PEDRITO FADRIGON

SUBSCRIBED AND SWORN TO before me this ___ day of October 2005, the foregoing affiants having exhibited before me proof of identification as described below:

Name

Proof of Identification

Jess del Prado
Carmelita Morante
Wilson Fortaleza
Jose Eleuterio Pinlac
Rasti Delizo
Pol Bangay
Marie Jo Ocampo
Lilia dela Cruz
Cristeta Ramos
Adelaida Ramos
Mary Grace Gonzales
Michael Cadasio
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