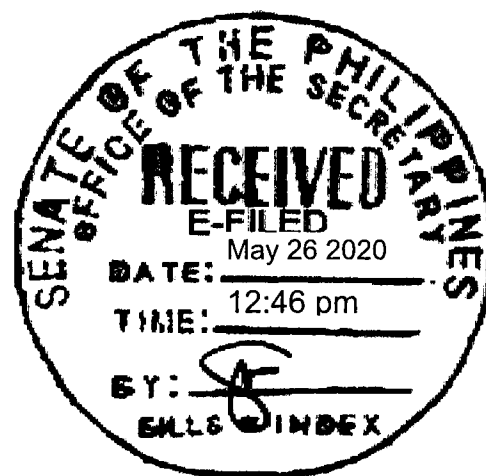


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE
P.S. Res. No. 419

Introduced by **SENATOR LEILA M. DE LIMA**

RESOLUTION
DIRECTING THE APPROPRIATE SENATE COMMITTEE
TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE
POWER GRANTED TO THE NATIONAL BUREAU OF INVESTIGATION
UNDER REPUBLIC ACT NO. 10867, OTHERWISE KNOWN AS THE
“NATIONAL BUREAU OF INVESTIGATION REORGANIZATION AND
MODERNIZATION ACT”, IN RELATION TO SUBPOENAS SERVED BY
THE NBI TO PRIVATE CITIZENS IN LIGHT OF THE RECENT COVID-19
GLOBAL PANDEMIC, WITH THE END IN VIEW OF DETERMINING
POSSIBLE MISUSE AND ABUSE OF ITS SUBPOENA POWERS TO
SUPPRESS CRITICAL DISSENT, UNDERMINE DEMOCRATIC
INSTITUTIONS, AND PREVENT AN EFFICACIOUS FIGHT AGAINST
THE PANDEMIC

1 WHEREAS, Article III, Section 4 of the Constitution states that, “[n]o law shall
2 be passed abridging the freedom of speech, of expression or of the press, or the right
3 of the people peaceably to assemble and petition the government for redress of
4 grievances”;

5 WHEREAS, Article XI, Section of the Constitution declares that, “[p]ublic office
6 is a public trust. Public officers and employees must at all times be accountable to the
7 people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act
8 with patriotism and justice, and lead modest lives;

9 WHEREAS, Article XVI, Section 10 of the Constitution provides that, “[t]he
10 State shall provide the policy environment for the full development of Filipino
11 capability and the emergence of communication structures suitable to the needs and
12 aspirations of the nation and the balanced flow of information into, out of, and across

1 the country, in accordance with a policy that respects the freedom of speech and of the
2 press”;

3 WHEREAS, *US v. Bustos*¹ proclaimed that, “[t]he interest of society and the
4 maintenance of good government demand a full discussion of public affairs. Complete
5 liberty to comment on the conduct of public men is a scalpel in the case of free speech.
6 The sharp incision of its probe relieves the abscesses of officialdom. Men in public life
7 may suffer under a hostile and an unjust accusation; the wound can be assuaged with
8 the balm of a clear conscience. A public officer must not be too thin-skinned with
9 reference to comment upon his official acts. Only thus can the intelligence and the
10 dignity of the individual be exalted.”;

11 WHEREAS, in *Yap v. Boltron*² the Supreme Court declared that, “xxx public
12 official, should not begrudge any complaint or criticism against his official actuations
13 if that is done in the proper spirit. Such is the right of every citizen under our
14 Constitution. Sound and constructive criticism is essential in a democracy for only in
15 that way can we put to a test the proper discharge of his duties by a public official”;

16 WHEREAS, the case of *Gonzalez v. COMELEC*³ explained that “Freedom of
17 speech and of the press thus means something more than the right to approve existing
18 political beliefs or economic arrangements, to lend support to official measures, to take
19 refuge in the existing climate of opinion on any matter of public consequence. So
20 atrophied, the right becomes meaningless. The right belongs as well, if not more, for
21 those who question, who do not conform, who differ. To paraphrase Justice Holmes,
22 it is freedom for the thought that we hate, no less than for the thought that agrees with
23 us”;

24 WHEREAS, the Supreme Court in *Chavez v. Secretary Gonzalez*⁴ pronounced
25 that, “[f]reedom of expression has gained recognition as a fundamental principle of
26 every democratic government, and given a preferred right that stands on a higher level
27 than substantive economic freedom or other liberties... xxx In the Philippines, the
28 primacy and high esteem accorded freedom of expression is a fundamental postulate
29 of our constitutional system. xxx Moreover, our history shows that the struggle to

¹ G.R. No. L-12592. (March 8, 1918)

² G.R. No. L-9523. (November 15, 1956)

³ G.R. No. L-27833. (April 18, 1969)

⁴ G.R. No. 168338. (February 15, 2008)

1 protect the freedom of speech, expression and the press was, at bottom, the struggle
2 for the indispensable preconditions for the exercise of other freedoms. For it is only
3 when the people have unbridled access to information and the press that they will be
4 capable of rendering enlightened judgments. In the oft-quoted words of Thomas
5 Jefferson, we cannot both be free and ignorant”;

6 WHEREAS, the case of *Gonzalez vs. COMELEC*⁵ is authority in matters relating
7 to the suppression of free speech, to wit: “For him the apprehended evil must be
8 ‘relatively serious.’ For [prohibition] of free speech and assembly is a measure so
9 stringent that it would be inappropriate as the means for averting a relatively trivial
10 harm to society.’ Justice Black would go further. He would require that the substantive
11 evil be ‘extremely serious.’ Only thus may there be a realization of the ideal envisioned
12 by Cardozo: “There shall be no compromise of the freedom to think one’s thoughts and
13 speak them, except at those extreme borders where thought merges into action.”;

14 WHEREAS, the same case of *Chavez v. Secretary Gonzalez*⁶ pronounced that,
15 “a governmental action that restricts freedom of speech or of the press based on
16 content is given the strictest scrutiny in light of its inherent and invasive impact. Only
17 when the challenged act has overcome the clear and present danger rule will it pass
18 constitutional muster, with the government having the burden of overcoming the
19 presumed unconstitutionality. Unless the government can overthrow this
20 presumption, the content-based restraint will be struck down”;

21 WHEREAS, Section 4 (b) of Republic Act No. 10867 otherwise known as the
22 “National Bureau of Investigation Reorganization and Modernization Act” grants the
23 NBI the power to “[i]ssue subpoena for the appearance of any person for investigation
24 or production of documents, through its officers from the ranks of Regional Director
25 to Director”;

26 WHEREAS, on 04 February 2020, Justice Secretary Menardo Guevarra
27 ordered the National Bureau of Investigation (NBI) to go after peddlers of fake news
28 involving the 2019 novel coronavirus or the 2019-nCoV. Department Order No. 052
29 “directed and granted authority to conduct an investigation and case build-up on the
30 alleged deliberate spread of misinformation and fake news about the 2019-nCov ARD

⁵ *Supra* Note 3.

⁶ *Supra* Note.

1 and false reporting of 2019-nCov ARD (Acute Respiratory Disease) cases and, if
2 evidence warrants, to file the appropriate charges against persons found responsible
3 thereof”;⁷

4 WHEREAS, NBI Director Eric Distor on 20 March 2020 ordered different units
5 of the NBI to investigate “all possible sources of fake news being spread in various
6 social media platforms.” The NBI had said it will especially look into “those reports
7 that sow chaos and will lead to unrest and anarchy in the country”;⁸

8 WHEREAS, as early as February 2020, Secretary Guevarra already warned
9 against spreading “fake news” on COVID-19 outbreak;⁹

10 WHEREAS, by April 2020, the Department of Justice (DOJ), through the NBI
11 has summoned ‘more than a dozen people’ over their social media posts related to the
12 coronavirus;¹⁰

13 WHEREAS, in defending the probe into the exercise of free speech of the
14 individuals subpoenaed, Secretary Guevarra said that “there are limitations to this
15 constitutional right, including the greater interest of the public.” Raising the ground
16 of clear and present danger, he said that the clear and present danger is “causing undue
17 panic and alarm in part, but also undermining government efforts for a unified and
18 coordinated approach to a common threat that affects us all.”;¹¹

19 WHEREAS, neither the NBI nor the DOJ has given a definition to the term “fake
20 news” over the spread of which they warned the public about, nor publicly laid the
21 parameters in determining the grounds on which a social media public post can be
22 considered as “fake news”, nor explained how the aforementioned social media post

⁷ Buan, Lian. “NBI to go after peddlers of coronavirus fake news.” 05 February 2020. Rappler. Retrieved from: <https://www.rappler.com/nation/250981-nbi-going-after-peddlers-coronavirus-fake-news>

⁸ Lagrimas, Nicole-Anne. “NBI sends out more than 12 subpoenas over fake news probe.” 02 April 2020. GMA News. Retrieved from: <https://www.gmanetwork.com/news/news/nation/732340/nbi-sends-out-more-than-12-subpoenas-over-fake-news-probe/story/>

⁹ Damicog, Jeffrey. “Guevarra warns against spreading fake news on nCoV outbreak.” 10 February 2020. Manila Bulletin. Retrieved from: <https://news.mb.com.ph/2020/02/05/guevarra-warns-against-spreading-fake-news-on-ncov-outbreak/>

¹⁰ *Ibid.*

¹¹ Patag, Kristine. “NBI to go after people ‘causing panic, undermining government efforts’ amid nCoV threat.” 05 February 2020. Philstar. Retrieved from: <https://www.philstar.com/headlines/2020/02/05/1990585/nbi-go-after-people-causing-panic-undermining-government-efforts-amid-ncov-threat>

1 fall within the NBI's reported goal of issuing subpoenas to prevent the propagation of
2 "those reports that sow chaos and will lead to unrest and anarchy in the country";¹²

3 WHEREAS, it was recently reported that the post for which a subpoena was
4 issued run along these lines: "we should speak out when our money is misused or
5 stolen. The government has money to buy a P2 billion business jet, but none for
6 healthcare?" To drive home the point, the post attached the news item of the
7 Department of Health (DOH) calling for volunteer health workers to help in the fight
8 against the coronavirus, side by side with the photo of the government's private jet;¹³

9 WHEREAS, it was recently reported that a salesman was arrested without
10 warrant for a social media post, in which he called Pres. Duterte "crazy" and an
11 "asshole";¹⁴

12 WHEREAS, human rights lawyer Atty. Chel Diokno slammed the arrest saying
13 that "[c]rimes like libel (specially those where no complaint is filed) were never meant
14 to be the subject of warrantless arrests." He added that only judges are "equipped with
15 the knowledge and impartiality to decide if a person should be jailed for libel";¹⁵

16 WHEREAS, in imposing restrictions on freedom of speech and expression on
17 the ground of clear and present danger, *Cabansag v. Fernandez*¹⁶ advanced that "the
18 evil consequence of the comment or utterance must be 'extremely serious and the
19 degree of imminence extremely high' before the utterance can be punished. The
20 danger to be guarded against is the 'substantive evil' sought to be prevented";

21 WHEREAS, Justice Carpio in a dissenting opinion has eloquently elucidated
22 the importance of free speech on the successful operations of democratic institutions:
23 "[a] democracy needs a healthy public sphere where the people can exchange ideas,
24 acquire knowledge and information, confront public issues, or discuss matters of

¹² Cabico, Gaea. "NBI tracing source of 'fake news' on COVID-19." 20 March 2020. Philstar. Retrieved from: <https://www.philstar.com/headlines/2020/03/20/2002297/nbi-tracing-source-fake-news-covid-19>

¹³ Buan, Lian. "NBI subpoena based on post griping about govt's P2B business jet." 07 April 2020. Rappler. Retrieved from: <https://www.rappler.com/nation/257278-nbi-subpoena-based-griping-about-government-private-jet>

¹⁴ Buan, Lian. "Salesman arrested, jailed for calling Duterte 'crazy'." 14 May 2020. Rappler. Retrieved from: <https://www.rappler.com/nation/260910-salesman-arrested-jailed-calling-duterte-crazy>

¹⁵ Damicog, Jeffrey. "Diokno hits PNP for arresting salesman who criticized Duterte online." 14 May 2020. Manila Bulletin Online. Retrieved from: <https://news.mb.com.ph/2020/05/14/diokno-hits-pnp-for-arresting-salesman-who-criticized-duterte-online/>

¹⁶ G.R. No. L-8974. (October 18, 1957)

1 public interest, without fear of reprisals. Free speech must be protected so that the
2 people can engage in the discussion and deliberation necessary for the successful
3 operation of democratic institutions”;¹⁷

4 WHEREAS, it is necessary to determine whether the Constitution and statutes
5 are violated in the issuance of NBI of subpoenas against social media posts which
6 merely express an opinion on matters relating to their and the rest of the society’s
7 rights;

8 WHEREAS, public scrutiny is necessary in exposing the response made by the
9 government and its officials to the impact of the crisis brought about by the COVID-19
10 pandemic, and in engendering a free exchange of ideas between society and
11 government agencies to help solve the crisis;

12 WHEREAS, the fight of our country is against a virus which the entire nation
13 seeks to triumph over, and not against private citizens who exercise their right to free
14 speech in order to exact accountability and better performance from government and
15 its officials in responding to the pandemic;

16 WHEREAS, the Republic Act No. 11469, otherwise known as the “Bayanihan to
17 Heal as One Act”, should never be used to suppress constitutionally protected speech;

18 WHEREAS, the Bayanihan Act should only be used to prevent the spread of
19 disinformation, and not to persecute expressions critical of the government or of any
20 of its officials;

21 WHEREAS, the use of the Bayanihan Act, Cybercrime Prevention Act, and
22 other similar laws to suppress dissent and persecute political opposition is not only
23 unconstitutional, but a grave abuse of authority by the NBI and is ultimately
24 detrimental to our democracy;

25 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE, to direct the
26 appropriate Senate Committee to conduct an inquiry, in aid of legislation, into the
27 power granted to the National Bureau of Investigation under Republic Act No. 10867,
28 otherwise known as the “National Bureau of Investigation Reorganization and
29 Modernization Act”, in relation to subpoenas served by the NBI to private citizens in
30 light of the recent COVID-19 global pandemic, with the end in view of determining

¹⁷ Dissenting Opinion, J. Antonio Carpio, Soriano v. Laguardia. (G.R. No. 164785; March 15, 2010)

1 possible misuse and abuse of its subpoena powers to suppress critical dissent,
2 undermine democratic institutions, and prevent an efficacious fight against the
3 pandemic.

4 *Adopted,*


LEILA M. DE LIMA