

**SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS.  
COMMISSION ON ELECTIONS, ENRIQUE T. GARCIA AND CATALINO  
A. CALIMBAS, RESPONDENTS.***G.R. No. 125416. September 26, 1996*

Ponente: PANGANIBAN, J.

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The 1987 Constitution is unique in many ways. For one thing, it institutionalized people power in law-making. Learning from the bitter lesson of completely surrendering to Congress the sole authority to make, amend or repeal laws, the present Constitution concurrently vested such prerogatives in the electorate by expressly recognizing their residual and sovereign authority to ordain legislation directly through the concepts and processes of initiative and of referendum.

In this Decision, this Court distinguishes referendum from initiative and discusses the practical and legal implications of such differences. It also sets down some guidelines in the conduct and implementation of these two novel and vital features of popular democracy, as well as settles some relevant questions on jurisdiction -- all with the purpose of nurturing, protecting and promoting the people's exercise of direct democracy.

In this action for certiorari and prohibition, petitioner seeks to nullify the respondent Commission on Elections' Ruling dated April 17, 1996 and Resolution No. 2848 promulgated on June 27, 1996[1] denying petitioner's plea to stop the holding of a local initiative and referendum on the proposition to recall Pambayang Kapasyahan Blg. 10, Serye 1993, of the Sangguniang Bayan of Morong, Bataan.

**The Facts**

On March 13, 1992, Congress enacted Republic Act No. 7227 (The Bases Conversion and Development Act of 1992), which among others, provided for the creation of the Subic Special Economic Zone, thus:

"Sec. 12. Subic Special Economic Zone. - Subject to the concurrence by resolution of the Sangguniang Panlungsod of the City of Olongapo and the Sangguniang Bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the Office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the zone as provided herein." (Underscoring supplied)

RA 7227 likewise created petitioner to implement the declared national policy of converting the Subic military reservation into alternative productive uses.[2] Petitioner was organized with an authorized capital stock of P20

billion which was fully subscribed and fully paid up by the Republic of the Philippines with, among other assets, "(a)ll lands embraced, covered and defined in Section 12 hereof, as well as permanent improvements and fixtures upon proper inventory not otherwise alienated, conveyed, or transferred to another government agency." [3]

On November 24, 1992, the American navy turned over the Subic military reservation to the Philippine government. Immediately, petitioner commenced the implementation of its task, particularly the preservation of the seaports, airports, buildings, houses and other installations left by the American navy.

In April 1993, the Sangguniang Bayan of Morong, Bataan passed a Pambayang Kapasyahan Bilang 10, Serye 1993, expressing therein its absolute concurrence, as required by said Sec. 12 of RA 7227, to join the Subic Special Economic Zone. On September 5, 1993, the Sangguniang Bayan of Morong submitted Pambayang Kapasyahan Bilang 10, Serye 1993 to the Office of the President.

On May 24, 1993, respondents Garcia, Calimbas and their companions filed a petition with the Sangguniang Bayan of Morong to annul Pambayang Kapasyahan Blg. 10, Serye 1993. The petition prayed for the following:

"I. Bawiin, nulipikahin at pawalang-bisa ang Pambayang Kapasyahan Blg. 10 Serye 1993 ng Sangguniang Bayan para sa pag-anib ng Morong sa SSEFZ na walang kundisyon.

II. Palitan ito ng isang Pambayang kapasiyahan na aanib lamang ang Morong sa SSEFZ kung ang mga sumusunod na kondisyones ay ipagkakaloob, ipatutupad at isasagawa para sa kapakanan at interes ng Morong at Bataan:

(A) Ibalik sa Bataan ang 'Virgin Forests' -- isang bundok na hindi nagagalaw at punong-puno ng malalaking punong-kahoy at iba't-ibang halaman.

(B) Ihiwalay ang Grande Island sa SSEFZ at ibalik ito sa Bataan.

(K) Isama ang mga lupain ng Bataan na nakapaloob sa SBMA sa pagkukuenta ng salaping ipinagkaloob ng pamahalaang national o 'Internal Revenue Allotment' (IRA) sa Morong, Hermosa at sa Lalawigan.

(D) Payagang magtatag rin ng sariling 'special economic zones' ang bawat bayan ng Morong, Hermosa at Dinalupihan.

(E) Ibase sa laki ng kanya-kanyang lupa ang pamamahagi ng kikitain ng SBMA.

(G) Ibase rin ang alokasyon ng pagbibigay ng trabaho sa laki ng nasabing mga lupa.

(H) Pabayaang bukas ang pinto ng SBMA na nasa Morong ng 24 na oras at bukod dito sa magbukas pa ng pinto sa hangganan naman ng Morong at Hermosa upang magkaroon ng pagkakataong umunlad rin ang mga nasabing bayan, pati na rin ng iba pang bayan ng Bataan.

(I) Tapusin ang pagkokonkreto ng mga daang Morong-Tala-Orani at Morong-Tasig-Dinalupihan para sa kabutihan ng mga taga-Bataan at tuloy makatulong sa pangangalaga ng mga kabundukan.

(J) Magkakaroon ng sapat na representasyon sa pamunuan ng SBMA ang Morong, Hermosa at Bataan."

The Sangguniang Bayan of Morong acted upon the petition of respondents Garcia, Calimbas, et al. by promulgating Pambayang Kapasyahan Blg. 18, Serye 1993, requesting Congress of the Philippines to amend certain provisions of R.A. No. 7227, particularly those concerning the matters cited in items (A), (B), (K), (E) and (G) of private respondents' petition. The Sangguniang Bayan of Morong also informed respondents that items (D) and (H) had already been referred to and favorably acted upon by the government agencies concerned, such as the Bases Conversion Development Authority and the Office of the President.

Not satisfied, and within 30 days from submission of their petition, herein respondents resorted to their power of

initiative under the Local Government Code of 1991,[4] Sec. 122 paragraph (b) of which provides as follows:

"Sec. 122. Procedure in Local Initiative. -

x x x x x x x x

(b) If no favorable action thereon is taken by the sanggunian concerned, the proponents, through their duly authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the sanggunian concerned.

x x x x x x x x."

On July 6, 1993, respondent Commission En Banc in Comelec Resolution No. 93-1623 denied the petition for local initiative by herein private respondents on the ground that the subject thereof was merely a resolution (pambayang kapasyahan) and not an ordinance. On July 13, 1993, public respondent Comelec En Banc (thru Comelec Resolution no. 93-1676) further directed its Provincial Election Supervisor to hold action on the authentication of signatures being solicited by private respondents.

On August 15, 1993, private respondents instituted a petition for certiorari and mandamus[5] before this Court against the Commission on Elections and the Sangguniang Bayan of Morong, Bataan, to set aside Comelec Resolution No. 93-1623 insofar as it disallowed the conduct of a local initiative to annul Pambayang Kapasyahan Bilang 10, Serye 1993, and Comelec Resolution No. 93-1676 insofar as it prevented the Provincial Election Supervisor of Bataan from proceeding with the authentication of the required number of signatures in support of the initiative and the gathering of signatures.

On February 1, 1995, pursuant to Sec. 12 of RA 7227, the President of the Philippines issued proclamation No. 532 defining the metes and bounds of the SSEZ. Said proclamation included in the SSEZ all the lands within the former Subic Naval Base, including Grande Island and that portion of the former naval base within the territorial jurisdiction of the Municipality of Morong.

On June 18, 1996, respondent Comelec issued Resolution No. 2845, adopting therein a "Calendar of Activities for local referendum on certain municipal ordinance passed by the Sangguniang Bayan of Morong, Bataan", and which indicated, among others, the scheduled referendum Day (July 27, 1996, Saturday). On June 27, 1996, the Comelec promulgated the assailed Resolution No. 2848 providing for "the rules and guidelines to govern the conduct of the referendum proposing to annul or repeal Kapasyahan Blg. 10, Serye 1993 of the Sangguniang Bayan of Morong, Bataan".

On July 10, 1996, petitioner instituted the present petition for certiorari and prohibition contesting the validity of Resolution No. 2848 and alleging, inter alia, that public respondent "is intent on proceeding with a local initiative that proposes an amendment of a national law. x x x"

#### The Issues

The petition[6] presents the following "argument":

"Respondent Commission on Elections committed grave abuse of discretion amounting to lack of jurisdiction in scheduling a local initiative which seeks the amendment of a national law."

In his Comment, private respondent Garcia claims that (1) petitioner has failed to show the existence of an actual case or controversy; (2) x x x petitioner seeks to overturn a decision/judgment which has long become final and executory; (3) x x x public respondent has not abused its discretion and has in fact acted within its jurisdiction; (and) (4) x x x the concurrence of local government units is required for the establishment of the Subic Special

Economic Zone."

Private respondent Calimbas, now the incumbent Mayor of Morong, in his Reply (should be Comment) joined petitioner's cause because "(a)fter several meetings with petitioner's Chairman and staff and after consultation with legal counsel, respondent Calimbas discovered that the demands in the petition for a local initiative/referendum were not legally feasible." [7]

The Solicitor General, as counsel for public respondent, identified two issues, as follows:

"1. Whether or not the Comelec can be enjoined from scheduling/conducting the local initiative proposing to annul Pambayang Kapasyahan Blg. 10, Serye 1993 of the Sangguniang Bayan of Morong, Bataan.

2. Whether or not the Comelec committed grave abuse of discretion in denying the request of petitioner SBMA to stop the local initiative."

On July 23, 1996, the Court heard oral argument by the parties, after which, it issued the following resolution:

"The Court Resolved to (1) GRANT the Motion to Admit the Attached Comment filed by counsel for private respondent Enrique T. Garcia, dated July 22, 1996 and (2) NOTE the: (a) Reply (should be comment) to the petition for certiorari and prohibition with prayer for temporary restraining order and/or writ of preliminary injunction, filed by counsel for respondent Catalino Calimbas, dated July 22, 1996; (b) Separate Comments on the petition, filed by: (b-1) the Solicitor General for respondent Commission on Elections dated July 19, 1996 and (b-2) counsel for private respondent Enrique T. Garcia, dated July 22, 1996 and (c) Manifestation filed by counsel for petitioner dated July 22, 1996.

At the hearing of this case this morning, Atty. Rodolfo O. Reyes appeared and argued for petitioner Subic Bay Metropolitan Authority (SBMA) while Atty. Sixto Brillantes for private respondent Enrique T. Garcia, and Atty. Oscar L. Karaan for respondent Catalino Calimbas. Solicitor General Raul Goco, Assistant Solicitor General Cecilio O. Estoesta and Solicitor Zenaida Hernandez-Perez appeared for respondent Commission on Elections with Solicitor General Goco arguing.

Before the Court adjourned, the Court directed the counsel for both parties to INFORM this Court by Friday, July 26, 1996, whether or not Commission on Elections would push through with the initiative/referendum this Saturday, July 27, 1996.

Thereafter, the case shall be considered SUBMITTED for resolution.

At 2:50 p.m. July 23, 1996, the Court received by facsimile transmission an Order dated also on July 23, 1996 from the respondent Commission on Elections En Banc inter alia 'to hold in abeyance the scheduled referendum (initiative) on July 27, 1996 pending resolution of G.R. No. 125416.' In view of this Order, the petitioner's application for a temporary restraining order and/or writ of preliminary injunction has become moot and academic and will thus not be passed upon by this Court at this time. Puno, J., no part due to relationship. Bellosillo, J., is on leave."

After careful study of and judicious deliberation on the submissions and arguments of the parties, the Court believes that the issues may be restated as follows:

(1) Whether this petition "seeks to overturn a decision/judgment which has long become final and executory"; namely G.R. No. 111230, Enrique Garcia, et al. vs. Commission on Elections, et al.;

(2) Whether the respondent Comelec committed grave abuse of discretion in promulgating and implementing its Resolution No. 2848 which "govern(s) the conduct of the referendum proposing to annul or repeal Pambayang Kapasyahan Blg. 10, Serye 1993 of the Sangguniang Bayan of Morong, Bataan;" and

(3) Whether the questioned local initiative covers a subject within the powers of the people of Morong to

enact; i.e., whether such initiative "seeks the amendment of a national law."

#### First Issue: Bar by Final Judgment

Respondent Garcia contends that this Court had already ruled with finality in *Enrique T. Garcia, et al. vs. Commission on Elections, et. al.*[8] on "the very issue raised in (the) petition: whether or not there can be an initiative by the people of Morong, Bataan on the subject proposition -- the very same proposition, it bears emphasizing, the submission of which to the people of Morong, Bataan is now sought to be enjoined by petitioner x x x".

We disagree. The only issue resolved in the earlier Garcia case is whether a municipal resolution as contra-distinguished from an ordinance may be the proper subject of an initiative and/or referendum. We quote from our said Decision:[9]

"In light of this legal backdrop, the essential issue to be resolved in the case at bench is whether Pambayang Kapasyahan Blg. 10, serye 1993 of the Sangguniang Bayan of Morong, Bataan is the proper subject of an initiative. Respondents take the negative stance as they contend that under the Local Government Code of 1991 only an ordinance can be the subject of initiative. They rely on Section 120, Chapter 2, Title XI, Book I of the Local Government Code of 1991 which provides: 'Local Initiative Defined. -- Local initiative is the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance.'

We reject respondent's narrow and literal reading of the above provision for it will collide with the Constitution and will subvert the intent of the lawmakers in enacting the provisions of the Local Government of 1991 on initiative and referendum.

The Constitution clearly includes not only ordinances but resolutions as appropriate subjects of a local initiative. Section 32 of Article VI provides in luminous language: 'The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress, or local legislative body x x x'. An act includes a resolution. Black defines an acts 'an expression of will or purpose . . . it may denote something done . . . as a legislature, including not merely physical acts, but also decrees, edicts, laws, judgement, resolves, awards and determination x x x.' It is basic that a law should be construed in harmony with and not in violation of the Constitution. In line with this postulates, we held in *In Re Guarina* that if there is doubt or uncertainly as to the meaning of the legislative, if the words or provisions are obscure, or if the enactment is fairly susceptible of two or more construction, that interpretations will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language used.' "

Moreover, we reviewed our rollo in said G.R. No. 111230 and we found that the sole issue presented by the pleadings was the question of "whether or not a Sangguniang Bayan Resolution can be the subject of a valid initiative or referendum".[10]

In the present case, petitioner is not contesting the propriety of municipal resolution as the form by which these two new constitutional prerogatives of the people may validly exercised. What is at issue here is whether Pambayang Kapasyahan Blg. 10, Serye 1993, as worded, is sufficient in form and substance for submission to the people for their approval; in fine, whether the Comelec acted properly and juridically in promulgating and implementing Resolution No. 2848.

#### Second Issue: Sufficiency of Comelec Resolution No. 2848

The main issue in this case may be re-started thus: Did respondent Comelec commit grave abuse of discretion in promulgating and implementing Resolution No. 2848?

We answer the question in the affirmative.

To begin with, the process started by private respondents was an INITIATIVE but respondent Comelec made preparations for a REFERENDUM only. In fact, in the body of the Resolution[11] as reproduced in the footnote below the word "referendum" is repeated at least 27 times, but "initiative" is not mentioned at all. The Comelec labeled the exercise as a "Referendum"; the counting of votes was entrusted to a "Referendum Committee"; the documents were called "referendum returns"; the canvassers, "Referendum Board of Canvassers" and the ballots themselves bore the description "referendum". To repeat, not once was the word "initiative" used in said body of Resolution No. 2848. And yet, this exercise is unquestionably an INITIATIVE.

There are statutory and conceptual demarcations between a referendum and an initiative. In enacting the "Initiative and Referendum Act,[12] Congress differentiated one term from the other, thus:

(a) "Initiative" is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose.

There are three (3) systems of initiative, namely:

a.1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;

a.2. Initiative on statutes which refers to a petition proposing to enact a national legislation; and

a.3. Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance.

(b) "Indirect initiative" is exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action.

(c) "Referendum" is the power of the electorate to approve or reject a legislation through an election called for the purpose. It may be of two classes, namely:

c.1. Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and

c.2. Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies.

Along these statutory definitions, Justice Isagani A. Cruz[13] defines initiative as the "power of the people to propose bills and laws, and to enact or reject them at the polls independent of the legislative assembly." On the other hand, he explains that referendum "is the right reserved to the people to adopt or reject any act or measure which has been passed by a legislative body and which in most cases would without action on the part of electors become a law." The foregoing definitions, which are based on Black's[14] and other leading American authorities, are echoed in the Local Government Code (RA 7160) substantially as follows:

"SEC. 120. Local Initiative Defined. -- Local Initiative is the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance.

"SEC. 126. Local Referendum Defined. -- Local referendum is the legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the sanggunian.

The local referendum shall be held under the control and direction of the Comelec within sixty (60) days in case of provinces and cities, forty-five (45) days in case of municipalities and thirty (30) days in case of barangays.

The Comelec shall certify and proclaim the results of the said referendum."

Prescinding from these definitions, we gather that initiative is resorted to (or initiated) by the people directly either because the law-making body fails or refuses to enact the law, ordinance, resolution or act that they desire or because they want to amend or modify one already existing. Under Sec. 13 of R.A. 6735, the local legislative body is given the opportunity to enact the proposal. If its refuses/neglects to do so within thirty (30) days from its presentation, the proponents through their duly-authorized and registered representatives may invoke their power of initiative, giving notice thereof to the local legislative body concerned. Should the proponents be able to collect the number of signed conformities within the period granted by said statute, the Commission on Elections "shall then set a date for the initiative (not referendum) at which the proposition shall be submitted to the registered voters in the local government unit concerned x x x".

On the other hand, in a local referendum, the law-making body submits to the registered voters of its territorial jurisdiction, for approval or rejection, any ordinance or resolution which is duly enacted or approved by such law-making authority. Said referendum shall be conducted also under the control and direction of the Commission on Elections.[15]

In other words, while initiative is entirely the work of the electorate, referendum is begun and consented to by the law-making body. Initiative is a process of law-making by the people themselves without the participation and against the wishes of their elected representatives, while referendum consists merely of the electorate approving or rejecting what has been drawn up or enacted by a legislative body. Hence, the process and the voting in an initiative are understandably more complex than in a referendum where expectedly the voters will simply write either "Yes" or "No" in the ballot.

[Note: While the above quoted laws variously refer to initiative and referendum as "powers" or "legal processes", these can also be "rights", as Justice Cruz terms them, or "concepts", or "the proposal" itself (in the case of initiative) being referred to in this Decision.]

From the above differentiation, it follows that there is need for the Comelec to supervise an initiative more closely, its authority thereon extending not only to the counting and canvassing of votes but also to seeing to it that the matter or act submitted to the people is in the proper form and language so it may be easily understood and voted upon by the electorate. This is especially true where the proposed legislation is lengthy and complicated, and should thus be broken down into several autonomous parts, each such part to be voted upon separately. Care must also be exercised that "(n)o petition embracing more than one subject shall be submitted to the electorate,"[16] although "two or more propositions may be submitted in an initiative".[17]

It should be noted that under Sec. 13 (c) of RA 6735, the "Secretary of Local Government or his designated representative shall extend assistance in the formulation of the proposition."

In initiative and referendum, the Comelec exercises administration and supervision of the process itself, akin to its powers over the conduct of elections. These law-making powers belong to the people, hence the respondent Commission cannot control or change the substance or the content of legislation. In the exercise of its authority, it may (in fact it should have done so already) issue relevant and adequate guidelines and rules for the orderly exercise of these "people-power" features of our Constitution.

Third Issue: Withdrawal of Adherence and Imposition of Conditionalities -- Ultra Vires?

Petitioner maintains that the proposition sought to be submitted in the plebiscite, namely, Pambayang Kapasyahan Blg. 10, Serye 1993, is ultra vires or beyond the powers of the Sangguniang Bayan to enact,[18] stressing that under Sec. 124 (b) of RA 7160 (the Local Government Code), "local initiative shall cover only such subjects or matters as are within the legal powers of the sanggunians to enact." Elsewise stated, a local initiative may enact only such ordinances or resolutions as the municipal council itself could, if it decided to so enact.[19] After the

Sangguniang Bayan of Morong and the other municipalities concerned (Olongapo, Subic and Hermosa) gave their resolutions of concurrence, and by reason of which the SSEZ had been created, whose metes and bounds had already been delineated by Proclamation No. 532 issued on February 1, 1995 in accordance with Section 12 of R.A. No. 7227, the power to withdraw such concurrence and/or to substitute therefor a conditional concurrence is no longer within the authority and competence of the Municipal Council of Morong to legislate. Furthermore, petitioner adds, the specific conditionalities included in the questioned municipal resolution are beyond the powers of the Council to impose. Hence, such withdrawal can no longer be enacted or conditionalities imposed by initiative. In other words, petitioner insists, the creation of SSEZ is now a *fait accompli* for the benefit of the entire nation. Thus, Morong cannot unilaterally withdraw its concurrence or impose new conditions for such concurrence as this would effectively render nugatory the creation by (national) law of the SSEZ and would deprive the entire nation of the benefits to be derived therefrom. Once created, SSEZ has ceased to be a local concern. It has become a national project.

On the other hand, private respondent Garcia counters that such argument is premature and conjectural because at this point, the resolution is just a proposal. If the people should reject it during the referendum, then there is nothing to declare as illegal.

Deliberating on this issue, the Court agrees with private respondent Garcia that indeed, the municipal resolution is still in the proposal stage. It is not yet an approved law. Should the people reject it, then there would be nothing to contest and to adjudicate. It is only when the people have voted for it and it has become an approved ordinance or resolution that rights and obligations can be enforced or implemented thereunder. At this point, it is merely a proposal and the writ of prohibition cannot issue upon a mere conjecture or possibility. Constitutionally speaking, courts may decide only actual controversies, not hypothetical questions or cases.[20]

We also note that the Initiative and Referendum Act itself provides[21] that "(n)othing in this Act shall prevent or preclude the proper courts from declaring null and void any proposition approved pursuant to this Act x x x."

So too, the Supreme Court is basically a review court.[22] It passes upon errors of law (and sometimes of fact, as in the case of mandatory appeals of capital offenses) of lower courts as well as determines whether there had been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any "branch or instrumentality" of government. In the present case, it is quite clear that the Court has authority to review Comelec Resolution No. 2848 to determine the commission of grave abuse of discretion. However, it does not have the same authority in regard to the proposed initiative since it has not been promulgated or approved, or passed upon by any "branch or instrumentality" or lower court, for that matter. The Commission on Elections itself has made no reviewable pronouncements about the issues brought by the pleadings. The Comelec simply included verbatim the proposal in its questioned Resolution No. 2848. Hence, there is really no decision or action made by a branch, instrumentality or court which this Court could take cognizance of and acquire jurisdiction over, in the exercise of its review powers.

Having said that, we are in no wise suggesting that the Comelec itself has no power to pass upon proposed resolutions in an initiative. Quite the contrary, we are ruling that these matters are in fact within the initiatory jurisdiction of the Commission -- to which then the herein basic questions ought to have been addressed, and by which the same should have been decided in the first instance. In other words, while regular courts may take jurisdiction over "approved propositions" per said Sec. 18 of R.A. 6735, the Comelec in the exercise of its quasi-judicial and administrative powers may adjudicate and pass upon such proposals insofar as their form and language are concerned, as discussed earlier; and it may be added, even as to content, where the proposals or parts thereof are patently and clearly outside the "capacity of the local legislative body to enact." [23] Accordingly, the question of whether the subject of this initiative is within the capacity of the Municipal Council of Morong to

enact may be ruled upon by the Comelec upon remand and after hearing the parties thereon.

While on the subject of capacity of the local lawmaking body, it would be fruitful for the parties and the Comelec to plead and adjudicate, respectively, the question of whether Grande Island and the "virgin forests" mentioned in the proposed initiative belong to the national government and thus cannot be segregated from the Zone and "returned to Bataan" by the simple expedient of passing a municipal resolution. We note that Sec. 13 (e) of R.A. 7227 speaks of the full subscription and payment of the P20 billion authorized capital stock of the Subic Authority by the Republic, with, aside from cash and other assets, the "... lands, embraced, covered and defined in Section 12 hereof, ..." which includes said island and forests. The ownership of said lands is a question of fact that may be taken up in the proper forum -- the Commission on Elections.

Another question which the parties may wish to submit to the Comelec upon remand of the initiative is whether the proposal, assuming it is within the capacity of the Municipal Council to enact, may be divided into several parts for purposes of voting. Item "I" is a proposal to recall, nullify and render without effect (bawiin, nulipikahin at pawalangbisa) Municipal Resolution No. 10, Series of 1993. On the other hand, Item "II" proposes to change or replace (palitan) said resolution with another municipal resolution of concurrence provided certain conditions enumerated thereunder would be granted, obeyed and implemented (ipagkakaloob, ipatutupad at isasagawa) for the benefit and interest of Morong and Bataan. A voter may favor Item I -- i.e., he may want a total dismemberment of Morong from the Authority -- but may not agree with any of the conditions set forth in Item II. Should the proposal then be divided and be voted upon separately and independently?

All told, we shall not pass upon the third issue of ultra vires on the ground of prematurity.

#### Epilogue

In sum, we hold that (i) our decision in the earlier Garcia case is not a bar to the present controversy as the issue raised and decided therein is different from the questions involved here; (ii) the respondent Commission should be given an opportunity to review and correct its errors in promulgating its Resolution No. 2848 and in preparing -- if necessary -- for the plebiscite; and (iii) that the said Commission has administrative and initiatory quasi-judicial jurisdiction to pass upon the question of whether the proposal is sufficient in form and language and whether such proposal or part or parts thereof are clearly and patently outside the powers of the municipal council of Morong to enact, and therefore violative of law.

In deciding this case, the Court realizes that initiative and referendum, as concepts and processes, are new in our country. We are remanding the matter to the Comelec so that proper corrective measures, as above discussed, may be undertaken, with a view to helping fulfill our people's aspirations for the actualization of effective direct sovereignty. Indeed we recognize that "(p)rovisions for initiative and referendum are liberally construed to effectuate their purposes, to facilitate and not to hamper the exercise by the voters of the rights granted thereby." [24] In his authoritative treatise on the Constitution, Fr. Joaquin G. Bernas, S.J. treasures these "instruments which can be used should the legislature show itself indifferent to the needs of the people." [25] Impelled by a sense of urgency, Congress enacted Republic Act No. 6735 to give life and form to the constitutional mandate. Congress also interphased initiative and referendum into the workings of local governments by including a chapter on this subject in the local Government Code of 1991. [26] And the Commission on Elections can do no less by seasonably and judiciously promulgating guidelines and rules, for both national and local use, in implementation of these laws. For its part, this Court early on expressly recognized the revolutionary import of reserving people power in the process of law-making. [27]

Like elections, initiative and referendum are powerful and valuable modes of expressing popular sovereignty. And this Court as a matter of policy and doctrine will exert every effort to nurture, protect and promote their legitimate

exercise. For it is but sound public policy to enable the electorate to express their free and untrammelled will, not only in the election of their anointed lawmakers and executives, but also in the formulation of the very rules and laws by which our society shall be governed and managed.

WHEREFORE the petition is GRANTED. Resolution No. 2848 is ANNULLED and SET ASIDE. The initiative on Pambayang Kapasyahan Blg. 10, Serye 1993 is REMANDED to the Commission on Elections for further proceedings consistent with the foregoing discussion. No costs.

**IT IS SO ORDERED.**

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Bellosillo, Melo, Vitug, Kapunan, Francisco, and Hermosisima, Jr., JJ., concur.

Romero, and Mendoza, JJ., on official leave.

Puno, J., no part due to relationship.

[1] Rollo, pp. 38-46; signed by Chairman Bernardo P. Pardo and Comms. Regalado E. Maambong, Remedios A. Salazar-Fernando, Manolo B. Gorospe, Julio F. Desamito, Teresita Dy-Liaco Flores and Japal M. Guiani.

[2] Sec. 13 (a), RA 7227.

[3] Sec. 13 (e) (1), RA 7227.

[4] Republic Act No. 7160.

[5] Enrique T. Garcia, et al. vs. Commission on Elections, et al., 237 SCRA 279, September 30, 1994.

[6] p. 10; Rollo, p. 12.

[7] Reply, p. 3.

[8] See footnote no. 5, supra.

[9] Supra, at pp. 290-291.

[10] Rollo, G.R. No. 111230, p. 82 (Solicitor General's Comment). See also petitioner Garcia's Memorandum, rollo, pp. 134-147.

[11] For easy reference, quoted verbatim hereunder, minus the preamble or "whereas" clauses, is the text of Resolution 2848:

NOW, THEREFORE, the Commission on Elections, by virtue of the powers vested upon it by the Constitution, Republic Act No. 6735, Republic Act No. 7160, the Omnibus Election Code and other related election laws, RESOLVED AS IT HEREBY RESOLVES to promulgate the following rules and guidelines to govern the conduct of the referendum proposing to annul or repeal Kapasyahan Blg. 10, Serye 1993, of the Sangguniang Bayan of Morong, Bataan.

SECTION 1. Supervision and control. - The Commission on Elections shall have direct control and supervision over the conduct of the referendum.

SECTION 2. Expenses forms and paraphernalia. - The expenses in the holding of the referendum, which shall include the printing of official ballots, referendum returns, and other forms and the procurement of supplies and paraphernalia, as well as the per diems of the members of the Referendum committees and overtime compensation of the members of the Board of Canvassers, shall be chargeable against the available funds of the Commission. In case of deficiency, the Executive Director and the Director of the Finance Services Department

are directed to submit the budget thereon and to request the Department of Budget and Management to immediately release the necessary amount.

SECTION 3. Date of referendum and voting hours. - The referendum shall be held on July 27, 1996. The voting shall start at seven o'clock in the morning and shall end at three o'clock in the afternoon.

SECTION 4. Area of coverage. - The referendum shall be held in the entire municipality of Morong, Bataan.

SECTION 5. Who may vote. - The qualified voters of Morong, Bataan, duly registered as such in the May 8, 1995 Congressional and Local Elections, and those who are registered in the special registration of voters scheduled on June 29, 1996, shall be entitled to vote in the referendum. For this purpose, the Election Officer, said municipality, shall prepare the lists of voters for the entire municipality.

SECTION 6. Precincts and polling places. - The same precincts and polling places that functioned in the municipality of Morong, Bataan during the May 8, 1995 Congressional and Local Elections shall function and be used in the referendum, subject to such changes under the law as the Commission may find necessary.

SECTION 7. Official ballots. - The official ballots to be used in the referendum shall bear the heading: "OFFICIAL BALLOT"; "REFERENDUM"; "JULY 27, 1996"; "MORONG, BATAAN"; and underneath, the following instructions: "Fill out this ballot secretly inside the voting booth. Do not put any distinctive mark on any part of this ballot." The following question shall be provided in the official ballots:

"DO YOU APPROVE OF THE PROPOSITIONS CONTAINED IN THE SIGNED PETITION TO ANNUL OR REPEAL PAMBAYANG KAPASYAHAN BLG. 10, SERYE 1993, OF THE SANGGUNIAN BAYAN OF MORONG, BATAAN, WHICH READ AS FOLLOWS:

I. Bawiin, nulipikahin at pawalang bisa ang Pambayang Kapasyahan Blg. 10, Serye 1993 ng Sangguniang Bayan para sa pag-anib ng Morong sa SSEZ na walang kondisyon.

II. Palitan ito ng isang Pambayang Kapasyahan na aanib lamang ang Morong sa SSEZ kung ang mga sumusunod na kondisyones ay ipagkakaloob, ipatutupad at isasagawa para sa kapakanan at interes ng Morong at Bataan:

(A) Ibalik sa Bataan ang "Virgin Forests" -- isang bundok na hindi nagagalaw at punong-puno ng malalaking punong-kahoy at iba't-ibang halaman.

(B) Ihiwalay ang Grande Island sa SSEZ at ibalik ito sa Bataan.

(K) Isama ang mga lupain ng Bataan na nakapaloob sa SBMA sa pagkukuenta ng salaping ipinagkaloob ng pamahalaang national o "Internal Revenue Allotment" (IRA) sa Morong, Hermosa at sa lalawigan.

(D) Payagang magtatag rin ng sariling "special economic zones" and bawat bayan ng Morong, Hermosa at Dinalupihan.

(E) Ibase sa laki ng kanya-kanyang lupa ang pamamahagi ng kikitain ng SBMA.

(G) Ibase rin ang alokasyon ng pagbibigay ng trabaho sa laki ng nasabing mga lupa.

(H) Pabayaang bukas ang pinto ng SBMA na nasa Morong ng 24 na oras at bukod dito sa magbukas pa ng pinto sa hangganan naman ng Morong at Hermosa upang magkaroon ng pagkakataong umunlad rin ang mga nasabing bayan, pati na rin ng iba pang bayan ng Bataan.

(I) Tapusin ang pagkokontre-to ng mga daang Morong-Tala-Orani at Morong-Tasig-Dinalupihan para sa kabutihan ng mga taga-Bataan at tuloy makatulong sa pangangalaga ng mga kabundukan.

(J) Magkaroon ng sapat na representation sa pamunuan ng SBMA ang Morong, Hermosa at Bataan.'?"

SECTION 8. Referendum Committee. - The voting and counting of votes shall be conducted in each polling place by a Referendum Committee composed of a Chairman, a Poll Clerk, and a Third Member who shall all be public school teachers, to be appointed by the Commission through the Election Officer of Morong, Bataan. Each member of the Referendum Committee shall be entitled to a per diem of Two Hundred Pesos (P200.00) for services rendered on the day of the referendum.

SECTION 9. Referendum returns and distribution of copies thereof. - The referendum returns shall be prepared by the Referendum Committee in three (3) copies, to be distributed as follows:

- (1) The first copy shall be delivered to the Referendum Board of Canvassers;
- (2) The second copy shall be forwarded to the Election Records and Statistics Department of the Commission; and
- (3) The third copy shall be deposited inside ballot box.

SECTION 10. Referendum Board of Canvassers. - There is hereby created a Referendum Board of Canvassers which shall be composed of the Provincial Election Supervisor of Bataan as Chairman; and as Members thereof, the Municipal Treasurer and the most senior District School Supervisor or, in the latter's absence, a principal of the school district or the elementary school.

At least five (5) days before the day of the referendum, the Chairman shall issue a written notice to the Members of the Board that it shall convene at four o'clock in the afternoon of Referendum Day to canvass the referendum returns. Notice of said meeting shall be posted in conspicuous places in the Municipal Hall and other public places within the municipality.

The Board shall meet at the session hall of the Sangguniang Bayan of Morong, Bataan not later than four o'clock in the afternoon of Referendum Day, and shall immediately canvass the referendum returns and shall not adjourn until the canvass is completed.

SECTION 11. Preparation and distribution of copies of the referendum results. - As soon as all the returns have been canvassed, the Board shall prepare and accomplish the Certificate of Canvass of Votes and Proclamation in five (5) copies, supported by a Statement of Votes per Precinct, and, on the basis thereof, shall certify and proclaim the final results.

Said copies shall be distributed as follows:

- (1) The original shall, within three (3) days from proclamation, be sent to the Election Records and Statistics Department of the Commission;
- (2) The second copy shall be filed in the Office of the Provincial Election Supervisor of Bataan;
- (3) The third copy shall be submitted to the Provincial Governor of Bataan;
- (4) The fourth copy shall be kept in the Office of the Election Officer of Morong, Bataan;
- (5) The fifth copy shall be submitted to the Municipal Mayor of Morong, Bataan.

SECTION 12. Information Campaign. - There shall be a period of information campaign which shall commence immediately, but shall not include the day before and the day of the referendum. During this period, The Election Officer of Morong, Bataan shall convoke barangay assemblies or "pulong-pulong" within the municipality. Civic, professional, religious, business, youth and any other similar organizations may also hold public rallies or

meetings to enlighten the residents therein of the issues involved. Constructive discussions and debates shall be encouraged and the voters assured of the freedom to voice their opinion regarding the issue.

SECTION 13. Applicability of election laws. - The pertinent provisions of Omnibus Election Code (Batas Pambansa Blg. 881), the Electoral Reforms Law of 1987 (Republic Act No. 6646) and other related election laws which are not inconsistent with this Resolution shall apply to this referendum.

SECTION 14. Implementation. - The Executive Director, assisted by the Deputy Executive Director for Operations and the Directors of the Finance Services Department, Administrative Services Department and Election and Barangay Affairs Department, shall implement this Resolution to ensure the holding of a free, orderly, honest, peaceful and credible referendum.

SECTION 15. Effectivity. - This Resolution shall take effect on the seventh day after its publication in two (2) daily newspapers of general circulation in the Philippines.

SECTION 16. Dissemination. - The Education and Information Department shall cause the immediate publication of this Resolution in two (2) daily newspapers of general circulation in the Philippines and give this Resolution the widest publicity and dissemination possible. The Executive Director shall furnish the Secretary of the Department of Budget and Management; the Secretary of the Department of Education, Culture and Sports; the Provincial Governor of Bataan; the Provincial Election Supervisor of Bataan; and the Municipal Mayor, the Municipal Treasurer, the District School Supervisor, and the Election Officer, all of Morong, Bataan, each a copy of this Resolution the widest publicity possible within the municipality.

### **SO ORDERED.**

[12] Sec. 3, Republic Act 6735; approved on August 4, 1989.

[13] Philippine Political Law, 1991 edition, p. 169.

[14] Black's Law Dictionary, 1979 edition, pp. 705 and 1152. See also Words and Phrases, Vol. 36A, 179 et seq. and Vol. 21-A, pp. 56 et seq.; 42 Am. Jur 647 et seq.; Bouvier's Law Dictionary, Vol. I, 3rd edition, 1569.

[15] Sec. 17, RA 6735.

[16] Sec. 10 (a), RA 6735.

[17] Sec. 13 (d), RA 6735.

[18] Rollo, pp. 10, 14.

[19] "Thus, local initiatives cannot propose the enactment of the death penalty for any crime because the imposition of (such) penalty is not within the competence of the local sanggunian to enact." -- Pimentel, The Local Government Code of 1991, 1993 edition, p. 237.

[20] "Judicial power has been defined in jurisprudence as 'the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction' (citing *Muskrats v. United States*, 219 U.S. 346 [1911]). It is 'the authority to settle controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights' (citing *Lopez v. Roxas*, 17 SCRA 756, 761 [1966]). Thus, there can be no occasion for the exercise of judicial power unless real parties come to court for the settlement of an actual controversy and unless the controversy is such that can be settled in a manner that binds the parties by the application of existing laws.

"The 1987 Constitution now adds: 'Judicial power includes the duty of the courts of justice to settle actual

controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.' x x x"

-Fr. Joaquin G. Bernas, S.J., *The Constitution of the Republic of the Philippines - A Commentary*, Vol. II, 1988 edition, p. 255.

[21] Sec. 18, RA 6735.

[22] Andres R. Narvasa C.J., *Handbook on the Courts and the Criminal Justice System*, 1996 Ed., p. 5.

[23] Cf. Sec. 12, RA 6735.

[24] 42 Am. Jr. 2d, p. 653.

[25] Bernas, *op. cit.*, Vol. II, at p. 68.

[26] R.A. 7160, See Book I, Title Nine, Chapter 2.

[27] *Garcia vs. Commission on Elections, et al.*, *supra*, at p. 288.

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