SORIANO VS. LA GUARDIA
G.R. NO. 164785. APRIL 29, 2009

Facts:

On August 10, 2004, at around 10:00 p.m., petitioner, as host of the program Ang Dating Daan, aired on UNTV 37, made obscene remarks against INC. Two days after, before the MTRCB, separate but almost identical affidavit-complaints were lodged by Jessie L. Galapon and seven other private respondents, all members of the Iglesia ni Cristo (INC), against petitioner in connection with the above broadcast. Respondent Michael M. Sandoval, who felt directly alluded to in petitioner's remark, was then a minister of INC and a regular host of the TV program Ang Tamang Daan.

Issue:

Whether or not Soriano's statements during the televised "Ang Dating Daan" part of the religious discourse and within the protection of Section 5, Art.III.

Held:

No. Under the circumstances obtaining in this case, therefore, and considering the adverse effect of petitioner's utterances on the viewers' fundamental rights as well as petitioner's clear violation of his duty as a public trustee, the MTRCB properly suspended him from appearing in Ang Dating Daan for three months. Furthermore, it cannot be properly asserted that petitioner's suspension was an undue curtailment of his **right to free speech** either as a prior restraint or as a subsequent punishment. Aside from the reasons given above (re the paramount of viewers rights, the public trusteeship character of a broadcaster's role and the power of the State to regulate broadcast media), a requirement that indecent language be avoided has its primary effect on the form, rather than the content, of serious communication. There are few, if any, thoughts that cannot be expressed by the use of less offensive language.

The SC ruled that "Soriano's statement can be treated as **obscene**, at least with respect to the average child," and thus his utterances cannot be considered as protected speech. Citing decisions from the US Supreme Court, the High Court said that the analysis should be "context based" and found the utterances to be obscene after considering the use of television broadcasting as a medium, the time of the show, and the "G" rating of the show, which are all factors that made the utterances susceptible to children viewers. The Court emphasized on how the uttered words could be easily understood by a child literally rather than in the context that they were used."

The SC also said "that the suspension is not a prior restraint, but rather a "form of permissible administrative sanction or subsequent punishment." In affirming the power of the MTRCB to issue an order of suspension, the majority said that "it is a sanction that the MTRCB may validly impose under its charter without running afoul of the free speech clause." visit fellester.blogspot.com The Court said that the suspension "is not a prior restraint on the right of petitioner to continue with the broadcast of Ang Dating Daan as a permit was already issued to him by MTRCB," rather, it was a sanction for "the indecent contents of his utterances in a "G" rated TV program." (Soriano v. Laguardia; GR No. 165636, April 29, 2009)

Dissenting Opinion:

PUNO, J.:

In a separate dissenting opinion, said that a single government action could be both a penalty and a prior restraint. The Chief Magistrate pointed out that the three month suspension takes such form because it also acts as a restraint to petitioner's future speech and thus deserves a higher scrutiny than the "context based" approach that the majority applied. In voting to grant Soriano's petition, the Chief Justice said that "in the absence of proof and reason, he [Soriano] should not be penalized with a three-month suspension that works as a prior restraint on his speech."

ABAD, J.:

Issue Presented:

This dissenting opinion presents a narrow issue: whether or not the Court is justified in imposing the penalty of three-month suspension on the television program Ang Dating Daan on the ground of host petitioner Soriano's remarks about Iglesia ni Cristo's Michael prostituting himself when he attacked Soriano in the Iglesia's own television program.

The Dissent:

The Ang Dating Daan is a nationwide television ministry of a church organization officially known as "Members of the Church of God International" headed by petitioner Soriano. It is a vast religious movement not so far from those of Mike Velarde's El Shadai, Eddie Villanueva's Jesus is Lord, and Apollo Quiboloy's The Kingdom of Jesus Christ. These

movements have generated such tremendous following that they have been able to sustain daily television and radio programs that reach out to their members and followers all over the country. Some of their programs are broadcast abroad. Ang Dating Daan is aired in the United States and Canada.

The Catholic Church is of course the largest religious organization in the Philippines. If its members get their spiritual nourishments from attending masses or novenas in their local churches, those of petitioner Soriano's church tune in every night to listen to his televised Bible teachings and how these teachings apply to their lives. They hardly have places of worship like the Catholic Church or the mainstream protestant movements.

Thus, suspending the Ang Dating Daan television program is the equivalent of closing down their churches to its followers. Their inability to tune in on their Bible teaching program in the evening is for them like going to church on Sunday morning, only to find its doors and windows heavily barred. Inside, the halls are empty.

Do they deserve this? No.

1. A tiny moment of lost temper.

Petitioner Soriano's Bible ministry has been on television continuously for 27 years since 1983 with no prior record of use of foul language. For a 15-second outburst of its head at his bitterest critics, it seems not fair for the Court to close down this Bible ministry to its large followers altogether for a full quarter of a year. It is like cutting the leg to cure a smelly foot.

2. Not obscene.

Primarily, it is obscenity on television that the constitutional guarantee of freedom of speech does not protect. As the Court's decision points out, the test of obscenity is whether the average person, applying contemporary standards, would find the speech, taken as a whole, appeals to the prurient interest. A thing is prurient when it arouses lascivious thoughts or desires or tends to arouse sexual desire.

A quarter-of-a-year suspension would probably be justified when a general patronage program intentionally sneaks in snippets of lewd, prurient materials to attract an audience to the program. This has not been the case here.

3. Merely borders on indecent.

Actually, the Court concedes that petitioner Soriano's short outburst was not in the category of the obscene. It was just "indecent." But were his words and their meaning utterly indecent? In a scale of 10, did he use the grossest language? He did not.

First, Soriano actually exercised some restraints in the sense that he did not use the vernacular word for the female sexual organ when referring to it, which word even the published opinions of the Court avoided despite its adult readers. He referred to it as "yung ibaba" or down below. And, instead of using the patently offensive vernacular equivalent of the word "fuck" that describes the sexual act in which the prostitute engages herself, he instead used the word "gumagana lang doon yung ibaba" or what functions is only down below. At most, his utterance merely bordered on the indecent.

Second, the word **"puta"** or **"prostitute"** describes a bad trade but it is not a bad word. **The world needs a word to describe it. "Evil" is bad but the word "evil" is not; the use of the words "puta" or "evil" helps people understand the values that compete in this world.** A policy that places these ordinary descriptive words beyond the hearing of children is unrealistic and is based on groundless fear. Surely no member of the Court will recall that when yet a child his or her hearing the word "puta" for the first time left him or her wounded for life.

Third, Soriano did not tell his viewers that being a prostitute was good. He did not praise prostitutes as to make them attractive models to his listeners. Indeed, he condemned Michael for acting like a prostitute in attacking him on the air. The trouble is that the Court, like the MTRCB read his few lines in isolation. Actually, from the larger picture, Soriano appears to have been provoked by Michael's resort to splicing his speeches and making it appear that he had taught inconsistent and false doctrines to his listeners. If Michael's sin were true, Soriano was simply defending himself with justified anger.

And fourth, the Court appears to have given a literal meaning to what Soriano said.

"Gago ka talaga x x x, masahol ka pa sa putang babae x x x. Yung putang babae ang gumagana lang doon yung ibaba, [dito] kay Michael ang gumagana ang itaas, o di ba!"

This was a figure of speech. Michael was a man, so he could not literally be a female prostitute. Its real meaning is that Michael was acting like a prostitute in mouthing the ideas of anyone who cared to pay him for such service. It had no indecent meaning. The Bible itself uses the word "prostitute" as a figure of speech. "By their deeds they prostituted themselves," said Psalm 106:39 of the Israelites who continued to worship idols after God had taken them out of Egyptian slavery. Soriano's real message is that Michael prostituted himself by his calumny against him.

If at all, petitioner Soriano's breach of the rule of decency is slight, one on a scale of 10. Still, the Court would deprive the Ang Dating Daan followers of their nightly bible teachings for a quarter of a year because their head teacher had used figures of speech to make his message vivid.

4. The average child as listener

The Court claims that, since Ang Dating Daan carried a general patronage rating, Soriano's speech no doubt caused harm to the children who watched the show. This statement is much too sweeping.

The Court relies on the United States case of Federal Communications Commission (FCC) v. Pacifica Foundation, a 1978 landmark case. Here are snatches of the challenged monologue that was aired on radio:

The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and maybe, even bring us, God help us, peace without honor and bourbon…Also cocksucker is a compound word and neither half of that is really dirty…And the cock crowed three times, the cock—three times. It's in the Bible, cock in the Bible…Hot shit, holy shit, tough shit, eat shit, shit-eating grin…It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. Fuck…A little something for everyone. Fuck. Good word. x x x

Imagine how the above would sound if translated into any of the Filipino vernaculars. The U.S. Supreme Court held that the above is not protected speech and that the FCC could regulate its airing on radio. The U.S. Supreme Court was of course correct.

Here, however, there is no question that Soriano attacked Michael, using figure of speech, at past 10:00 in the evening, not at 2:00 in the afternoon. The average Filipino child would have been long in bed by the time Ang Dating Daan appeared on the television screen. What is more, Bible teaching and interpretation is not the stuff of kids. It is not likely that they would give up programs of interest to them just to listen to Soriano drawing a distinction between "faith" and "work or action." The Court has stretched the "child" angle beyond realistic proportions. The MTRCB probably gave the program a general patronage rating simply because Ang Dating Daan had never before been involved in any questionable broadcast in the previous 27 years that it had been on the air.

The monologue in the FCC case that was broadcast at 2 in the afternoon was pure indecent and gross language, uttered for its own sake with no social value at all. It cannot compare to Soriano's speech where the indecent words were slight and spoken as mere figure of speech to defend himself from what he perceived as malicious criticism.

5. Disproportionate penalty

The Court applied the balancing of interest test in justifying the imposition of the penalty of suspension against Ang Dating Daan. Under this test, when particular conduct is regulated in the interest of public order and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented.

An example of this is where an ordinance prohibits the making of loud noises from 9:00 p.m. to 6:00 a.m. Can this ordinance be applied to prevent vehicles circling the neighborhood at such hours of night, playing campaign jingles on their loudspeakers to win votes for candidates in the election? Here, there is a tension between the rights of candidates to address their constituents and the interest of the people in healthy undisturbed sleep. The Court would probably uphold the ordinance since public interest demands a quiet night's rest for all and since the restraint on the freedom of speech is indirect, conditional, and partial. The candidate is free to make his broadcast during daytime when people are normally awake and can appreciate what he is saying.

But here, the abridgment of speech—three months total suspension of the Ang Dating Daan television bible teaching program—cannot be regarded as indirect, conditional, or partial. It is a direct, unconditional, and total abridgment of the freedom of speech, to which a religious organization is entitled, for a whole quarter of a year.

In the American case of FCC, a parent complained. He was riding with his son in the car at 2:00 in the afternoon and they heard the grossly indecent monologue on radio. Here, no parent has in fact come forward with a complaint that his child had heard petitioner Soriano's speech and was harmed by it. The Court cannot pretend that this is a case of angry or agitated parents against Ang Dating Daan. The complaint here came from Iglesia ni Cristo preachers and members who deeply loathed Soriano and his church. The Court's decision will not be a victory for the children but for the Iglesia ni Cristo, finally enabling it to silence an abhorred competing religious belief and its practices.

What is more, since this case is about protecting children, the more appropriate penalty, if Soriano's speech during the program mentioned was indecent and had offended them, is to raise his program's restriction classification. The MTRCB classify programs to protect vulnerable audiences. It can change the present G or General Patronage classification of Ang Dating Daan to PG or "with Parental Guidance only" for three months. This can come with a warning that should the program commit the same violation, the MTRCB can make the new classification permanent or, if the violation is recurring, cancel its program's permit.

This has precedent. In Gonzales v. Katigbak, the Court did not ban the motion picture just because there were suggestive scenes in it that were not fit for children. It simply classified the picture as for adults only. By doing this, the Court would not be cutting the leg to cure a smelly foot.

I vote to partially grant the motion for reconsideration by modifying the three-month suspension penalty imposed on the program Ang Dating Daan. In its place, I vote to raise the program's restriction classification from G or General Patronage to PG or with Parental Guidance for three months with warning that should petitioner Soriano commit the same violation, the classification of his program will be permanently changed or, if the violation is persistent, the program will be altogether cancelled.

CARPIO, J.:

Liberty is a right that inheres in every one of us as a member of the human family. When a person is deprived of his right, all of us are diminished and debased for liberty is total and indivisible.

Among the cherished liberties in a democracy such as ours is freedom of expression. A democracy needs a healthy public sphere where the people can exchange ideas, acquire knowledge and information, confront public issues, or discuss matters of public interest, without fear of reprisals. Free speech must be protected so that the people can engage in the discussion and deliberation necessary for the successful operation of democratic institutions. Thus, no less than our Constitution mandates full protection to freedom of speech, of expression, and of the press. All of the protections expressed in the Bill of Rights are important, but the courts have accorded to free speech the status of a preferred freedom. This qualitative significance of freedom of expression arises from the fact that it is the indispensable condition of nearly every other freedom.

The freedom of expression clause is precisely a guarantee against both prior restraint and subsequent punishment. It protects from any undue interference by the government the people's right to freely speak their minds. The guarantee rests on the principle that freedom of expression is essential to a functioning democracy and suppression of expression leads to authoritarianism.

Prior restraint has been defined as official governmental restrictions on any form of expression in advance of actual dissemination. But the mere prohibition of government interference before words are spoken is not an adequate protection of the freedom of expression if the government could arbitrarily punish after the words have been spoken. The threat of subsequent punishment itself would operate as a very effective prior restraint.

Any form of prior restraint bears a presumption against its constitutional validity. The burden is on the censor to justify any imposition of prior restraint, not on the censored to put up a defense against it. In the case of print media, it has been held that just because press freedom may sometimes be abused does not mean that the press does not deserve immunity from prior restraint. The settled rule is that any such abuse may be remedied by subsequent punishment.

This Court, in Eastern Broadcasting Corporation v. Dans, Jr., laid down the following guideline:

All forms of media, whether print or broadcast, are entitled to the broad protection of the freedom of speech and expression clause. The test for limitations on freedom of expression continues to be the clear and present danger rule – that 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 the lawmaker has a right to prevent.

Chief Justice Fernando expounded on the meaning of the “clear and present danger” test in Gonzalez v. Chairman Katigbak, to wit:

The test, to repeat, to determine whether freedom of expression may be limited is the clear and present danger of an evil of a substantive character that the State has a right to prevent. Such danger must not only be clear but must also be present. There should be no doubt that what is feared may be traced to the expression complained of. The causal connection must be evident. Also, there must be reasonable apprehension about its imminence. The time element cannot be ignored. Nor does it suffice if such danger be only probable. There is the requirement of its being well-nigh inevitable.

Where the medium of a television broadcast is concerned, as in the case at hand, well-entrenched is the rule that censorship is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, public morals, public health, or any other legitimate public interest.

One of the established exceptions in freedom of expression is speech characterized as obscene. I will briefly discuss obscenity as the majority opinion characterized the subject speech in this case as obscene, thereby taking the speech out of the scope of constitutional protection.

The leading test for determining what material could be considered obscene was the famous Regina v. Hicklin case wherein Lord Cockburn enunciated thus:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

Judge Learned Hand, in United States v. Kennerly, opposed the strictness of the Hicklin test even as he was obliged to follow the rule. He wrote:

I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time.

Roth v. United States laid down the more reasonable and thus, more acceptable test for obscenity: “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.” Such material is defined as that which has “a tendency to excite lustful thoughts,” and “prurient interest” as “a shameful or morbid interest in nudity, sex, or excretion.”

Miller v. California merely expanded the Roth test to include two additional criteria: “the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and the work, taken as whole, lacks serious literary, artistic, political, or scientific value.” The basic test, as applied in our jurisprudence, extracts the essence of both Roth and Miller – that is, whether the material appeals to prurient interest.

The present controversy emanated from the alleged splicing of a video recording wherein petitioner was supposedly made to appear as if he was asking for contributions to raise 37 trillion pesos instead of the allegedly true amount of 3.6 million pesos. The video was played by ministers of Iglesia ni Cristo in their television program “Ang Tamang Daan.”

In response, petitioner Eliseo Soriano, as host of the television program “Ang Dating Daan,” made the following utterances:

Bro. Josel Mallari:

Ulit-ulit na iyang talagang kawalanghiyaan na iyan, naku. E, markado nang masyado at saka branded na itong nga ito anong klase po sila. Wala kayong babalikan diyan Kapatid na Manny. Iyang klase ng mga ministro na iyan, pasamain lamang si Kapatid na Eli e pati mga ninakaw na tape, pati mga audio na pinag-edit-edit, lalagyan ng caption para makita nila, maipakita nilang malinaw ‘yung panloloko nila. Kasi Sis. Luz, puwede mo nang hindi lagyan ng caption e, patunugin mo na lang na ganun ang sinasabi. Pero talagang para mai-emphasize nila ‘yung kanilang kawalanghiyaan, lalagyan pa nila ng caption na hindi naman talagang sinabi ni Bro. Eli kundi pinagdugtong lang ‘yung audio.

Bro. Eli Soriano:

At saka ang malisyoso. Kitang-kita malisyoso e. Paninirang-puri e. Alam mo kung bakit? Mahilig daw ako talagang manghingi para sa aking pangangailangan. Pangangailangan ko ba 'yung pambayad sa UNTV e ang mga kontrata diyan ay hindi naman ako kapatid na Josel.

Bro. Josel Mallari:

Ay, opo.

Bro. Eli Soriano:

Hindi ko kontrata iyang babayaran na iyan. I am not even a signatory to that contract. Pagkatapos para pagbintangan mo ako na humingi ako para sa pangangailangan ko, gago ka talaga Michael. Masahol ka pa sa putang babae. O, di ba? Yung putang babae ang gumagana lang doon yung ibaba, kay Michael ang gumagana ang itaas, o di ba! O, masahol pa sa putang babae yan. Sabi ng lola ko masahol pa sa putang babae yan. Sobra ang kasinungalingan ng mga demonyong ito. Sige, sumagot kayo. At habang ginaganyan ninyo ako, ang mga miyembro ninyo unti-unting maliliwanagan. Makikita n'yo rin, magreresulta ng maganda iyan.

Bro. Manny Catangay Jusay:

Bro. Eli, ay iyan nga po ang sinasabi ko e, habang gumagawa sila ng ganyan, gaya nung sinabi nung Kapatid natin kagabi dahil napanood 'yung kasinungalingan ni Pol Guevarra, ay, lumuluha 'yung Kapatid, inaanyayahan 'yung mag-anak niya. Magsialis na kayo diyan. Lipat na kayo rito. Kasi kung nag-iisip lang ang isang Iglesia ni Cristo matapos ninyong mapanood itong episode na ito, iiwanan ninyo e, kung mahal ninyo ang kaluluwa ninyo. Hindi kayo paaakay sa ganyan, nagpafabricate ng mga kasinungalingan. Sabi ko nga lahat ng paraan ng pakikipagbaka nagawa na nila e, isa na lang ang hindi 'yung pakikipagdebate at patunayan na sila ang totoo. Iyon na lang ang hindi nila nagagawa. Pero demanda, paninirang-puri – nagtataka nga ako e, tayo, kaunting kibot, nakademanda sila e. 'yung ginagawa nila, ewan ko, idinedemanda n'yo ba Bro. Eli?

The majority opinion ruled that the highlighted portion of the aforequoted speech was obscene and was, therefore, not entitled to constitutional protection.

Well-settled is the rule that speech, to be considered obscene, must appeal to prurient interest as defined in Roth and firmly adopted in our jurisdiction. The subject speech cannot, by any stretch of the imagination, be said to appeal to any prurient interest. The highlighted portion of the verbal exchange between the two feuding religious groups is utterly bereft of any tendency to excite lustful thoughts as to be deemed obscene. The majority's finding of obscenity is clearly untenable.

In contrast, a radio broadcast of a monologue replete with indecent words such as shit, piss, fuck, cunt, cocksucker, motherfucker, and tits, has been held protected speech depending on the context relating to the time of broadcast. However, in this case before us, the words "putang babae" (female prostitute), and the descriptive action phrases "ang gumagana lang doon yung ibaba" and "kay Michael ang gumagana ang itaas" were enough to constitute outright obscenity for the majority. The majority opinion simply forced these words and phrases into a strained standard formula for censorship. But such overbroad standard must be struck down for it indiscriminately infringes upon free speech.

The subject speech in this case may, at most, be considered indecent speech.

Indecent speech conveyed through the medium of broadcast is a case of first impression in our jurisdiction. However, this issue has been settled in American case law, which has persuasive influence in our jurisprudence. There, the rule is that indecent speech is protected depending on the context in which it is spoken. The concept of what is "indecent" is intimately connected with the exposure of children to language that describes, in terms patently offensive, as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience.

FCC v. Pacifica Foundation is the landmark U.S. case on the regulation of indecent speech in broadcast. The case involved a radio broadcast of "Filthy Words," a 12-minute monologue by American stand-up comedian and social critic, George Carlin. Appended to the decision is the following verbatim transcript prepared by the Federal Communications Commission:

The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and maybe, even bring us, God help us, peace without honor and a bourbon. And

now the first thing that we noticed was that word fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. You want to be a purist, it can't be on the list of basic words. Also, cocksucker is a compound word and neither half of that is really dirty. The word-the half sucker that's merely suggestive and the word cock is a half-way dirty word, 50% dirty-dirty half the time, depending on what you mean by it. Uh, remember when you first heard it, like in 6th grade, you used to giggle. And the cock crowed three times, the cock-three times. It's in the Bible, cock in the Bible. And the first time you heard about a cock-fight, remember-What? Huh? It ain't that, are you stupid? It's chickens, you know, Then you have the four letter words from the old Angle-Saxon fame. Uh, shit and fuck. The word shit, uh, is an interesting kind of word in that the middle class has never really accepted it and approved it. They use it like, crazy but it's not really okay. It's still a rude, dirty, old kind of gushy word. They don't like that, but they say it, like, they say it like, a lady now in a middle-class home, you'll hear most of the time she says it as an expletive, you know, it's out of her mouth before she knows. She says, Oh shit oh shit, oh shit. If she drops something, Oh, the shit hurt the broccoli. Shit. Thank you.

Shit! I won the Grammy, man, for the comedy album. Isn't that groovy? That's true. Thank you. Thank you man. Yeah. Thank you man. Thank you. Thank you very much, man. Thank, no, for that and for the Grammy, man, ['']cause that's based on people liking it man, that's okay man. Let's let that go, man. I got my Grammy. I can let my hair hang down now, shit. Ha! So! Now the word shit is okay for the man. At work you can say it like crazy. Mostly figuratively, Get that shit out of here, will ya? I don't want to see that shit anymore. I can't cut that shit, buddy. I've had that shit up to here. I think you're full of shit myself. He don't know shit from Shinola. you know that? Always wondered how the Shinola people felt about that Hi, I'm the new man from Shinola, Hi, how are ya? Nice to see ya. How are ya? Boy, I don't know whether to shit or wind my watch. Guess, I'll shit on my watch. Oh, the shit is going to hit de fan. Built like a brick shit-house. Up, he's up shit's creek. He's had it. He hit me, I'm sorry. Hot shit, holy shit, tough shit, eat shit. shit-eating grin. Uh, whoever thought of that was ill. He had a shit-eating grin! He had a what? Shit on a stick. Shit in a handbag. I always like that. He ain't worth shit in a handbag. Shitty. He acted real shitty. You know what I mean? I got the money back, but a real shitty attitude. Heh, he had a shit-fit. Wow! Shit-fit. Whew! Glad I wasn't there. All the animals-Bull shit, horse shit, cow shit, rat shit, bat shit. First time I heard bat shit, I really came apart. A guy in Oklahoma, Boggs, said it, man. Aw! Bat shit. Vera reminded me of that last night. Snake shit, slicker than owl shit. Get your shit together. Shit or get off the pot. I got a shit-load full of them. I got a shit-pot full, all right. Shit-head, shit-heel, shit in your heart, shit for brains, shit-face. I always try to think how that could have originated; the first guy that said that. Somebody got drunk and fell in some shit, you know. Hey, I'm shit-face. Shit-face, today. Anyway, enough of that shit. The big one, the word fuck that's the one that hangs them up the most. ['']Cause in a lot of cases that's the very act that hangs them up the most. So, it's natural that the word would, uh, have the same effect. It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. Fuck. You know, it's easy. Starts with a nice soft sound fuh ends with a kuh. Right? A little something for everyone. Fuck Good word. Kind of a proud word, too. Who are you? I am FUCK, FUCK OF THE MOUNTAIN. Tune in again next week to FUCK OF THE MOUNTAIN. It's an interesting word too, ['']cause it's got a double kind of a life-personality-dual, you know, whatever the right phrase is. It leads a double life, the word fuck. First of all, it means, sometimes, most of the time, fuck. What does it mean? It means to make love. Right? We're going to make love, yeh, we're going to fuck, yeh, we're going to fuck, yeh, we're going to make love. we're really going to fuck, yeh, we're going to make love. Right? And it also means the beginning of life, it's the act that begins life, so there's the word hanging around with words like love, and life, and yet on the other hand, it's also a word that we really use to hurt each other with, man. It's a heavy one that you have toward the end of the argument. Right? You finally can't make out. Oh, fuck you man. I said, fuck you. Stupid fuck. Fuck you and everybody that looks like you man. It would be nice to change the movies that we already have and substitute the word fuck for the word kill, wherever we could, and some of those movie cliches would change a little bit. Madfuckers still on the loose. Stop me before I fuck again. Fuck the ump, fuck the ump, fuck the ump, fuck the ump, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again. The other shit one was, I don't give a shit. Like it's worth something, you know? I don't give a shit. Hey, well, I don't take no shit, you know what I mean? You know why I don't take no shit? ['']Cause I don't give a shit. If I give a shit, I would have to pack shit. But I don't pack no shit cause I don't give a shit. You wouldn't shit me, would you? That's a joke when you're a kid with a worm looking out the bird's ass. You wouldn't shit me, would you? It's an eight-year-old joke but a good one. The additions to the list. I found three more words that had to be put on the list of words you could never say on television, and they were fart, turd and twat, those three. Fart, we talked about, it's harmless. It's like tits, it's a cutie word, no problem. Turd, you can't say but who wants to, you know? The subject never comes up on the panel so I'm not worried about that one. Now the word twat is an interesting word. Twat! Yeh, right in the twat. Twat is an interesting word because it's the only one I know of, the only slang word applying to the, a part of the sexual anatomy that doesn't have another meaning to it. Like, ah, snatch, box and pussy all have other meanings, man. Even in a Walt Disney movie, you can say, We're going to snatch that pussy and put him in a box and bring him on the airplane. Everybody loves it. The twat stands alone, man, as it should. And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. You can't say, up your ass. You can say, stuff it!

Worthy of note, in Pacifica, the FCC did not resort to any subsequent punishment, much less any prior restraint. The station was not suspended for the broadcast of the monologue, which the U.S. Supreme Court merely considered indecent speech based on the context in which it was delivered. According to the U.S. Supreme Court, the monologue would have been protected were it delivered in another context. The monologue was broadcast at 2:00 p.m., when children were presumptively in the audience.

A later case, Action for Children's Television v. FCC, establishes the safe harbor period to be from 10:00 in the evening to 6:00 in the morning, when the number of children in the audience is at a minimum. In effect, between the hours of 10:00 p.m. and 6:00 a.m., the broadcasting of material considered indecent is permitted. Between the hours of 6:00 a.m. and 10:00 p.m., the broadcast of any indecent material may be sanctioned.

In this case, the subject speech by petitioner was broadcast starting 10:00 p.m. onwards, clearly within the safe harbor period as established in Action for Children's Television. Correctly applying Pacifica's context-based ruling, petitioner's speech, if indeed indecent, enjoys constitutional protection and may not be sanctioned. The rule on this matter, as laid down by Pacifica in relation to Action for Children's Television, is crystal-clear. But should the majority still have any doubt in their minds, such doubt should be resolved in favor of free speech and against any interference by government. The suspension of "Ang Dating Daan" by the MTRCB was a content-based, not a content-neutral regulation. Thus, the suspension should have been subjected to strict scrutiny following the rule in Chavez v. Gonzales. The test should be strict because the regulation went into the very heart of the rationale for the right to free speech – that speech may not be prohibited just because government officials disapprove of the speaker's views.

Further, the majority opinion held that even if petitioner's utterances were not obscene but merely indecent speech, they would still be outside of the constitutional protection because they were conveyed through a medium easily accessible to children. The majority misapplied the doctrine of FCC v. Pacifica, the leading jurisprudence on this matter. Pacifica did not hold that indecent speech, when conveyed through a medium easily accessible to children, would automatically be outside the constitutional protection. On the contrary, the U.S. Supreme Court emphasized the narrowness of its ruling in Pacifica. The guideline that Pacifica laid down is that the broadcast of a monologue containing indecent speech could be considered protected or unprotected depending on the context, that is, the time of the day or the night when the indecent utterances were delivered.

The majority's ruling in this case sets a dangerous precedent. This decision makes it possible for any television or radio program, on the slightest suspicion of being a danger to national security or on other pretexts, to likewise face suspension. The exacting "clear and present danger" test is dispensed with to give way to the "balancing of interests" test in favor of the government's exercise of its regulatory power. Granting without conceding that "balancing of interests" is the appropriate test in setting a limitation to free speech, suspension of a television program is a measure way too harsh that it would be inappropriate as the most reasonable means for averting a perceived harm to society. The restriction on freedom need not be greater than is necessary to further the governmental interest.

The "balancing of interests" test requires that a determination must first be made whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom. The majority immediately resorted to outright suspension without first exploring other measures less restrictive of freedom of speech. It cites MTRCB v. ABS-CBN Broadcasting Corporation in justifying the government's exercise of regulatory power. But the ABS-CBN case involved a mere fine as punishment, not a prior restraint in the form of suspension as in this case. In the cited case, one of the episodes of "The Inside Story," a television program of ABS-CBN, was aired without prior review and approval by the MTRCB. For this omission, the MTRCB subsequently fined ABS-CBN in the amount of P20,000. However, even as the television station was fined, the program continued to be aired and was never suspended.

Indeed, prior restraint by suspension is an extreme measure that may only be imposed after satisfying the "clear and present danger" test, which requires the perceived danger to be both grave and imminent. Prior restraint is simply uncalled for in this case where what is involved is not even obscene speech, but mere indecent speech. Note too, that the subject utterances in this case were broadcast starting 10:00 p.m. onwards, well within the safe harbor period for permissible television broadcast of speech which may be characterized as indecent.

Suspension of the program stops not only petitioner, but also the other leaders of his congregation from exercising their constitutional right to free speech through their medium of choice, which is television. The majority opinion attempts to assuage petitioner's misery by saying that petitioner can still exercise his right to speak his mind using other venues. But this proposition assumes that petitioner has access to other venues where he may continue his interrupted exercise of free speech using his chosen mode, television broadcast.

While we may not agree with petitioner's choice of language in expressing his disgust in this word war between two feuding religious groups, let us not forget that freedom of speech includes the expression of thoughts that we do not approve of, not just thoughts that are agreeable. To paraphrase Voltaire: We may disapprove of what petitioner has said, but we must defend to the death his right to say it.

The three-month suspension cannot be passed off merely as a preventive suspension that does not partake of a penalty. The actual and real effect of the three-month suspension is a prior restraint on expression in violation of a

fundamental constitutional right. Even Congress cannot validly pass a law imposing a three-month preventive suspension on freedom of expression for offensive or vulgar language uttered in the past. Congress may punish such offensive or vulgar language after their utterance, with damages, fine, or imprisonment; but Congress has no power to suspend or suppress the people's right to speak freely because of such utterances. In short, Congress may pass a law punishing defamation or tortious speech but the punishment cannot be the suspension or suppression of the constitutional right to freedom of expression. Otherwise, such law would be abridging the freedom of speech, of expression, or of the press. If Congress cannot pass such a law, neither can respondent MTRCB promulgate a rule or a decision suspending for three months petitioner's constitutional right to freedom of speech. And of course, neither can this Court give its stamp of imprimatur to such an unconstitutional MTRCB rule or decision.

I end this dissenting opinion with a reminder from Justice Oliver Wendell Holmes – that the market place of ideas is still the best alternative to censorship. The market place of ideas makes freedom of speech robust and allows people to be more tolerant of opposing views. It has been said that freedom of speech is not only to freely express oneself within the context of the law but also to hear what others say, that all may be enlightened, regardless of how obnoxious or erroneous the opposing views may be.

Accordingly, I vote to GRANT the motion for reconsideration.