



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

MARC DOUGLAS IV C. CAGAS,  
Petitioner,

G.R. No. 209185

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,\*  
ABAD,  
VILLARAMA, JR.,  
PEREZ,\*\*  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.

- versus -

COMMISSION ON ELECTIONS,  
represented by its CHAIRMAN,  
ATTY. SIXTO BRILLANTES, JR.,  
and the PROVINCIAL ELECTION  
OFFICER OF DAVAO DEL SUR,  
represented by ATTY. MA. FEBES  
BARLAAN,

Respondents.

Promulgated:

OCTOBER 25, 2013

X ----- X

RESOLUTION

CARPIO, J.:

This Resolution resolves the Petition for Prohibition,<sup>1</sup> filed by Marc Douglas IV C. Cagas (Cagas), in his capacity as taxpayer, to prohibit the Commission on Elections (COMELEC) from conducting a plebiscite for the creation of the province of Davao Occidental simultaneously with the 28 October 2013 Barangay Elections within the whole province of Davao del Sur, except in Davao City.

\* On official leave.

\*\* On official leave.

<sup>1</sup> Under Rule 65, Section 2 of the Rules of Court.

Cagas, while he was representative of the first legislative district of Davao del Sur, filed with Hon. Franklin Bautista, then representative of the second legislative district of the same province, House Bill No. 4451 (H.B. No. 4451), a bill creating the province of Davao Occidental. H.B. No. 4451 was signed into law as Republic Act No. 10360 (R.A. No. 10360), the Charter of the Province of Davao Occidental.

Sections 2 and 7 of R.A. No. 10360 provide for the composition of the new provinces of Davao Occidental and Davao del Sur:

*Sec. 2. Province of Davao Occidental.* – There is hereby created a new province from the present Province of Davao del Sur to be known as the Province of Davao Occidental, consisting of the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani. The territorial jurisdiction of the Province of Davao Occidental shall be within the present metes and bounds of all the municipalities that comprise the Province of Davao Occidental.

x x x x

*Sec. 7. Legislative District.* – The Province of Davao Occidental shall have its own legislative district to commence in the next national and local elections after the effectivity of this Charter. Henceforth, the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani shall comprise the Lone Legislative District of the Province of Davao Occidental while the City of Digos and the municipalities of Malalag, Sulop, Kiblawan, Padada, Hagonoy, Sta. Cruz, Matanao, Bansalan and Magsaysay shall comprise the Lone Legislative District of the Province of Davao del Sur.

x x x x

Section 46 of R.A. No. 10360 provides for the date of the holding of a plebiscite.

*Sec. 46. Plebiscite.* – The Province of Davao Occidental shall be created, as provided for in this Charter, upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within sixty (60) days from the date of the effectivity of this Charter.

The amount necessary for the conduct of the plebiscite shall be borne by the COMELEC.

R.A. No. 10360 was passed by the House of Representatives on 28 November 2012, and by the Senate on 5 December 2012. President Benigno S. Aquino III approved R.A. No. 10360 on 14 January 2013.<sup>2</sup> R.A.

<sup>2</sup> The history of H.B. No. 4451 is provided in [http://www.congress.gov.ph/legis/search/hist\\_show.php?congress=15&save=1&journal=&switch=0&bill\\_no=HB04451](http://www.congress.gov.ph/legis/search/hist_show.php?congress=15&save=1&journal=&switch=0&bill_no=HB04451) (accessed 23 October 2013) as follows:

No. 10360 was published in the Philippine Star and the Manila Bulletin only on 21 January 2013. Considering that R.A. No. 10360 shall take effect 15 days after its publication in at least two newspapers of general and local circulation,<sup>3</sup> COMELEC, therefore, only had until 6 April 2013 to conduct the plebiscite.<sup>4</sup>

As early as 27 November 2012, prior to the effectivity of R.A. No. 10360, the COMELEC suspended the conduct of all plebiscites as a matter of policy and in view of the preparations for the 13 May 2013 National and Local Elections.<sup>5</sup> On 9 July 2013, the COMELEC extended

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NO. HB04451 REPUBLIC ACT NO. RA10360

FULL TITLE: AN ACT CREATING THE PROVINCE OF DAVAO OCCIDENTAL

SHORT TITLE: Creating The Province Of Davao Occidental

BY CONGRESSMAN/WOMAN CAGAS, MARC DOUGLAS IV CHAN

DATE FILED ON 2011-03-23

CO-AUTHORS:

BAUTISTA, FRANKLIN PERALTA

REFERRAL ON 2011-03-23 TO THE COMMITTEE ON RULES

SIGNIFICANCE: LOCAL

DATE READ: 2011-03-23

COMMITTEE REPORT NO. 00827 submitted on 2011-03-23

SUBMITTED BY: LOCAL GOVERNMENT

RECOMMENDATIONS: approval

SUBSTITUTED BILLS: HB03644

DATE INCLUDED IN OB: 2011-03-23

BILL APPROVED ON SECOND READING: 2011-03-23

DATE DISTRIBUTED: 2011-05-09

REMARKS : On March 23, 2011, the Body approved to consider the Explanatory Note of the bill as the sponsorship remarks on the measure; terminated the period of sponsorship and debate; terminated the period of amendments and approved the same on Second Reading.

DATE APPROVED BY THE HOUSE ON THIRD READING: 2011-05-16

HOUSE VOTES: YEAS: 219 NAYS: 0 ABSTAIN: 0

DATE TRANSMITTED TO THE SENATE: 2011-05-24

DATE RECEIVED BY THE SENATE: 2011-05-24

DATE PASSED BY THE SENATE: 2012-10-08

PASSED WITH AMENDMENTS(Y/N)?: Y

DATE REQUESTED TO FORM A CONFERENCE COMMITTEE(CC): 2012-10-17

CC REQUESTED BY: HOUSE

DATE AGREED TO FORM A CC: 2012-11-12

REMARKS :

DATE HOUSE AGREED ON CONCOM REPORT: 2012-11-28

DATE SENATE AGREED ON CONCOM REPORT: 2012-12-05

DATE TRANSMITTED TO THE PRESIDENT: 2012-12-21

DATE ACTED UPON BY THE PRESIDENT: 2013-01-14

PRESIDENTIAL ACTION:(A)PPROVED/(V)ETOED/(L)APSED: A

REPUBLIC ACT NO.: RA10360

ORIGIN: HOUSE

REPUBLIC ACT TITLE: AN ACT CREATING THE PROVINCE OF DAVAO OCCIDENTAL

<sup>3</sup> Section 54 of R.A. No. 10360 provides:

*Effectivity.* – This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of general and local circulation.

<sup>4</sup> Fifteen days from 21 January 2013, the date of publication, is 5 February 2013. Sixty days from 5 February 2013, the date of effectivity, is 6 April 2013.

<sup>5</sup> *Rollo*, p. 53.

the policy on suspension of the holding of plebiscites by resolving to defer action on the holding of all plebiscites until after the 28 October 2013 Barangay Elections.<sup>6</sup> During a meeting held on 31 July 2013, the COMELEC decided to hold the plebiscite for the creation of Davao Occidental simultaneously with the 28 October 2013 Barangay Elections to save on expenses<sup>7</sup>. The COMELEC, in Minute Resolution No. 13-0926, approved the conduct of the Concept of Execution for the conduct of the plebiscite on 6 August 2013.<sup>8</sup> On 14 August 2013, Bartolome J. Sinocruz, Jr., the Deputy Executive Director for Operations of the COMELEC, issued a memorandum furnishing a copy of Minute Resolution No. 13-0926 to Atty. Remlane M. Tambuang, Regional Election Director of Region XI; Atty. Ma. Febes M. Barlaan, Provincial Election Supervisor of Davao del Sur; and to all election officers of Davao del Sur. On 6 September 2013, the COMELEC promulgated Resolution Nos. 9771<sup>9</sup> and 9772.<sup>10</sup> Resolution No. 9771 provided for the following calendar of activities:

| <b>DATE/PERIOD</b>  | <b>ACTIVITIES</b>   | <b>PROHIBITED ACTS</b>  |
|---|---|---|
| SEPT. 09, 2013 (MON)  | Last day to constitute the Plebiscite Board of Canvassers |   |
| SEPT. 28, 2013 (SAT) – NOV. 12, 2013 (TUE) (30 DAYS BEFORE THE DATE OF PLEBISCITE AND 15 DAYS THEREAFTER) | PLEBISCITE PERIOD   | Bearing, carrying or transporting firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, or even if licensed to possess or carry the same, unless authorized in writing by the Commission (Sec. 261 (p) (q) OEC, as amended by Sec. 32, RA 7166); |
|   |   | Suspension of local elective officials (Sec. 261 (x), OEC);   |

<sup>6</sup> Id. at 54.

<sup>7</sup> Id.

<sup>8</sup> Id. at 57.

<sup>9</sup> Calendar of Activities and Periods of Prohibited Acts in Connection With the Plebiscite for the Creation of Davao Occidental out of the Province of Davao del Sur Consisting of the Municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos, and Sarangani, Pursuant to Republic Act No. 10360 Dated July 23, 2012 and the Adoption of Pertinent Resolutions in Connection Therewith. <http://www.comelec.gov.ph/?r=Plebiscites/res9771> (accessed 23 October 2013).

<sup>10</sup> Rules and Regulations Governing the Conduct of the October 28, 2013 Plebiscite to Ratify the Creation of the Province of Davao Occidental out of Davao del Sur Pursuant to Republic Act No. 10360 Dated 23 July 2012. <http://www.comelec.gov.ph/?r=Plebiscites/res9772> (accessed 23 October 2013).

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|  |                             | Transfer of officers and employees in the civil service (Sec. 261 (h), OEC);   |
|  |                             | Alteration of territory of a precinct or establishment of a new precinct (Sec. 5, R.A. 8189);  |
|  |                             | Organizing or maintaining reaction/strike forces or similar forces (Sec. 261, (u), OEC);   |
|  |                             | Illegal release of prisoners (Sec. 261 (n), OEC);  |
|  |                             | Use of security personnel or bodyguards by candidates, whether or not such bodyguards are regular members or officers of the Philippine National Police or Armed Forces of the Philippines or other law enforcement agency (Sec. 261 (t), OEC, as amended by Sec. 33, RA 7166);    |
|  |                             | Release, disbursement or expenditures of public funds (Sec. 261 (v), OEC); Construction of public works, delivery of materials for public works and issuance of treasury warrants or similar devices for a future undertaking chargeable against public funds (Sec. 261, (w) OEC). |
| SEPTEMBER 28, 2013 (SAT) to OCTOBER 26, 2013 (SAT) | INFORMATION CAMPAIGN PERIOD | Making any donation or gift in cash or in kind, etc. (Sec. 104, OEC);<br>Use of armored/ land/ water/ air craft. (Sec. 261 (r), OEC);<br>Appointing or using special policemen, special/ confidential agents or the like. (Sec. 261 (m), OEC);                                     |

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|--|---|---|
| SEPTEMBER 28, 2013 (SAT) to OCTOBER 28, 2013 (MON) |   | Issuance of appointments, promotions, creation of new positions, or giving of salary increases.   |
| OCTOBER 27, 2013 (SUN)                             | EVE OF PLEBISCITE DAY   | Campaigning (Sec. 3, OEC);  |
|  |   | Giving, accepting free transportation, foods, drinks, and things of value (Sec. 89, OEC);   |
|  |   | Selling, furnishing, offering, buying, serving or taking intoxicating liquor (Sec. 261 (dd), (1), OEC).<br><br>(NOTE: Acts mentioned in the three (3) preceding paragraphs are prohibited until election day.)  |
| OCTOBER 28, 2013 (MON)                             | PLEBISCITE DAY<br><br>Casting of votes- (from 7:00 a.m. to 3:00 p.m. simultaneous with the voting for the Barangay and SK Elections)<br><br>Counting of votes shall be after the counting of votes for Barangay and SK Elections)<br><br>Convening of the City Plebiscite Board of Canvassers – (6:00 p.m.) | Vote-buying and vote selling (Sec. 261 (a), OEC);<br>Voting more than once or in substitution of another (Sec. 261 (z) (2) and (3), OEC);<br>Campaigning (Sec. 3, OEC);<br>Soliciting votes or undertaking any propaganda for or against any candidate or any political party within the polling place or within thirty (30) meters thereof (Sec. 261 (cc) (6), OEC);<br>Selling, furnishing, offering, buying, serving or taking intoxicating liquor, etc. (Sec. 261 (dd) (1), OEC);<br>Opening of booths or stalls for the sale, etc., of wares, merchandise or refreshments, within thirty (30) meters radius from the polling place. (Sec. 261 (dd) (2) OEC);<br>Giving and/or accepting free transportation, food, |

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|  |  | drinks and things of value (Sec. 89, OEC);<br>Holding of fairs, cockfights, boxing, horse races or similar sports. (Sec. 261 (dd) (3), OEC). |
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Resolution No. 9772, on the other hand, provided that copies of R.A. No. 10360 be posted<sup>11</sup> and that information campaigns be conducted prior to the plebiscite.<sup>12</sup>

On 9 October 2013, Cagas filed the present petition for prohibition. Cagas cites three causes of action:

1. COMELEC is without authority or legal basis to AMEND or MODIFY Section 46 of Republic Act No. 10360 by mere MINUTE RESOLUTION because it is only CONGRESS who can validly amend, repeal [sic] or modify existing laws, thus COMELEC [sic] act in suspending the holding of a plebiscite is unconstitutional;<sup>13</sup>
2. COMELEC is without authority or legal basis to hold a plebiscite this coming October 28, 2013 for the creation of the Province of Davao Occidental because Section 46 of Republic Act [No.] 10360 has already lapsed;<sup>14</sup> and
3. Petitioner has no other adequate remedy to prevent the COMELEC from holding the Plebiscite on October 28, 2013 for the creation of the Province of Davao Occidental except through the issuance of Temporary Restraining Order and Preliminary Injunction because COMELEC had already commenced the preparation for holding of the Plebiscite for the creation of the Province of [Davao] Occidental synchronizing it with that of the Barangay and SK elections this coming October 28, 2013.<sup>15</sup>

On 17 October 2013, we issued a Resolution requiring respondents COMELEC, represented by its Chairperson, Hon. Sixto Brillantes, Jr., and

<sup>11</sup> SEC. 3. *Posting of Republic Act No. 10360.* - At least ten (10) days prior to the day of the plebiscite, the Election Officers (EOs) of the whole Province of Davao del Sur, except Davao City, shall cause the posting of [a] copy of Republic Act No. 10360 in the bulletin boards of their respective City/Municipal Halls.

<sup>12</sup> SEC. 4. *Information campaign.* - An objective information campaign shall be conducted in the whole of Davao del Sur, except Davao City, to commence on September 28, 2013 to October 26, 2013. During this period, civic, professional, religious, business, youth and any other similar organizations may hold symposia, public rallies or meetings to enlighten the voters of Davao del Sur on the plebiscite issues, and to campaign for or against the ratification of Republic Act No. 10360. Constructive discussions and debates shall be encouraged and the voters assured of the freedom to voice their opinion regarding the issues, advantages or disadvantages thereof.

The EOs in the Province of Davao del Sur, under the supervision of the Provincial Election Supervisor of Davao del Sur and the Regional Election Director of Region XI, in coordination with the local government officials, mass media, NGOs and religious groups shall convene barangay assemblies or “*pulong-pulong*” for such constructive discussions and debates.

<sup>13</sup> *Rollo*, p. 10.

<sup>14</sup> *Id.* at 14-15.

<sup>15</sup> *Id.* at 17.

the Provincial Election Officer of Davao del Sur, represented by Atty. Ma. Febes Barlaan, to file their comment to Cagas' petition not later than 21 October 2013.

The respondents, through the Office of the Solicitor General (OSG), filed their comment on 21 October 2013. The OSG raises the following arguments:

1. The 1987 Constitution does not fix the period to hold a plebiscite for the creation of a local government unit;
2. There was logistical and financial impossibility for the COMELEC to hold a plebiscite at a mere two months' notice;
3. Legislative intent is for R.A. No. 10360 to be implemented;
4. Public interest demands that the plebiscite be conducted; and
5. The COMELEC did not abuse its discretion in issuing the questioned Resolutions.<sup>16</sup>

In this Resolution, we simplify the issues raised by the parties, thus: Did the COMELEC act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when it resolved to hold the plebiscite for the creation of the Province of Davao Occidental on 28 October 2013, simultaneous with the Barangay Elections?

We answer in the negative.

***The COMELEC's power to administer elections includes the power to conduct a plebiscite beyond the schedule prescribed by law.***

The conduct of a plebiscite is necessary for the creation of a province. Sections 10 and 11 of Article X of the Constitution provide that:

Sec. 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

Sec. 11. The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executive and legislative assemblies. The jurisdiction of the metropolitan authority that will thereby be created shall be limited to basic services requiring coordination.

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<sup>16</sup> Comment, p. 4.



Section 10, Article X of the Constitution emphasizes the direct exercise by the people of their sovereignty. After the legislative branch's enactment of a law to create, divide, merge or alter the boundaries of a local government unit or units, the people in the local government unit or units directly affected vote in a plebiscite to register their approval or disapproval of the change.<sup>17</sup>

The Constitution does not specify a date as to when plebiscites should be held. This is in contrast with its provisions for the election of members of the legislature in Section 8, Article VI<sup>18</sup> and of the President and Vice-President in Section 4, Article VII.<sup>19</sup> The Constitution recognizes that the power to fix the date of elections is legislative in nature, which is shown by the exceptions in previously mentioned Constitutional provisions, as well as in the election of local government officials.<sup>20</sup>

Section 10 of R.A. No. 7160 furnishes the general rule as to when a plebiscite may be held:

Sec. 10. *Plebiscite Requirement.* – No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixed another date.

Section 46 of R.A. No. 10360, however, specifically provides that the plebiscite for the creation of the province of Davao Occidental be held within 60 days from the effectivity of R.A. No. 10360, or until 6 April 2013.<sup>21</sup> Cagas claims that R.A. No. 10360 “did not confer express or implied power to COMELEC to exercise discretion when the plebiscite for the creation of the Province of Davao Occidental will be held. On the contrary, said law provides a specific period when the COMELEC should conduct a plebiscite.”<sup>22</sup> Cagas views the period “60 days from the effectivity” in R.A. No. 10360 as absolute and mandatory; thus, COMELEC has no legal basis to hold a plebiscite on 28 October 2013.

<sup>17</sup> See *Miranda v. Hon. Aguirre*, 373 Phil. 386 (1999).

<sup>18</sup> Section 8, Article VI of the Constitution reads: “Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May.”

<sup>19</sup> The third paragraph of Section 4, Article VII of the Constitution reads: “Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.”

<sup>20</sup> Section 3, Article X of the Constitution reads in part: “The Congress shall enact a local government code which shall provide for the x x x election x x x of local officials x x x.” In turn, Section 42 of R.A. No. 7160, or the Local Government Code of 1991, reads: “*Date of Election.* – Unless otherwise provided by law, the elections for local officials shall be held every three (3) years on the second Monday of May.”

<sup>21</sup> *Supra* note 4.

<sup>22</sup> *Rollo*, p. 12.

The Constitution, however, grants the COMELEC the power to “[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall.”<sup>23</sup> The COMELEC has “exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections.”<sup>24</sup> The text and intent of Section 2(1) of Article IX(C) is to give COMELEC “all the *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.”<sup>25</sup>

Sections 5 and 6 of Batas Pambansa Blg. 881 (B.P. Blg. 881) the Omnibus Election Code, provide the COMELEC the power to set elections to another date.

*Sec. 5. Postponement of election.* - When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.

*Sec. 6. Failure of election.*- If, on account of *force majeure*, violence, terrorism, fraud, or other analogous causes the election in any polling place has not been held on the date fixed, or had been suspended before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect.

The tight time frame in the enactment, signing into law, and effectivity of R.A. No. 10360 on 5 February 2013, coupled with the subsequent conduct of the National and Local Elections on 13 May 2013 as mandated by the Constitution, rendered impossible the holding of a plebiscite for the creation of the province of Davao Occidental on or before 6 April 2013 as scheduled in R.A. No. 10360. We also take judicial notice of the COMELEC’s burden

<sup>23</sup> 1987 CONSTITUTION, ART. IX-C, SEC. 2(1).

<sup>24</sup> B.P. Blg. 881, Sec. 52.

<sup>25</sup> *Pangandaman v. COMELEC*, 377 Phil. 297, 312 (1999).

in the accreditation and registration of candidates for the Party-List Elections.<sup>26</sup> The logistic and financial impossibility of holding a plebiscite so close to the National and Local Elections is unforeseen and unexpected, a cause analogous to *force majeure* and administrative mishaps covered in Section 5 of B.P. Blg. 881. The COMELEC is justified, and did not act with grave abuse of discretion, in postponing the holding of the plebiscite for the creation of the province of Davao Occidental to 28 October 2013 to synchronize it with the Barangay Elections.

The OSG illustrated the COMELEC's predicament in this manner:

To be sure, at the time R.A. No. 10360 was approved, the COMELEC had to deliver and accomplish the following, among many others, for the May 2013 National and Local Elections:

1. Preparation of the Project of Precincts indicating the total number of established precincts and the number of registered voters per precincts [sic] in a city or municipality.
2. Constitution of the Board of Election Inspectors including the precincts where they will be assigned and the barangay where the precinct is located.
3. Inspection, verification and sealing of the Book of Voters containing the approved voter registration records of registered voters in the particular precinct which must be inspected, verified, and sealed.
4. Finalization and printing of the computerized voters list for use on election day.
5. The preparation, bidding, printing and distribution of the voters' information.
6. Configuration, testing, and demonstration of the PCOS machines and their distribution to the different precincts.

To comply with the 60-day period to conduct the plebiscite then, as insisted, petitioner would have the COMELEC hold off all of its above tasks. If COMELEC abandoned any of its tasks or did not strictly follow the timetable for the accomplishment of these tasks then it could have put in serious jeopardy the conduct of the May 2013 National and Local Elections. The COMELEC had to focus all its attention and concentrate all its manpower and other resources on its preparation for the May 2013 National and Local Elections, and to ensure that it would not be derailed, it had to defer the conduct of all plebiscites including that of R.A. No. 10360.

Parenthetically, for the COMELEC to hold the plebiscite for the ratification of R.A. No. 10360 within the fixed period, it would have to reconfigure for said purpose some of the PCOS machines that were

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<sup>26</sup> See the consolidated cases under *Atong Paglaum, Inc. v. COMELEC*, G.R. No. 203766, 2 April 2013, 694 SCRA 477.

already configured for the May 2013 National and Local Elections; or in the alternative, conduct the plebiscite manually.

However, conducting the plebiscite manually would require another set of ballots and other election paraphernalia. Besides, another set of election materials would also require additional logistics for printing, checking, packing, and deployment thereof. Lest it be forgotten, that all of these things should undergo public bidding.

Since the plebiscite would be a separate undertaking, the COMELEC would have to appoint separate sets of board[s] of election inspectors, tellers, and other personnel to canvass the result of the plebiscite – all of which would have entailed further cost for the COMELEC whose budget had already been overly stretched to cover the May 2013 National and Local Elections.

More importantly, it bears stressing that the COMELEC was not given a special budget to defray the cost of the plebiscite. In fact, the COMELEC had to take ₱11 million from its savings and from the Barangay Elections budget to finance the plebiscite to ratify R.A. No. 10360 on October 28, 2013.

The COMELEC's questioned Resolution then directing the holding of the plebiscite for the ratification of R.A. No. 10360 simultaneously with the Barangay Elections was not an abuse of its discretion, as alleged, but simply an exercise of prudence, because as the COMELEC itself noted, doing so "will entail less expense than holding it separately." [p. 9, Resolution No. 13-0926, Annex B, Petition.]

The determination of the feasibility of holding a plebiscite on a given date is within the competence and discretion of the COMELEC. Petitioner cannot therefore simply insist that the COMELEC should have complied with the period specified in the law when doing so would be virtually impossible under the circumstances.<sup>27</sup>

This Court has rejected a too literal interpretation of election laws in favor of holding free, orderly, honest, peaceful and credible elections.

In *Pangandaman v. COMELEC*,<sup>28</sup> Lining Pangandaman (Pangandaman) filed a petition for *certiorari* and prohibition with prayer for temporary restraining order and preliminary injunction to challenge the Omnibus Order of the COMELEC *En Banc*. The COMELEC *En Banc* ordered the conduct of special elections in certain municipalities in Lanao del Sur on 18 and 25 July 1998, or more than 30 days after the failure of elections on 11 May 1998. Like Cagas, Pangandaman insisted on a strict compliance with the schedule of the holding of special elections. Pangandaman asserted that COMELEC's authority to call a special election was limited by the 30-day period and that Congress had the power to call a special election after the 30<sup>th</sup> day. We admonished Pangandaman against a

<sup>27</sup> Comment, pp. 7-9.

<sup>28</sup> *Supra* note 25.

too literal interpretation of the law, and protected COMELEC's powers against the straitjacketing by procedural rules.

It is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution and that the spirit, rather than the letter of the law determines its construction; for that reason, a statute must be read according to its spirit and intent. Thus, a too literal interpretation of the law that would lead to absurdity prompted this Court to —

x x x [a]dmonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose and defeat the intention of its authors. That intention is usually found not in 'the letter that killeth but in the spirit that vivifieth' x x x

Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." There can hardly be any doubt that the text and intent of this constitutional provision is to give COMELEC all the *necessary* and *incidental* powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.

Pursuant to this intent, this Court has been liberal in defining the parameters of the COMELEC's powers in conducting elections. As stated in the old but nevertheless still very much applicable case of *Sumulong v. COMELEC*:

Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions x x x. There are no ready made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of laws relative to the conduct of election x x x we must not by any excessive zeal take away from the Commission on Elections that initiative which by constitutional and legal mandates properly belongs to it.

More pointedly, this Court recently stated in *Tupay Loong v. COMELEC, et al.*, that "[O]ur elections are not conducted under laboratory conditions. In running for public offices, candidates do not follow the rules of Emily Post. *Too often, COMELEC has to make snap judgments to meet unforeseen circumstances that threaten to subvert the will of our voters. In the process, the actions of COMELEC may not be impeccable, indeed, may even be debatable.* We cannot, however, engage

in a swivel chair criticism of these actions often taken under very difficult circumstances.”

The purpose of the governing statutes on the conduct of elections

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x x x [i]s to protect the integrity of elections to suppress all evils that may violate its purity and defeat the will of the voters. The purity of the elections is one of the most fundamental requisites of popular government. The Commission on Elections, by constitutional mandate, must do everything in its power to secure a fair and honest canvass of the votes cast in the elections. In the performance of its duties, *the Commission must be given a considerable latitude in adopting means and methods that will insure the accomplishment of the great objective for which it was created* — to promote free, orderly, and honest elections. *The choice of means taken by the Commission on Elections, unless they are clearly illegal or constitute grave abuse of discretion, should not be interfered with.*

Guided by the above-quoted pronouncement, the legal compass from which the COMELEC should take its bearings in acting upon election controversies is the principle that “*clean elections control the appropriateness of the remedy.*”

In fixing the date for special elections the COMELEC should see to it that: 1.] it should not be later than thirty (30) days after the cessation of the cause of the postponement or suspension of the election or the failure to elect; and, 2.] it should be reasonably close to the date of the election not held, suspended or which resulted in the failure to elect. The first involves a question of fact. The second *must be determined in the light of the peculiar circumstances of a case.* Thus, the holding of elections within the next few months from the cessation of the cause of the postponement, suspension or failure to elect may still be considered “reasonably close to the date of the election not held.”

In this case, the COMELEC can hardly be faulted for tardiness. The dates set for the special elections were actually the *nearest* dates from the time total/partial failure of elections was determined, which date fell on July 14, 1998, the date of promulgation of the challenged Omnibus Order. Needless to state, July 18 and 25, the dates chosen by the COMELEC for the holding of special elections *were only a few days away from the time a total/partial failure of elections was declared and, thus, these were “dates reasonably close” thereto*, given the prevailing facts herein. Furthermore, it bears stressing that in the exercise of the plenitude of its powers to protect the integrity of elections, the COMELEC should not and must not be straitjacketed by procedural rules in the exercise of its discretion to resolve election disputes.<sup>29</sup>

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<sup>29</sup>

Id. at 312-314. Citations omitted. Italics in the original.

In *Sambarani v. COMELEC*,<sup>30</sup> petitioners were candidates for punong barangay in different barangays in Lanao del Sur. There was a failure of elections in the 15 July 2002 Synchronized Barangay and Sangguniang Kabataan (SK) Elections, and special elections were set on 13 August 2002 in the affected barangays. No special elections were held on 13 August 2002, so petitioners asked the COMELEC to declare a failure of elections in their barangays and to hold another special election. The COMELEC, however, directed the Department of Interior and Local Government to appoint the Barangay Captains, Barangay *Kagawads*, SK Chairmen, and SK *Kagawads* in the affected barangays. The COMELEC stated that it is no longer in a position to call for another special election since Section 6 of the Omnibus Election Code provides that “special elections shall be held on a date reasonably close to the date of the election not held, but not later than thirty days after cessation of the cause of such postponement.”

We directed the COMELEC to conduct special elections and stated that the deadline cannot defeat the right of suffrage of the people.

The prohibition on conducting special elections after thirty days from the cessation of the cause of the failure of elections is not absolute. It is directory, not mandatory, and the COMELEC possesses residual power to conduct special elections even beyond the deadline prescribed by law. The deadline in Section 6 cannot defeat the right of suffrage of the people as guaranteed by the Constitution. The COMELEC erroneously perceived that the deadline in Section 6 is absolute. The COMELEC has broad power or authority to fix other dates for special elections to enable the people to exercise their right of suffrage. The COMELEC may fix other dates for the conduct of special elections when the same cannot be reasonably held within the period prescribed by law.<sup>31</sup>

It is thus not novel for this Court to uphold the COMELEC’s broad power or authority to fix other dates for a plebiscite, as in special elections, to enable the people to exercise their right of suffrage. The COMELEC thus has residual power to conduct a plebiscite even beyond the deadline prescribed by law. The date 28 October 2013 is reasonably close to 6 April 2013, and there is no reason why the plebiscite should not proceed as scheduled by the COMELEC. The OSG points out that public interest demands that the plebiscite be conducted.

At this point, there is nothing more for the COMELEC to do except to hold the plebiscite as scheduled on October 18, [sic] 2013. In fact, the COMELEC already scheduled the shipment and deployment of the election paraphernalia to all the precincts in Davao del Sur, except Davao City.

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<sup>30</sup> 481 Phil. 661 (2004).

<sup>31</sup> Id. at 671-672.

The COMELEC had put so much work and effort in its preparation for the conduct of the plebiscite. A substantial amount of funds have also been defrayed for the following election undertakings:

1. Bidding for election paraphernalia;
2. Cleansing of voters' registration list;
3. Preparation, bidding, printing and distribution of the voters' information;
4. Preparation and completion of the projects of precincts;
5. Printing of ballots;
6. Constitution of the Board of Election Inspectors;
7. Training and assignment of personnel; [and]
8. Information dissemination / campaign.

To demand now that the COMELEC desist from holding the plebiscite would be an utter waste of time, effort and resources, not to mention its detriment to public interest given that public funds are involved.<sup>32</sup>

In election law, the right of suffrage should prevail over mere scheduling mishaps in holding elections or plebiscites. Indeed, Cagas' insistence that only Congress can cure the alleged legal infirmity in the date of holding the plebiscite for the creation of the Province of Davao Occidental fails in light of the absence of abuse of discretion of the COMELEC. Finally, this Court finds it unacceptable to utilize more of our taxpayers' time and money by preventing the COMELEC from holding the plebiscite as now scheduled.

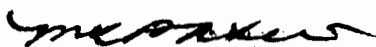
**WHEREFORE**, we **DISMISS** the petition for lack of merit.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice


**WE CONCUR:**




**MARIA LOURDES P. A. SERENO**  
Chief Justice

<sup>32</sup> Comment, pp. 11-12.





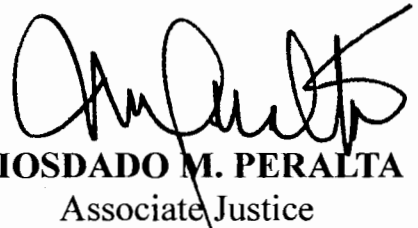
**PRESBITERO J. VELASCO, JR.**  
Associate Justice



**TÉRESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**ARTURO D. BRION**  
Associate Justice




**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS R. BERSAMIN**  
Associate Justice

(On official leave)  
**MARIANO C. DEL CASTILLO**  
Associate Justice



**ROBERTO A. ABAD**  
Associate Justice

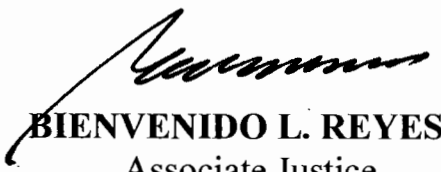


**MARTIN S. VILLARAMA, JR.**  
Associate Justice

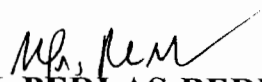
(On official leave)  
**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice




**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

## **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**

Chief Justice