

FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
OFFICE OF THE SECRETARY

10 JUL 22 A9:14

SENATE
S. No. 1852

RECEIVED BY: W

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

In the case of *Nestle Philippines v. Sanchez*, 154 SCRA 542 (1987), the Supreme Court pronounced the *sub judice* rule anew. The rule means that when a legal matter or controversy has come under the jurisdiction of a court (*sub judice*), nobody, including the press and other media should interfere by publication or public clamor with the court's proper handling of the proceeding.

The *sub judice* rule is a foreign legal concept. It originated in countries whose justice systems have adopted trial by jury, such as the United States. There is no trial by jury in the Philippines. Yet, not too frequently, Philippine courts invoke the *sub judice* rule to prohibit the press and other media from reporting, commenting on, or publishing events surrounding a trial. This is notwithstanding the palpable absence of a panel of jurors which need to be impaneled and sequestered from widespread publicity surrounding a court trial. Thus, through long and unfettered court practice, the *sub judice* rule has endeared itself as a reasonable restriction on the constitutional guarantees of free press and of the people's right to petition and information on matters of public concern.

In the United States, the *sub judice* rule also used to be seen as a reasonable restriction on the freedom of the press. Today, however, most U.S. Supreme Court decisions regard it as an unconstitutional impairment of the latter. In *Sheppard v. Maxwell*, 384 U.S. 362-363, the U.S. Supreme Court noted that: "there is nothing that proscribes the press from reporting events that transpire in the courtroom." This is just like saying that once a public hearing had been held, what transpired there could not be subject to prior restraint.

That trend in America is decidedly a welcome improvement on the *sub judice* rule. It affirms and supports that idea that a people's liberty depends on the freedom of the press which

cannot be limited without being lost. Now, if Philippine courts have transplanted the *sub judice* rule into local jurisprudence, perhaps then, it is also high time that they improve on it. The constitutional guarantees of free speech, free press, and right to information occupy lofty positions in the Filipino people's hierarchy of values. Any attempt at "freezing" them, which gag orders or other form of prior restraint do, must be shown to be necessitated by an interest more substantial than the guarantees themselves. Absent such a showing, the *sub judice* rule must be acknowledged by Philippine courts as an impermissible incursion on the salutary constitutional precept that discussion of public affairs in a free society cannot depend on the preliminary grace of judicial censors. Hence, this bill provides for the elimination of the *sub judice* rule.*

miriam defensor santia
MIRIAM DEFENSOR SANTIAGO
acv

* This bill was originally filed during the Thirteenth Congress, First Regular Session.

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1 AN ACT
2 PROHIBITING COURT ORDERS, WRITS AND INJUNCTIONS WHICH PREVENT
3 MEDIA REPORTS AND COMMENTARIES ON, OR PUBLICATION OF, PROCEEDINGS
4 *SUB JUDICE*, EXCEPT UNDER CERTAIN CIRCUMSTANCES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

5 SECTION 1. *Short Title.* – This Act shall be known as the “Judicial Right to Know Act.”

6 SECTION 2. *Declaration of Policy.* – Conformably with the constitutional guarantees of
7 free press and of the people’s right to petition and to information on matters of public concern, it
8 is hereby declared a national policy that no court order, writ, or injunction shall issue that would
9 have the effect of enjoining the press and other media from publishing information in connection
10 with a criminal, civil, or administrative case of widespread concern to the community.

11 SECTION 3. *Gag Orders Generally Unlawful; Exception.* – Court orders, writs or
12 injunctions which prohibit media reports and commentaries on, or publication of, proceedings
13 held in public or on events that transpire in the courtroom shall be invalid.

14 In cases where the report, commentary, or publication is based on information gained
15 from other sources, a gag order may lawfully issue only upon prior showing by the party who
16 seeks its issuance that the report, commentary, or publication will likely prevent, directly and
17 irreparably, a fair and impartial resolution of the case. This requires a clear showing that the
18 report, commentary, or publication will prejudice the outcome of the proceedings of the case and
19 that no less restrictive alternatives are available.

1 Notwithstanding such a showing, a gag order, writ or injunction may not issue unless it is
2 also shown that a previous report, commentary, or publication will not render the order, writ, or
3 injunction ineffectual.

4 SECTION 4. *Repealing Clause.* – All laws, rules and regulations inconsistent with this
5 Act repealed or modified accordingly.

6 SECTION 5. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
7 publication in at least two (2) newspapers of general circulation.

Approved,