



Republic of the Philippines
Supreme Court
Manila

EN BANC

ALROBEN J. GOH,
Petitioner,

G.R. No. 212584

Present:

- versus -

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

HON. LUCILO R. BAYRON and
COMMISSION ON ELECTIONS,
Respondents.

Promulgated:

November 25, 2014

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DECISION

CARPIO, J.:

The Case

This case is a Petition for *Certiorari*¹ with prayer for the issuance of a preliminary mandatory injunction filed by Alroben J. Goh (Goh) assailing Resolution Nos. 9864 and 9882 issued by the Commission on Elections (COMELEC).

* On leave.

** On official leave.

¹ Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure. *Rollo*, pp. 3-42.

Resolution No. 9864,² promulgated on 1 April 2014, affirmed the recommendation of the Office of the Deputy Executive Director (ODEDO). The ODEDO found the petition seeking the recall (recall petition) of Mayor Lucilo R. Bayron (Mayor Bayron), the incumbent mayor of Puerto Princesa City, sufficient in form and substance. However, Resolution No. 9864 suspended all proceedings under the recall petition because the Financial Services Department (FSD) of the COMELEC raised an issue as to the funding of the entire process of recall. The COMELEC Chairman and all COMELEC Commissioners³ signed Resolution No. 9864 without any separate opinion.

Resolution No. 9882,⁴ promulgated on 27 May 2014, suspended any proceeding relative to recall as the recall process, as stated in said Resolution, does not have an appropriation in the General Appropriations Act of 2014 (2014 GAA)⁵ and the 2014 GAA does not provide the COMELEC with legal authority to commit public funds for the recall process. Unlike Resolution No. 9864, five COMELEC Commissioners signed Resolution No. 9882 with a comment or a separate opinion.⁶

The Facts

On 17 March 2014, Goh filed before the COMELEC a recall petition, docketed as SPA EM No. 14-004 (RCL),⁷ against Mayor Bayron due to loss of trust and confidence brought about by “gross violation of pertinent provisions of the Anti-Graft and Corrupt Practices Act, gross violation of pertinent provisions of the Code of Conduct and Ethical Standards for Public Officials, Incompetence, and other related gross inexcusable negligence/dereliction of duty, intellectual dishonesty and emotional immaturity as Mayor of Puerto Princesa City.”

On 1 April 2014, the COMELEC promulgated Resolution No. 9864. Resolution No. 9864 found the recall petition sufficient in form and substance, but suspended the funding of any and all recall elections until the resolution of the funding issue. We reproduce the text of Resolution No. 9864 below:

WHEREAS, the Commission is mandated to enforce all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall;

² Id. at 47-48.

³ The COMELEC En Banc was composed of Sixto S. Brillantes, Jr., Chairman, with Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Parreño, and Luie Tito F. Guia, Commissioners.

⁴ *Rollo*, pp. 49-55.

⁵ Republic Act No. 10633.

⁶ The five Commissioners are Lucenito N. Tagle, Christian Robert S. Lim, Maria Gracia Cielo M. Padaca, Al A. Parreño, and Luie Tito F. Guia.

⁷ *Rollo*, pp. 67-74.

WHEREAS, a petition for the recall of Mayor Lucilo Bayron of Puerto Princesa City, Palawan, is pending before this Commission, and has been reviewed by the [ODEDO] and submitted to the *en banc* through a Memorandum dated 24 March 2014, to wit:

After review of the reports/findings of EO Gapulao, the ODEDO recommends to the Commission the issuance of a Resolution certifying to the SUFFICIENCY of the petition for recall of Mayor Lucilo R. Baron [sic] of Puerto Princesa City, Palawan.

WHEREAS, Section 75 of the Local Government Code (LGC) of 1991 provides for the source of funding for the conduct of recall elections, to wit:

Section 75. Expenses Incident to Recall Elections. – All expenses incidental to recall elections shall be borne by the COMELEC. For this purpose, there shall be included in the annual General Appropriations Act a contingency fund at the disposal of the COMELEC for the conduct of recall elections.

WHEREAS, Section 31 of COMELEC Resolution No. 7505 decrees that all expenses incident to recall elections shall be borne by the Commission, pursuant to Section 75 of the LGC.

WHEREAS, a Memorandum from the Finance Services Department dated 24 March 2014 raised an issue as to the funding of the *entire* process of recall;

NOW THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Local Government Code, as amended, the Omnibus Election Code, Republic Act No. 9244, and other elections laws, RESOLVED, as it hereby RESOLVES, to AFFIRM the recommendation of the ODEDO as to the SUFFICIENCY of the Recall Petition filed against Mayor Lucilo R. Bayron of Puerto Princesa City, Palawan.

RESOLVED FURTHER, considering that the FSD has raised an issue as to the funding of any and all recall elections, any proceeding in furtherance thereof, *including the verification process*, is hereby SUSPENDED until the funding issue shall have been resolved.

SO ORDERED.⁸

On 28 April 2014, Mayor Bayron filed with the COMELEC an Omnibus Motion for Reconsideration and for Clarification⁹ which prayed for the dismissal of the recall petition for lack of merit.

⁸ Id. at 47-48.

⁹ Id. at 107-148.

On 19 May 2014, Goh filed a Comment/Opposition (To the 27 April 2014 Omnibus Motion for Reconsideration and for Clarification) with Motion to Lift Suspension¹⁰ which prayed for the COMELEC's denial of Mayor Bayron's 27 April 2014 Omnibus Motion, as well as to direct COMELEC's authorized representative to immediately carry out the publication of the recall petition against Mayor Bayron, the verification process, and the recall election of Mayor Bayron.

On 27 May 2014, COMELEC promulgated Resolution No. 9882, as follows:

This refers to the petition for recall against Mayor Lucilo Bayron of the City of Puerto Princesa, Province of Palawan. In Resolution No. 9864, while the Commission *en banc* affirmed the recommendation of the Office of the Deputy Executive Director for Operations (ODEDO) as to the sufficiency of the Recall Petition, it suspended further proceedings on recall until the funding issue raised by the Finance Services Department shall have been resolved.

The power of recall for loss of confidence is exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs [Footnote 1 - Sec. 69 of the Local Government Code]. The exercise of this power is subject to the following limitations provided for by law: (a) any elective local official may be the subject of a recall election only once during his term of office for loss of confidence; and (b) [n]o recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular election [Footnote 2 - Section 74 of the Local Government Code]. Because of the cost implications involved, the achievability of pursuing a recall proceeding to its conclusion will depend on the availability of funds at the disposal of the Commission on Elections (the Commission).

The conduct of recall is one of several constitutional mandates of the Commission. Unfortunately, it cannot now proceed with the conduct of recall elections as it does not have an appropriation or legal authority to commit public funds for the purpose.

I. All expenses incident to Recall elections shall be for the account of the Commission.

It is important to note that the Local Government Code (LGC) specifically provides for the expenses in the conduct of recall elections, *to wit*:

“SECTION 75. *Expenses Incident to Recall Elections.* - All expenses incident to recall elections shall be borne by the COMELEC. For this purpose, there shall be included in the annual General Appropriations Act a contingency fund at the disposal of the COMELEC for the conduct of recall election.”

¹⁰ Id. at 169-191.

Hence, the Commission is mandated to shoulder ALL expenses relative to the conduct of recall elections. Expenses in recall elections, unlike the other exercises mandated by the [C]onstitution to be administered by the Commission, is specifically treated in a special law – the LGC. Section 75 of the LGC likewise requires the annual General Appropriations Act (GAA) to include a contingency fund at the disposal of the Commission for the conduct of recall elections. This leads us to the crucial question: does the 2014 GAA [Footnote 3 - Republic Act No. 10633] include such contingency fund in the Commission's appropriations?

II. The Commission does not have an appropriation or line item budget to serve as a contingency fund for the conduct of recall elections under the 2014 GAA.

A careful review of the Commission's budget under the 2014 GAA reveals that it does not have any appropriation or line item budget (line item) to serve as a contingency fund for the conduct of recall elections. While **the Commission has a line item for the "Conduct and supervision of elections, referenda, recall votes and plebiscites" under the Program category of its 2014 budget in the amount of Php1,401,501,000.00**, the said amount cannot be considered as "*an appropriation made by law*" as required by the Constitution [Footnote 4 – Art. VI, Section 29 (1)] nor a contingent fund provided under the LGC considering that the said line item is legally intended to finance the basic continuing staff support and administrative operations of the Commission such as salaries of officials and employees as well as essential office maintenance and other operating expenses. As such, it cannot be used for the actual conduct of recall elections.

Under the Revised Administrative Code, an appropriation may be used only for the specific purpose for which they are appropriated, *to wit*:

"SECTION 32. Use of Appropriated Funds. - All moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated."

In prior years, including election years such as 2007, 2010 and 2013, the Commission had a line item for the "*Conduct and Supervision of Elections and other Political Exercises*" under the Program category of its budget. However, the said line item was never utilized for the actual conduct of any elections or other political exercises including recall elections. Again, the said line item has been consistently spent for the basic continuing staff support and administrative operations of the Commission. This is because on top of the line item for the "*Conduct and Supervision of Elections and other Political Exercises*" under the Program category, separate line items were provided by Congress for the conduct of the "*National and Local Elections*," "*SK and Barangay Elections*" as well as "*Overseas Absentee Voting*" under the Locally Funded Projects (Project) category of the Commission's 2007, 2010 and 2013 budget, *to wit*:

Year/ GAA	Item Budget under Program	Amount	Item Budget under Projects	Amount
2007	Conduct and Supervision of Elections and Other Political Exercises	₱957,294,000	National and Local Elections	₱5,128,969,000
			SK and Barangay Elections	₱2,130,969,000
			Overseas Absentee Voting	₱238,421,000
2010	Conduct and Supervision of Elections and Other Political Exercises	₱1,101,072,000	Automated National and Local Elections	₱5,216,536,000
			SK and Barangay Elections	₱3,241,535,000
			Overseas Absentee Voting	₱188,086,000
2013	Conduct and Supervision of Elections and Other Political Exercises	₱1,452,752,000	Synchronized National, Local and ARMM Elections	₱4,585,314,000
			SK and Barangay Elections	₱1,175,098,000
			Overseas Absentee Voting	₱105,036,000

Thus, all expenses relative to the actual conduct of elections were charged against the specific line items for “*National and Local Elections*,” “*SK and Barangay Elections*” and “*Overseas Absentee Voting*” under the Locally Funded Projects category and not against the separate line item for the “*Conduct and Supervision of Elections and other Political Exercises*” under the Program category.

This brings us to the relevance of classifying an agency’s budget into two major categories – Programs and Projects. Their definitions are found in the 2014 Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress as required by the Constitution [Footnote 5 - Article VII, Sec. 22]. In the Glossary of Terms attached to the 2014 BESF, a “Program” [Footnote 6 - Page 1015] is defined as “*a homogenous group of activities necessary for the performance of a major purpose for which a government agency is established, for the basic maintenance of the agency’s administrative operations or for the provisions of staff support to agency’s administrative operations or for the provisions of staff support to the agency’s line functions.*” On the other hand, “Projects” are defined as “*[s]pecial agency undertakings which are to be carried out within a definite time frame and which are intended to result [in] some pre-determined measures of goods and services.*”

Moreover, in the Organizational Performance Indicator Framework (OPIF) Reference Guide issued by the Department of Budget and Management (DBM) itself, a “Program” is defined as “*an integrated group of activities that contribute to a particular continuing objective of a department/agency.*” [Footnote 7 - Page 36]

Hence, a budget under the category of “Program” is intended to finance the regular day-to-day activities of the Commission for the continuing basic maintenance of its administrative operations. Those activities are regularly undertaken by the Commission regardless of *whether or not an election or any political exercises are being administered by the Commission*. With respect to budget under the category of “Project”, it is intended to fund the special undertakings or activities of the Commission which are not carried out on a regular day-to-day basis such as the actual administration of elections and other political exercises including recall elections. Hence, it is illegal to proceed with any activity falling within the definition of “Project” by using the budget intended to finance the activities within the scope of “Program.” The only instance when the Constitution allows the budget intended for “Program” to be used for “Project” is when there is a valid augmentation.

Clearly, thus, the Commission’s appropriations in the 2014 GAA does [sic] not include any line item for a contingency fund for the specific purpose of conducting recall elections. In fact, the same has been true for all appropriations of the Commission since 2005.

Allocating funds for the purpose of conducting recall elections would not only be illegal under the Supreme Court ruling in *Brillantes, Jr. v. Commission on Elections* [Footnote 8 – G.R. No. 163193, 15 June 2004], it would likewise, and more importantly, run afoul [of] the prohibition under Article VI, Section 29 (1) of the 1987 Constitution that “*No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.*” The same prohibition is reiterated in the Government Auditing Code of the Philippines [Footnote 9 - Presidential Decree No. 1445].

III. Augmentation is Not Possible.

III. a.) There is no Line Item for Recall Elections in the 2014 GAA.

Article VI, Section 25 (5) of the Constitution empowers the Chairman of the Commission, along with other heads of the Constitutional Departments and Commissions, to augment any item in the general appropriations law, *to wit*:

“No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.”

Clearly, there are three (3) requisites for the valid exercise of the power to augment, *namely*:

1. There must be a law authorizing the Chairman to augment;
2. There must be a deficient existing line item in the general appropriations law to be augmented; and
3. There must be savings on the part of the Commission.

While there is a law authorizing the Chairman to augment a deficient appropriation (*Sec. 67, General Provisions of the 2014 GAA*), there is no existing line item in the Commission's budget for the actual conduct of a recall elections [sic]. Thus, augmentation is not possible in this case.

III. b.) Recall Elections is not one of the Specific Purposes and Priorities for Augmentation under the 2014 GAA.

Granting *arguendo* that the line item for the "Conduct and supervision of elections, referenda, recall votes and plebiscites" under the Program category of the Commission's 2014 budget is also a line item for the conduct of recall elections, still, augmentation cannot be made within the bounds of the law. Under *Sec. 69 of the General Provisions of the 2014 GAA*, there are priorities in the use of savings, and [the conduct of] recall elections is not one of them, *to wit*:

"Sec. 69. Priority in the Use of Savings. In the use of savings, priority shall be given to the augmentation of the amounts set aside for the payment of compensation, year-end bonus and cash gift, retirement gratuity, terminal leave benefits, old age pension of veterans and other personnel benefits authorized by law, and those expenditure items authorized in agency special provisions and in other sections of the General Provisions in this Act."

Most importantly, under the 2014 GAA's Special Provisions for the Commission, the Chairman's power to augment is *limited to specific purposes only, which purposes do not include recall elections, to wit*:

"2. Use of Savings. The COMELEC, through its Chairperson, is authorized to use savings from its appropriations to cover actual deficiencies incurred for the current year and for the following purposes: (i) printing and/or publication of decisions, resolutions, and training information materials; (ii) repair, maintenance and improvement of central and regional offices, facilities and equipment; (iii) purchase of equipment, books, journals and periodicals; (iv) necessary expenses for the employment of temporary, contractual and casual employees; and (v) payment of extraordinary and miscellaneous expenses, representation and transportation allowances, and other authorized benefits of its officials and employees, subject to

pertinent budgeting, accounting and auditing rules and regulations.”

Notably, the latter restriction aforequoted under the 2014 GAA is new and absent from General Appropriations Acts of previous years. Hence, in the past, the Chairman could augment ANY deficient items in the Commission’s budget. But with the present legislative restrictions, augmentation is limited to certain purposes which, unfortunately, do not include recall elections.

IV. Personal and Criminal Liabilities for Violation of the GAA and the Revised Penal Code.

Not only will the use of the Commission’s current funds for the conduct of recall elections be unconstitutional, it would likewise open the responsible officials to possible personal and criminal liabilities.

Section 17 of the General Provisions of the 2014 GAA provides for the use of the current year’s appropriation and spells out the liability that will be faced by any official or employee who will authorize, allow or permit, as well as those who are negligent in the performance of their duties and functions which resulted in the incurrence of obligations or commitments by the government in violation of the provision of law, *to wit*:

“Sec. 17. Use of the Current Year’s Appropriations. All departments, bureaus and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs shall ensure that appropriations in this Act shall be disbursed only for the purposes authorized herein and incurred during the current year. x x x.

Officials and employees who will authorize, allow or permit, as well as those who are negligent in the performance of their duties and functions which resulted in the incurrence of obligations or commitments by the government in violation of this provision shall be personally liable to the government for the full amount obligated or committed, and subject to disciplinary actions in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292, and to appropriate criminal action under existing laws.”

It should be emphasized that mere utilization of a public fund to any public use other than for which such fund was appropriated by law is considered as a criminal act under Article 220 of the Revised Penal Code even if no damage has resulted to the public, *to wit*:

*“Article 220. Illegal use of public funds or property.
– Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prison*

correccional in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.”

V. The Conduct of Recall Elections may adversely affect the Commission’s preparation’s [sic] for [the] 2016 National and Local Elections.

It should be noted that the instant petition is not the only move for the conduct of recall elections. In fact, another petition is pending for the conduct of recall in the Province of Bulacan. Thus, should the Commission allow the present petition to push through, it is equivalent to opening the floodgates for numerous other recall petitions which will result in multiple counts of violation of the existing appropriation laws. Furthermore, the conduct of several recall elections may adversely affect the ongoing preparations for the conduct of the May 9, 2016 National, Local and ARMM Elections, which the Commission has commenced as far back as December of 2013.

VI. The only Solution is the Enactment of a Law that will Appropriate Funds for the Conduct of Recall Elections.

One solution to the Commission’s predicament on recall is the inclusion in the 2015 GAA of a contingency fund that may be used by the Commission for the conduct of recall elections pursuant to Section 75 of the LGC. Hence, in the Commission’s budget proposal for 2015, the Commission included a budget in the amount of Php321,570,000.00 for possible recall elections in 2015 considering that recall elections can still be conducted up to May of 2015.

An alternative solution is for persons interested in pursuing recall elections to adopt actions that may lead to the passage by Congress of a supplemental (special) appropriations law for the FY 2014 for the conduct of recall elections. The same may be supported by the Commission by certifying that such funds, which are presently lacking, are necessary to defray expenses for the holding of recall elections, pursuant to Section 11, Art. IX(C) of the Constitution.

Relative to this matter, it is unwise to request additional funding from the DBM. Again, Section 29(1), Article VI of the Constitution is clear that the expenditure of public funds must be pursuant to an appropriation made by law. Since only Congress can enact laws [Footnote 10 – Section 1, Article VI, Philippine Constitution], the DBM has no power to set aside funds, more so allot to the Commission said funds, for

an item of expenditure that is not provided in the Commission's appropriations in the 2014 GAA.

It is likewise unwise for the Commission to request the partial use of the One Billion Peso (PHP1,000,000,000.00) Contingent Fund under the 2014 GAA [Footnote 11 - Page 853]. True, Special Provision No. 1 does say that the contingent fund may be used for "new and/or urgent projects and activities that need to be implemented during the year." However, it also says that such fund "shall be administered by the office of the President." Given the circumstances, not a few may interpret the Commission's request to use such fund from the Office of the President as an affront to the independence of this Commission. This may in turn lead some quarters to view any recall process funded by the said Contingent Fund as tainted and biased. Going through with this proposal would do more harm than good.

WHEREFORE, in view of all the foregoing, the Commission RESOLVED, as it hereby RESOLVES, not to continue with any proceedings relative to recall as it does not have a line item budget or legal authority to commit public funds for the purpose. Hence, until a law is passed by Congress appropriating funds for recall elections – either by approving the Commission's budget proposal for FY 2015 or through a supplemental (special) appropriations for FY 2014 – any proceeding relative to the instant petition for recall should be suspended further.

RESOLVED, further, that this Resolution shall be applied consistently to all other petitions for recall now pending or to be pursued by interested parties subsequent hereto.

SO ORDERED.¹¹

Resolution No. 9882 was signed, without comment or separate opinion, by Chairman Sixto S. Brillantes, Jr. and Commissioner Elias R. Yusoph. Commissioner Lucenito N. Tagle voted in favor of the resolution and filed a comment.¹² Commissioner Christian Robert S. Lim concurred in the resolution, with the comment that "malversation should be under Article 217 not 220 [of the Revised Penal Code]."¹³ Commissioners Maria Gracia Cielo M. Padaca,¹⁴ Al A. Parreño,¹⁵ and Luie Tito F. Guia¹⁶ wrote separate opinions.

Commissioner Tagle stated that "in order for the Commission to effectively undertake actions relative to recall petitions, *First*, the budget proposal to Congress for the FY 2015 should contain a specific line item appropriated for the funding of the conduct of recall elections; or *Second*, if

¹¹ Id. at 49-55. Boldfacing and underscoring supplied.

¹² Id. at 64-66.

¹³ Id. at 55.

¹⁴ Id. at 56-57.

¹⁵ Id. at 62-63.

¹⁶ Id. at 58-61.

feasible, we can request a supplemental budget from Congress for the FY 2014 to specifically answer for the funding of recall proceedings.”¹⁷

Commissioner Padaca called for a holistic look of the GAA. She submitted that “the allocation for the Commission in the GAA is primarily geared toward our Constitutional mandate, that is, the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall x x x.”¹⁸ Therefore, the interpretation of the provisions of the GAA should be read with the intent to pursue COMELEC’s mandate. Commissioner Padaca further pointed out that the COMELEC was “able to conduct special elections in the first district of Ilocos Sur in 2011, Zambales in 2012, and a plebiscite for the creation of Davao Occidental in 2013, all of which lack a specific line item in the applicable GAA. The lack of a specific appropriation or line item in the GAA did not deter [COMELEC] from conducting and supervising an electoral exercise that was legally called upon by the people.”¹⁹ However, Commissioner Padaca recognized the limitations set by Section 2 of the 2014 GAA²⁰ on the COMELEC’s use of its savings.

In his separate opinion, Commissioner Parreño agreed with the factual findings of the FSD of the COMELEC and the Office of the Chairman that the budget for the conduct of recall elections was not in the 2014 GAA. He quoted from the 24 March 2014 Memorandum to the FSD which stated that the Department of Budget and Management (DBM) did not include a provision for expenses for recall elections for Fiscal Years 2013 and 2014. The memorandum stated that:

Please be informed that for the FY 2013 and 2014, there is no provision made by the DBM for any expenses for the recall elections. A provision was made only in the previous years in the total amount of ₱1,000,000.00. What was provided for in our FY 2014 budget was the regular expenses for the election activities – regular salaries of field employees and the corresponding expenses for the regular activities of our office.²¹

The Office of the Chairman, on the other hand, submits the COMELEC’s annual budget for the COMELEC En Banc’s approval and directs and supervises the operations and internal administrations of the COMELEC.

Commissioner Guia states that the majority opinion suggests that recall elections can only be funded through a supplemental budget law. He opines that the majority adopts a strict interpretation of the budget law when it states that there is no line item for the conduct of recall elections in the

¹⁷ Id. at 66.

¹⁸ Id. at 56.

¹⁹ Id. at 57.

²⁰ Commissioner Padaca referred to paragraph 2 of the Special Provisions for the COMELEC in the 2014 GAA.

²¹ *Rollo*, pp. 62-63.

2014 GAA. Commissioner Guia proposes a liberal approach: that the 2014 GAA should be construed as merely failing to provide sufficient funds for the actual conduct of recall elections, and not as preventing COMELEC from exercising its constitutional mandate of conducting recall elections. Commissioner Guia's liberal approach to interpreting the budget law makes the remedy of funding recall elections by way of augmenting an existing line item from savings a theoretical possibility. Commissioner Guia, however, recognizes that the GAA's Sec. 69 of the General Provisions and Sec. 2 of the Special Provisions for the COMELEC²² limit the items that can be funded from the COMELEC's savings. He suggests that curative legislation be made to enable COMELEC to perform its constitutional mandate.

Goh filed the present Petition on 6 June 2014.

The Issues

In his Grounds for filing the Petition, Goh stated:

26. Petitioner respectfully moves for (a) the PARTIAL ANNULMENT and REVERSAL of Resolution No. 9864, insofar as the same directed the suspension of further action on the instant Recall Petition, and (b) the ANNULMENT AND REVERSAL of Resolution No. 9882, on the ground that in their issuance, the respondent Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to rule that:

I. THE 2014 GAA PROVIDES FOR AN APPROPRIATION OR LINE ITEM BUDGET TO SERVE AS A CONTINGENCY FUND FOR THE CONDUCT OF RECALL ELECTIONS.

II. THE RESPONDENT COMMISSION MAY LAWFULLY AUGMENT ANY SUPPOSED INSUFFICIENCY IN FUNDING FOR THE CONDUCT OF RECALL ELECTIONS BY UTILIZING ITS SAVINGS.

III. THE PROPER, ORDERLY AND LAWFUL EXERCISE OF THE PROCESS OF RECALL IS WITHIN THE EXCLUSIVE POWER AND AUTHORITY OF THE RESPONDENT COMMISSION.

IV. THE FACTUAL BACKDROP OF THIS CASE DOES NOT WARRANT NOR JUSTIFY THE DEFERMENT OF ALL PROCEEDINGS ON RECALL PETITIONS.

27. Petitioner respectfully submits that an examination of the merits of this case, as well as the applicable laws and entrenched legal precepts on the legal issues presented, will clearly establish an undeniable basis for the reversal of the questioned Resolution Nos. 9864 and 9882.

²²

See footnote 20.

28. Indeed, notwithstanding its finding that the Recall Petition filed by Petitioner Goh is sufficient in form and substance, Respondent Commission nevertheless suspended the holding of a recall election supposedly through lack of funding. Petitioner respectfully submits that the same is a grave abdication and wanton betrayal of the Constitutional mandate of the Respondent Commission and a grievous violation of the sovereign power of the people. What the Resolution Nos. 9864 and 9882 have given with one hand (the affirmation of the sufficiency of the Recall Petition), they have taken away with the other (the funding issue, later claimed the issue of lack funding).²³

In his comment, Mayor Bayron provided the following grounds for the dismissal of the petition:

I. THE 2014 GENERAL APPROPRIATIONS ACT DOES NOT CARRY ANY SPECIFIC PARTICULAR ITEM FOR THE CONDUCT OF RECALL ELECTIONS IN THE CITY OF PUERTO PRINCESA, PROVINCE OF PALAWAN OR ELSEWHERE;

A. The “power of the purse” belongs to the Congress and not with the Commission on Elections;

B. Fiscal autonomy of the Commission on Elections operates within the parameters of the Constitution;

C. There is no particular item for the Conduct of Recall Elections in which to apply the provision on budget augmentation; [and]

D. It is the Commission, in line with the present budget, that has the authority to determine the presence and possibility of augmentation.

II. PROGRAM AND PROJECT HAVE BEEN CLEARLY DIFFERENTIATED BY THE COMMISSION ON ELECTIONS;

III. THE 2014 GENERAL APPROPRIATIONS ACT PRESENTS A SPECIAL PROVISION WHICH WAS ABSENT IN THE PREVIOUS GENERAL APPROPRIATIONS ACT THEREBY FURTHER LIMITING THE COMELEC’S EXERCISE OF AUGMENTATION;

IV. BUDGET CAN STILL BE ALLOCATED BY CONGRESS THROUGH THE ENACTMENT AND PASSAGE OF A 2014 SUPPLEMENTAL BUDGET OR THROUGH THE 2015 GENERAL APPROPRIATIONS ACT;

V. GOVERNMENT FUNDS SHOULD NOT BE SPENT TO SUPPORT ILLEGAL AND PREMATURE INSTITUTION OF RECALL; [and]

²³

Rollo, pp. 11-12.

VI. POLITICS IS A PRACTICAL MATTER, AND POLITICAL QUESTIONS MUST BE DEALT WITH REALISTICALLY.²⁴

The COMELEC, through the Office of the Solicitor General, argued that:

I. RESPONDENT COMELEC EN BANC DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN SUSPENDING PROCEEDINGS RELATIVE TO THE RECALL PETITION FILED AGAINST RESPONDENT MAYOR LUCILO R. BAYRON OF PUERTO PRINCESA CITY.

A. The 2014 GAA does not provide for an appropriation or line item to serve as contingency fund for the conduct of Recall Elections.

B. Any activity falling within the definition of a “Project,” such as Recall Elections, cannot validly proceed by using the budget intended to finance the activities within the scope of “Programs.”

C. Respondent COMELEC may not lawfully utilize its savings to augment any insufficiency in the funding for recall elections.

II. THE RECALL ELECTIONS BEING SOUGHT BY PETITIONER MAY PROCEED ONLY IF A LAW IS ENACTED APPROPRIATING FUNDS THEREFOR.

III. PETITIONER IS NOT ENTITLED TO THE ISSUANCE OF A WRIT OF PRELIMINARY MANDATORY INJUNCTION.²⁵

The Court’s Ruling

We grant the petition. We hold that the COMELEC committed grave abuse of discretion in issuing Resolution Nos. 9864 and 9882. The 2014 GAA provides the line item appropriation to allow the COMELEC to perform its constitutional mandate of conducting recall elections. There is no need for supplemental legislation to authorize the COMELEC to conduct recall elections for 2014.

The COMELEC’s Fiscal Autonomy

The 1987 Constitution expressly provides the COMELEC with the power to “[e]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and **recall**.”²⁶ The 1987 Constitution not only guaranteed the COMELEC’s fiscal autonomy,²⁷

²⁴ Id. at 331-332.

²⁵ Id. at 401-402.

²⁶ Section 2(1), Article IX-C of the 1987 Constitution.

²⁷ Section 5, Article IX-A of the 1987 Constitution provides:

but also granted its head, as authorized by law, to augment items in its appropriations from its savings.²⁸ The 2014 GAA provides such authorization to the COMELEC Chairman.²⁹

The COMELEC’s budget in the 2014 GAA

Goh asserts that the 2014 GAA provided COMELEC with an appropriation for the conduct of recall elections in the total amount of PhP2,735,321,000. As evidence, Goh reproduced the COMELEC’s budget allocation in the 2014 GAA:

	PS	MOOE	CO	TOTAL
PROGRAMS	1,937,544,000	450,937,000		2,388,481,000
General Administration & Support	454,457,000	276,749,000		731,206,000
Operations	1,483,087,000	174,184,000		1,657,275,000
PROJECTS	500,000	120,816,000	225,524,000	346,840,000
Locally-funded Projects	500,000	120,816,000	225,524,000	346,840,000
TOTAL NEW APPRO.	1,938,044,000	571,753,000	225,524,000	2,735,321,000 ³⁰

Goh further pointed out that the COMELEC has PhP1,483,087,000 appropriated under Operations, and that the PhP1,401,501,000 for current operating expenditure is allocated per region as follows:

National Capital Region	74,356,000
Region I – Ilocos	97,350,000

The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

²⁸ Section 25(5), Article VI of the 1987 Constitution provides:
No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

²⁹ Section 67. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, **the Heads of Constitutional Commissions enjoying fiscal autonomy**, and the Ombudsman **are hereby authorized to use savings in their respective appropriations to augment actual deficiencies incurred for the current year in any item of their respective appropriations.** (Boldfacing and underscoring supplied)

³⁰ *Rollo*, p. 18. PS stands for Personal Services, MOOE for Maintenance and Other Operating Expenses, and CO for Capital Outlay.

Region II – Cagayan Valley	69,302,000
Cordillera Administrative Region (CAR)	63,120,000
Region III – Central Luzon	112,896,000
Region IV-A – CALABARZON	183,390,000
Region V – Bicol	92,944,000
Region VI – Western Visayas	23,252,000
Region VII – Central Visayas	108,093,000
Region VIII – Eastern Visayas	106,144,000
Region IX – Zamboanga Peninsula	56,636,000
Region X – Northern Mindanao	76,864,000
Region XI – Davao	51,639,000
Region XII – SOCCSKSARGEN	44,982,000
Region XIII – CARAGA	59,481,000
Autonomous Region in Muslim Mindanao (ARMM)	81,052,000 ³¹

Goh further states that COMELEC’s personnel themselves admitted to the existence of a contingency fund for the lawful conduct of recall elections. Atty. Maria Lea R. Alarkon, Acting Director III of the COMELEC’s FSD, during the 3 September 2013 budget hearing before the Senate’s Subcommittee A of the Committee on Finance, stated:

Your Honors, for the specifics of our MFO [Major Final Output] budget, x x x **conduct and supervision of elections, referenda, recall and plebiscites, 1,527,815,000**; x x x.³² (Emphasis supplied)

Goh also cited an online news article which quoted COMELEC spokesperson James Jimenez saying that “lack of budget (should) not (be) an issue. x x x We always have a ‘standby’ budget for recall, plebiscite, etc.” and adding that the successful holding of any recall elections, referendum or plebiscite is the fundamental mandate of the COMELEC.³³

Finally, Goh presented a letter dated 28 May 2014 from Rep. Isidro T. Ungab, Chairman of the House of Representatives’ Committee on Appropriations, addressed to Hon. Douglas S. Hagedorn, Representative of the Third District of Palawan. The letter stated that “[t]he FY 2014 budget of the COMELEC as authorized in the FY 2014 General Appropriations Act amounts to **₱2,735,321,000, of which ₱1,401,501,000 is appropriated for**

³¹ From www.dbm.gov.ph/wp-content/uploads/GAA/GAA2014/COMELEC/COMELEC.pdf (last accessed 5 November 2014). See *rollo*, p. 18.

³² *Rollo*, pp. 235-236. Annex G of the petition refers to the Certified True Copy of the Transcript of Stenographic Notes taken during the 3 September 2013 hearing of the Proposed Fiscal Year 2014 budget of the Office of the President and the Commission on Elections. The COMELEC’s presentation began on page II-1 and ended on page IV-1. Emphasis supplied.

³³ Id. at 275-276. See <http://www.interaksyon.com/article/84457/recall-petition-vs-puerto-princesa-mayor-affirmed-but-process-on-hold-over-funding-issue> (last accessed 5 November 2014).

the conduct and supervision of elections, referenda, recall votes and plebiscites.”³⁴

The COMELEC, through the Solicitor General, classifies Goh’s assertions as misleading. To illustrate the lack of appropriation or line item for a contingency fund for the conduct of recall elections in the 2014 GAA, the COMELEC countered:

The amount of PhP1,483,087,000 referred to by [Goh] allegedly for the conduct and supervision of election, referenda, recall votes and plebiscites, actually refers to operating expenditures for “Personnel Services,” under the program “Regulation of Elections.”

The amount of PhP1,401,501,000, on the other hand, is the total amount allotted for “Personnel Services” (PhP1,360,975,000) and “Maintenance and Other Operating Expenses” (PhP40,526,000) for Regional Allocation.³⁵

The COMELEC reiterated pertinent portions of Resolution No. 9882,³⁶ thus:

x x x While x x x the Commission has a line item for the “Conduct and supervision of elections, referenda, recall votes and plebiscites” under the Program category of its 2014 budget in the amount of PhP1,401,501,000.00, the said amount cannot be considered as “an appropriation made by law” as required by the Constitution [Footnote 17 – Art. VI, Section 29 (1)] nor a contingent fund provided under the LGC considering that the said line item is legally intended to finance the basic continuing staff support and administrative operations of the Commission such as salaries of officials and employees as well as essential office maintenance and other operating expenses. As such, it cannot be used for the actual conduct of recall elections.

x x x x

In prior years, including election years such as 2007, 2010 and 2013, the Commission had a line item for the “Conduct and Supervision of Elections and other Political Exercises” under the Program category of its budget. However, the said line item was never utilized for the actual conduct of any elections or other political exercises including recall elections. Again, the said line item has been consistently spent for the basic continuing staff support and administrative operations of the Commission. This is because the top of the line item for the “Conduct and Supervision of Elections and other Political Exercises” under the Program category, separate line items were provided by Congress for the conduct of the “National and Local Elections,” “SK and Barangay Elections” as well as “Overseas Absentee Voting” under the Locally Funded Projects (Project) category of the Commission’s 2007, 2010 and 2013 budget, *to wit*:

³⁴ Id. at 277. Emphasis supplied.

³⁵ Id. at 405.

³⁶ Id. at 405-406.

Year/ GAA	Item Budget under Program	Amount	Item Budget under Projects	Amount
2007	Conduct and Supervision of Elections and Other Political Exercises	₱957,294,000	National and Local Elections	₱5,128,969,000
			SK and Barangay Elections	₱2,130,969,000
			Overseas Absentee Voting	₱238,421,000
2010	Conduct and Supervision of Elections and Other Political Exercises	₱1,101,072,000	Automated National and Local Elections	₱5,216,536,000
			SK and Barangay Elections	₱3,241,535,000
			Overseas Absentee Voting	₱188,086,000
2013	Conduct and Supervision of Elections and Other Political Exercises	₱1,452,752,000	Synchronized National, Local and ARMM Elections	₱4,585,314,000
			SK and Barangay Elections	₱1,175,098,000
			Overseas Absentee Voting	₱105,036,000

Despite Resolution No. 9882’s statement about the alleged failure of the 2014 GAA to provide for a line item appropriation for the conduct of recall elections, **we hold that the 2014 GAA actually expressly provides for a line item appropriation for the conduct and supervision of recall elections.** This is found in the Programs category of its 2014 budget, which the COMELEC admits in its Resolution No. 9882 is a “**line item** for the ‘Conduct and supervision of elections, referenda, **recall votes** and plebiscites.’” In addition, one of the specific constitutional functions of the COMELEC is to conduct recall elections. When the COMELEC receives a budgetary appropriation for its “Current Operating Expenditures,” such appropriation includes expenditures to carry out its constitutional functions, including the conduct of recall elections. Thus, in *Socrates v. COMELEC*³⁷ (*Socrates*), recall elections were conducted even without a specific appropriation for recall elections in the 2002 GAA.

In *Socrates*, the COMELEC conducted recall elections for mayor of Puerto Princesa City, Palawan on 24 September 2002. At the time, the COMELEC found no reason to raise any concern as to the funding of the 24 September 2002 recall elections. The COMELEC’s budget in the 2002 GAA provided for the following:

³⁷ 440 Phil. 106 (2002).

New Appropriations, by Program / Project

	Current Operating Expenditures			
	Personal Services	Maintenance and Other Operating Expenses	Capital Outlays	Total
A. PROGRAMS				
I. General Administration and Support				
a. General Administration and Support Services	₱ 171,608,000	₱ 66,201,000		₱ 237,809,000
Sub-total, General Administration and Support	171,608,000	66,201,000		237,809,000
II. Support to Operations				
a. Conduct and Supervision of Elections and Other Political Exercises	6,739,000	7,830,000		14,569,000
b. Legal Services and Adjudication of Election Contests	4,255,000	1,545,000		5,800,000
Sub-total, Support to Operations	10,994,000	9,375,000		20,369,000
III. Operations				
a. Conduct and Supervision of Elections and Other Political Exercises	38,105,000	57,685,000		95,790,000
b. Legal Services and Adjudication of Election Contests	21,629,000	4,776,000		26,405,000
c. Conduct and Supervision of Elections and Other Political Exercises	765,537,000	23,122,000		788,659,000
Sub-total, Operations	825,271,000	85,583,000		910,854,000
Total, Programs	1,007,873,000	161,159,000		1,169,032,000
B. PROJECT(S)				
I. Locally-funded Project(s)				
a. For the modernization of Electoral System			500,000,000	500,000,000
b. Honorarium of Election Registration	24,480,000			24,480,000

Board				
c. For the Holding of Barangay Elections	554,243,000	545,757,000		1,100,000,000
Sub-total, Locally- funded Project(s)	578,723,000	545,757,000	500,000,000	1,624,480,000
Total, Projects	578,723,000	545,757,000	500,000,000	1,624,480,000
TOTAL NEW APPROPRIATIONS	₱1,586,596,000	₱706,916,000	₱500,000,000	₱2,793,512,000

In the 2002 GAA, the COMELEC had PhP910,854,000 appropriated under Operations, and that the PhP788,659,000 for current operating expenditure was allocated per region as follows:

National Capital Region	41,708,000
Region I	57,269,000
Cordillera Administrative Region	34,975,000
Region II	40,813,000
Region III	63,799,000
Region IV	103,689,000
Region V	54,911,000
Region VI	68,236,000
Region VII	62,421,000
Region VIII	61,655,000
Region IX	48,318,000
Region X	57,308,000
Region XI – Davao	45,150,000
Region XII	48,407,000

Under these factual circumstances, we find it difficult to justify the COMELEC’s reasons why it is unable to conduct recall elections in 2014 when the COMELEC was able to conduct recall elections in 2002 despite lack of the specific words “Conduct and supervision of x x x recall votes x x x” in the 2002 GAA. In the 2002 GAA, the phrase “Conduct and supervision of elections and other political exercises” was sufficient to fund the conduct of recall elections. **In the 2014 GAA, there is a specific line item appropriation for the “Conduct and supervision of x x x recall votes x x x.”**

More importantly, the COMELEC admits in its Resolution No. 9882 that the COMELEC has “**a line item** for the ‘Conduct and supervision of elections, referenda, **recall votes** and plebiscites.’” This admission of the COMELEC is a correct interpretation of this specific budgetary appropriation. To be valid, an appropriation must indicate a specific amount

and a specific purpose. However, the purpose may be specific even if it is broken down into different related sub-categories of the same nature. For example, the purpose can be to “conduct elections,” which even if not expressly spelled out covers regular, special, or recall elections. The purpose of the appropriation is still specific – to fund elections, which naturally and logically include, even if not expressly stated, not only regular but also special or recall elections.

The COMELEC’s Savings

Nowhere in the COMELEC’s comment, however, does it dispute the existence of savings. In the transcript of the hearing for the COMELEC’s 2014 budget, the COMELEC estimated to have PhP10.7 billion savings around the end of 2013. However, since the DBM did not include a line budget for certain items, Chairman Brillantes estimated that the PhP10.7 billion savings will be reduced to about PhP2 billion after the COMELEC augments expenses for the purchase of its land, warehouse, building, and the overseas absentee voting. This estimate was made under the assumption that the 2014 GAA will provide a line item budget for the COMELEC’s land, warehouse, building, and the overseas absentee voting.

In his opening remarks before the Senate Committee on Finance, Chairman Brillantes underscored the need for a line item budget for certain items that the COMELEC can subsequently augment based on its savings. Chairman Brillantes was aware that an item without a line budget cannot be funded by savings.

MR. BRILLANTES. 2014 is a non-election year, your Honor. Therefore, the budget that the Commission on Elections would be asking will not really be too much. We, in fact, asked for five billion, which is much, much lower than all of our previous budgets but this has been cut by the DBM to only 2.8.

Now, 2.8 is already acceptable to the Commission on Elections. There are only some slight requests that we are going to ask. Since the 2.8 reduction actually cut off our projects, like we intend to set up our own building and purchase land. All that we are asking is that in previous years we have been given a line budget for one million at least which we can augment based on our savings. All that we ask is that we be given another line item for land, building and warehouse. Even at one million each or two million each and we will take care of the augmentation as we have enough savings which we have tried to accumulate during the past years which we can set up our own land, building and warehouse. So we would request that we realign, not necessarily getting from other agencies, the amount of three million or six million as the case may be, but get it from the same budget that we have so that we will not touch the budget of other agencies. We have special budget for ISSP, and this is at 226 million. We can reduce this to 220 million and put the six million to two million each for land, building and warehouse so we can cover it.

THE CHAIRMAN (SEN. [FRANCIS G.] ESCUDERO). Noted. Noted, Mr. Chairman. Thank you.

MR. BRILLANTES. Yes, Your Honor. In addition to this let me just point out, Your Honor, that this year, we are holding the barangay elections this coming October 28. While we did, in fact, ask for a budget last year for the 2013 elections for barangay, we were only given by Congress as well as the President 1.1 billion. What we intend [for] our budget for the October 28 barangay elections is based on our computations, 3.4 billion. So on the basis of that, we are going to have to set aside from our own savings 2.3 billion to cover for the entire barangay elections. So we are setting aside 2.3 billion from our own savings so that we can cover the 3.4 billion that we expect to actually spend for the October 2013 barangay elections, meaning that the 1.1 plus 2.3 would be the 3.4. Therefore, that would cut off into our savings but we are willing to sacrifice for this.

With this, Your Honor, we are ready to present our budget which is not really much. It is only 2.8 billion.

Now, we are also – we would like also to mention by way of an addition [sic] final statement, Your Honor. We were given zero budget for the COAV [Committee on Overseas Absentee Voting], the overseas voting, zero budget. We can understand that there has been some, well, reservations in Congress as well as the President because of the poor performance in the COAV. However, there is a new law now which requires the establishment of an office for the overseas voting. And this new law provides that the coverage is supposed to allocate a certain amount for the appropriation for this new office for COAV. However, this law was passed after DBM had already submitted its budget to Congress and therefore it is not allocated. It is not provided for under the submitted budget.

Now, we have some – we can provide for some amounts again for COAV but we would need at least another line item for this no matter how big. We were asking for about 60 million which is really not much. We can take it out from our own savings but we have to have a line item also for this and then we would ask that Congress provide – as provided for by the new law that new amounts be given to us, even another 60 million, so we can cover our preparations for the the overseas voting for the 2016.
x x x.

x x x x

THE CHAIRMAN (SEN. ESCUDERO). x x x. Second, Mr. Chairman, you were mentioning a while ago the savings of the COMELEC. May we know how much exactly is the savings of the COMELEC? Kasi kaya n'yo palang punuan yung kulang ng barangay election. Kaya n'yo palang magpagawa ng building.

MR. BRILLANTES. Tama ho iyon. Kaya ho namin kaya lang masasaktan ho yung bibilhin naman naming lupa at saka building. Kasi ho 2.3 ang iaabono namin sa barangay. That is why if you will notice, as soon as we finished the May elections, May 2013 elections, I immediately

announced that we were praying na kung pwede i-postpone na natin yung barangay saka SK.

THE CHAIRMAN (SEN. ESCUDERO). I heard that but how?

MR. BRILLANTES. Pero sinabi ng Presidente tuloy, so tuloy tayo kako. Because we only have 1.1 billion budget and we need about three billion plus, so we know it will cut on our savings. Yung savings ho namin pag titgnan ho, mahaba hong kwento yung savings namin. Pag makikita ninyo yung notes ninyo, nag-uumpisa sa 10.7 billion, parang napakalaki. Pero hindi ho totoo iyon. Ten point seven billion, marami hong natatangal diyan. Natanggalan kami ng 2.3 sa barangay, marami pa ho kaming utang na hindi binabayaran, sa Smartmatic meron pa –

THE CHAIRMAN (SEN. ESCUDERO). Wala pa ho tayo duon. Sa ngayon lang ho, magkano ho yung savings ng COMELEC?

MR. BRILLANTES. Ngayon ho siguro mga 2B.

THE CHAIRMAN (SEN. ESCUDERO). Binawas n'yo na yung 2.4 sa barangay.

MR. BRILLANTES. Tanggal ng lahat po yung barangay, yung mga utang na dapat naming bayaran, obligasyon. At saka iyon ni-reserve namin, in-obligate na namin para sa lupa at saka sa building ...

THE CHAIRMAN (SEN. ESCUDERO). Sa building.

MR. BRILLANTES. ... which is about three.

x x x x

THE CHAIRMAN (SEN. ESCUDERO). Now, two more points, Mr. Chairman. On the use of savings within the NEP as provided for, nakalagay ho dito yung reuse of savings ninyo for repair, for printing, for purchase of equipment. Ang sinasabi niyo po, ang kailangan may provision. Are you asking for a provision in the special provisions to allow you to use savings for your building or do you want an item or is it the same?

MR. BRILLANTES. We need a line item for it, Your Honor, because we had some debates with then – of the Senate President, who was then the Committee Finance chairman during previous proceedings...

THE CHAIRMAN (SEN. ESCUDERO). Na?

MR. BRILLANTES. ... na meron – bumibili na ho kami ng lupa, nakapag-down payment na nga kami ng 200 million, pero wala pala kaming line budget for purchase of land.

THE CHAIRMAN (SEN. ESCUDERO). But was there a use of savings provisions similar to what we have in the proposed 2014 budget in 2013?

MR. BRILLANTES. Meron ho kami, yeah, we have the savings.

THE CHAIRMAN (SEN. ESCUDERO). May use of savings provision din?

MR. BRILLANTES. Yes, we can use to augment but there has to be a line budget. We cannot augment if it is zero. Yun ang naging argument nun. So we ask for the Committee on Finance then for a one million kuwan, kami na ang bahalang mag-augment. Binigyan naman kami for 2013 for the land at saka warehouse. Binigyan kami tigwa-one million, so we can augment. But we did not have time to work on it ngayong 2013 because of the elections at saka meron pa hong barangay. So we might have to make – apply this in 2014 ...

THE CHAIRMAN (SEN. ESCUDERO). For that matter –

MR. BRILLANTES. ... If we don't have any line item now, we might have a problem in 2014.

THE CHAIRMAN (SEN. ESCUDERO). For that matter, pwede rin naman piso po yun, 'di ba? Pareho lang naman. It's the same.

MR. BRILLANTES. Pwede rin ho. Pero sinasabi nga namin –

THE CHAIRMAN (SEN. ESCUDERO). All you need is an item, right?

MR. BRILLANTES. Sina-suggest ko nga ho kanina sa opening statement ko, meron kami dun sa ISSP na 226 million...

THE CHAIRMAN (SEN. ESCUDERO). Yun na lang din ang pagkunan.

MR. BRILLANTES. ... yung six million na lang ang tanggalin, gawin na lang 220, kasya na yun dun sa ISSP namin, bigyan na lang kami ng tigto-two million dun sa six, hindi kami kukuha sa ibang agencies, sa amin din.

THE CHAIRMAN (SEN. ESCUDERO). Within the agency din?

MR. BRILLANTES. Yes, para hindi ho tayo magkaproblema.

THE CHAIRMAN (SEN. ESCUDERO). That's for two items, right?

MR. BRILLANTES. Yes.

THE CHAIRMAN (SEN. ESCUDERO). Two or three items?

MR. BRILLANTES. Actually, four ho yun, tatlo sa –

THE CHAIRMAN (SEN. ESCUDERO). Land, building –

MR. BRILLANTES. Land, building and warehouse, tapos yung overseas kasama pa ho.

THE CHAIRMAN (SEN. ESCUDERO). Pang-apat yung OAV?

MR. BRILLANTES. Pang-apat ho yun.³⁸

*The COMELEC's Alleged Lack of Authority
to Augment the "Project" "Recall Elections" from Savings*

Despite the PhP2 billion to PhP10.7 billion savings existing in the COMELEC's coffers, the COMELEC asserts that it cannot legally fund the exercise of recall elections. The power to augment from savings lies dormant until authorized by law.³⁹ Flexibility in the use of public funds operates only upon legislative fiat.

x x x However, to afford the heads of the different branches of the government and those of the constitutional commissions considerable flexibility in the use of public funds and resources, the constitution allowed the enactment of a law authorizing the transfer of funds for the purpose of augmenting an item from savings in another item in the appropriation of the government branch or constitutional body concerned. The leeway granted was thus limited. The purpose and conditions for which funds may be transferred were specified, i.e. transfer may be allowed for the purpose of augmenting an item and such transfer may be made only if there are savings from another item in the appropriation of the government branch or constitutional body.⁴⁰

The COMELEC cited the following provisions in the 2014 GAA to justify its lack of authority to augment expenses for the conduct of recall elections from its existing savings:

Special Provisions for the COMELEC

2. Use of Savings. **The COMELEC, through its Chairperson, is hereby authorized to use savings from its appropriations to cover actual deficiencies incurred for the current year** and for the following purposes: (i) printing and/or publication of decisions, resolutions, and training information materials; (ii) repair, maintenance and improvement of central and regional offices, facilities and equipment; (iii) purchase of equipment, books, journals and periodicals; (iv) necessary expenses for the employment of temporary, contractual and casual employees; and (v) payment of extraordinary and miscellaneous expenses, representation and transportation allowances, and other authorized benefits of its officials and employees, subject to pertinent budgeting, accounting and auditing rules and regulations.

³⁸ Rollo, pp. 220-223, 254-256, 267-270.

³⁹ *Brillantes, Jr. v. COMELEC*, 476 Phil. 294, 334 (2004) citing *Gonzales v. Macaraig, Jr.*, G.R. No. 87636, 19 November 1990, 191 SCRA 452, 470.

⁴⁰ *Demetria v. Hon. Alba*, 232 Phil. 222, 229 (1987).

General Provisions in the 2014 GAA

Sec. 67. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, **the Heads of Constitutional Commissions enjoying fiscal autonomy**, and the Ombudsman **are hereby authorized to use savings in their respective appropriations to augment actual deficiencies incurred for the current year in any item of their respective appropriations.**

Sec. 68. Meaning of Savings and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

Sec. 69. Priority in the Use of Savings. In the use of savings, priority shall be given to the augmentation of the amounts set aside for the payment of compensation, year-end bonus and cash gift, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personnel benefits authorized by law, **and those expenditure items authorized in agency special provisions** and in other sections of the General Provisions in this Act. (Boldfacing and underscoring supplied)

Commissioner Guia, in his Separate Opinion, stressed the disconnection between the COMELEC's mandate and the lack of a line budget item for the conduct of recall elections.

At this point let it be stated that there is a provision in the GAA limiting the items that can be funded from realignment of savings. See Section 69 of the General Provisions and Section 2 of the Special Provision for COMELEC in the 2014 GAA. Providing for the conduct of recall votes is not one of them. This limitation effectively establishes a clash between the COMELEC's constitutional mandate as an independent constitutional body to administer recall elections and the power of Congress to appropriate public funds.

This clash can simply be avoided by a curative legislation that would enable COMELEC to perform its constitutional mandate while at the same time recognizing the power of Congress to allocate public funds. Unless there are other lawful means by which the conduct of recall elections can be funded, COMELEC's hands are tied by the way the GAA is worded. The ball is now in the hands of Congress.⁴¹

Resolution No. 9882 proposed alternative sources for funding recall elections:

One solution to the Commission's predicament on recall is the inclusion in the 2015 GAA of a contingency fund that may be used by the Commission for the conduct of recall elections pursuant to Section 75 of the LGC. Hence, in the Commission's budget proposal for 2015, the Commission included a budget in the amount of Php321,570,000.00 for possible recall elections in 2015 considering that recall elections can still be conducted up to May of 2015.

An alternative solution is for persons interested in pursuing recall elections to adopt actions that may lead to the passage by Congress of a supplemental (special) appropriations law for the FY 2014 for the conduct of recall elections. The same may be supported by the Commission by certifying that such funds, which are presently lacking, are necessary to defray expenses for the holding of recall elections, pursuant to Section 11, Art. IX(C) of the Constitution.⁴²

There is no clash between the COMELEC and Congress. **We reiterate that the 2014 GAA provides a line item appropriation for the COMELEC's conduct of recall elections.** Since the COMELEC now admits that it does not have sufficient funds from its current line item appropriation for the "Conduct and supervision of x x x recall votes x x x" to conduct an actual recall election, then there is therefore an **actual deficiency** in its operating funds for the current year. This is a situation that allows for the exercise of the COMELEC Chairman's power to augment actual deficiencies in the item for the "Conduct and supervision of x x x recall votes x x x" in its budget appropriation.

The COMELEC, in Resolution No. 9882, admitted the existence of a line item appropriation for the "Conduct and supervision of x x x **recall votes** x x x":

A careful review of the Commission's budget under the 2014 GAA reveals that it does not have any appropriation or line item budget (line item) to serve as a contingency fund for the conduct of recall elections. While the Commission has a line item for the "*Conduct and supervision of elections, referenda, recall votes and plebiscites*" under the Program category of its 2014 budget in the amount of Php1,401,501,000.00, the said amount cannot be considered as "*an appropriation made by law*" as required by the Constitution [Footnote 4 – Art. VI, Section 29 (1)] nor a contingent fund provided under the LGC considering that the said line

⁴¹ *Rollo*, p. 61.

⁴² *Id.* at 54.

item is legally intended to finance the basic continuing staff support and administrative operations of the Commission such as salaries of officials and employees as well as essential office maintenance **and other operating expenses**. As such, it cannot be used for the actual conduct of recall elections. (Emphasis supplied)

However, contrary to the COMELEC's assertion, the appropriations for personnel services and maintenance and **other operating expenses** falling under "Conduct and supervision of elections, referenda, **recall votes** and plebiscites" constitute a line item which can be augmented from the COMELEC's savings to fund the conduct of recall elections in 2014. The conduct of recall elections requires only operating expenses, not capital outlays. The COMELEC's existing personnel in Puerto Princesa are the same personnel who will evaluate the sufficiency of the recall petitions and conduct the recall elections.⁴³

Moreover, the line item appropriation for the "Conduct and supervision of x x x recall votes x x x" in the 2014 GAA is sufficient to fund recall elections. There is no constitutional requirement that the budgetary appropriation must be loaded in "contingent funds." The Congress has plenary power to lodge such appropriation in current operating expenditures.

Going back to the circumstances of the 2002 recall elections in Puerto Princesa, the 2002 GAA provided for the following:

⁴³ Sections 70 and 71 of the Local Government Code of 1991, Republic Act No. 7160, read in pertinent part:

Section 70. *Initiation of the Recall Process.* – x x x
(d) x x x x

(1) A written petition for recall duly signed before the election registrar or his representative, and in the presence of a representative of the petitioner and a representative of the official sought to be recalled and, and in a public place in the province, city, municipality, or barangay, as the case may be, shall be filed with the COMELEC through its office in the local government unit concerned. The COMELEC or its duly authorized representative shall cause the publication of the petition in a public and conspicuous place for a period of not less than ten (10) days nor more than twenty (20) days, for the purpose of verifying the authenticity and genuineness of the petition and the required percentage of voters.

(2) Upon the lapse of the aforesaid period, the COMELEC or its duly authorized representative shall announce the acceptance of candidates to the position and thereafter prepare the list of candidates which shall include the name of the official sought to be recalled.

Section 71. *Election on Recall.* – Upon the filing of a valid resolution or petition for recall with the appropriate local office of the COMELEC, the Commission or its duly authorized representative shall set the date of the election on recall, which shall not be later than thirty (30) days after the filing of the resolution or petition for recall in the case of the barangay, city, or municipal officials and forty-five (45) days in the case of provincial officials. The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon.

1. Special Audit. The appropriations herein authorized for the Commission for registration, plebiscite, referendum and election purposes shall be used exclusively for the purpose for which these are intended. Special Audit shall be undertaken by the Commission on Audit (COA) on all expenses for printing jobs, materials and paraphernalia to be used for registration, plebiscite, referendum and election purposes. Copies of the COA report shall be furnished the Legislature within one month after such audit.

2. Augmentation of the Appropriations for Barangay Elections. The appropriations authorized herein for the holding of barangay elections may be augmented by COMELEC savings not exceeding Three Hundred Million Pesos (₱300,000,000.00) if upon implementation or subsequent evaluation, the needed resources for the holding of said election is determined to be deficient.

3. Appropriations for Programs and Specific Activities. The amounts herein appropriated for the programs of the agency shall be used specifically for the following activities in the indicated amounts and conditions: x x x.

General Provisions in the 2002 GAA

Sec. 51. Modification of Expenditure Components. Unless specifically authorized in this Act, no change or modification shall be made in the expenditure items authorized in this Act and other appropriations laws unless in cases of augmentations from savings in appropriations as authorized under Section 25(5), Article VI of the 1987 Philippine Constitution.

53. Use of Savings. The President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, **the Heads of Constitutional Commissions** under Article IX of the 1987 Constitution, the Ombudsman, and the Chairman of the Commission on Human Rights **are hereby authorized to augment any item in this Act for their respective offices from savings in other items of their respective appropriations.**

Sec. 54. Meaning of Savings and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized, or arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay.

Augmentation implies the existence in this Act of an item, project, activity, or purpose with an appropriation which upon implementation or subsequent evaluation of needed resources is determined to be deficient. In no case, therefore, shall a non-existent item, project, activity, purpose or object of expenditure be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

Sec. 55. Priority in the Use of Savings. In the use of savings, priority shall be given to the augmentation of the amounts set aside for compensation, year-end bonus and cash gift, retirement gratuity, terminal leave benefit, old-age pension of veterans and other personnel benefits authorized by law, **and those expenditure items authorized in agency Special Provisions** and in Section 16 and in other Sections of the General Provisions of this Act. (Boldfacing and underscoring supplied)

We thus find unnecessary the COMELEC's protests regarding the difference between "Projects" and "Programs" for their failure to allocate funds for any recall process in 2014.

x x x The constitutional test for validity is not how itemized the appropriation is down to the project level but whether the purpose of the appropriation is specific enough to allow the President to exercise his line-item veto power. Section 23, Chapter 4, Book VI of the Administrative Code provides a **stricter requirement** by mandating that there must be a corresponding appropriation for each program and for each project. A project is a component of a program which may have several projects. A program is equivalent to the specific purpose of an appropriation. An item of appropriation for school-building is a program, while the specific schools to be built, being the **identifiable outputs** of the program, are the projects. **The Constitution only requires a corresponding appropriation for a specific purpose or program, not for the sub-set of projects or activities.**⁴⁴ (Emphasis supplied)

Considering that there is an existing line item appropriation for the conduct of recall elections in the 2014 GAA, we see no reason why the COMELEC is unable to perform its constitutional mandate to "enforce and administer all laws and regulations relative to the conduct of x x x recall."⁴⁵ Should the funds appropriated in the 2014 GAA be deemed insufficient, then the COMELEC Chairman may exercise his authority to augment such line item appropriation from the COMELEC's existing savings, as this augmentation is expressly authorized in the 2014 GAA.

WHEREFORE, the petition is **GRANTED**.

We **PARTIALLY REVERSE** and **SET ASIDE** Resolution No. 9864 insofar as it directed the suspension of any and all proceedings in the recall petition. We **REVERSE** and **SET ASIDE** Resolution No. 9882, and **DIRECT** the Commission on Elections to immediately carry out the recall elections of Mayor Lucilo R. Bayron of Puerto Princesa City, Palawan in

⁴⁴ Emphasis in the last sentence supplied. Concurring opinion of J. Carpio in the consolidated cases under *Belgica v. Ochoa, Jr.*, G.R. No. 208566, 19 November 2013, 710 SCRA 1, 228-229, citing Section 2(12) and (13), Chapter 1, Book VI, Administrative Code of 1987.

SECTION 2. *Definition of Terms.* – When used in this Book:

x x x x

(12) "Program" refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established.

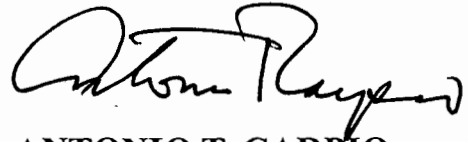
(13) "Project" means a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output.

⁴⁵ Section 2(1), Article IX-C, 1987 Constitution.


accordance with the provisions of the Local Government Code and COMELEC Resolution No. 7505.


This Decision is immediately executory.


SO ORDERED.


ANTONIO T. CARPIO
Associate Justice

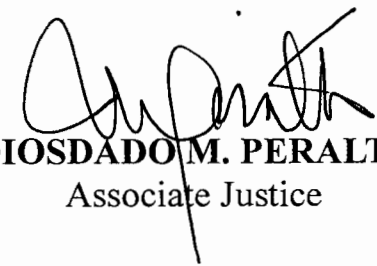
WE CONCUR:

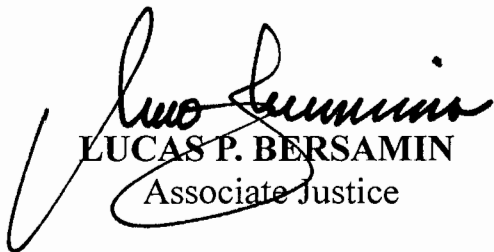

MARIA LOURDES P. A. SERENO
Chief Justice


PRESBITERO J. VELASCO, JR.
Associate Justice

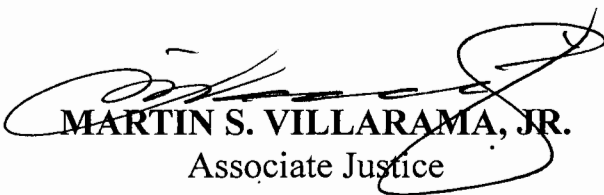

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


(On leave)
ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

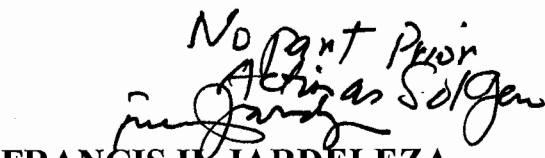

JOSE PORTUGAL BEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

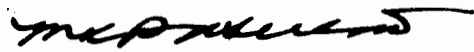
(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

*No part Prior
Acting Sol Gen*

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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