

JOVITO O. CLAUDIO, PETITIONER, VS. COMMISSION ON ELECTIONS, DEPARTMENT OF BUDGET AND MANAGEMENT, COMMISSION ON AUDIT AND RICHARD ADVINCULA, RESPONDENTS.*G.R. No. 140560. May 04, 2000*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140560/>**MENDOZA, J.:**

These are petitions arising from the proceedings initiated by the Preparatory Recall Assembly of Pasay City (PRA) in the Commission on Elections in E.M. No. 99-005 entitled IN THE MATTER OF THE PREPARATORY RECALL ASSEMBLY RESOLUTION NO. 01, S-1999 ADOPTED ON 29 MAY 1999 FOR THE RECALL OF MAYOR JOVITO CLAUDIO OF PASAY CITY. G.R. No. 140560 is a petition for certiorari and prohibition, seeking the nullification of the resolution,[1] dated October 18, 1999, of the COMELEC giving due course to the petition for the recall of petitioner Jovito O. Claudio as mayor of Pasay City. On the other hand, G.R. No. 140714 is a petition for mandamus filed by the PRA, represented by its Chair, Richard Advincula, to compel the COMELEC to set the date for the holding of recall elections in Pasay City pursuant to the aforementioned resolution of the COMELEC.

The facts are as follows:

Jovito O. Claudio, petitioner in G.R. No. 140560, was the duly elected mayor of Pasay City in the May 11, 1998 elections. He assumed office on July 1, 1998.

Sometime during the second week of May 1999, the chairs of several barangays in Pasay City gathered to discuss the possibility of filing a petition for recall against Mayor Claudio for loss of confidence. On May 19, 1999, at the residence of barangay chair Benjamin Lim, Jr. in Barangay 11, Zone 4, Pasay City, several barangay chairs formed an ad hoc committee for the purpose of convening the PRA. Richard Advincula, private respondent in G.R. No. 140560 and petitioner in G.R. No. 140714, was designated chair.

On May 29, 1999, 1,073 members of the PRA composed of barangay chairs, kagawads, and sangguniang kabataan chairs of Pasay City, adopted Resolution No. 01, S-1999, entitled RESOLUTION TO INITIATE THE RECALL OF JOVITO O. CLAUDIO AS MAYOR OF PASAY CITY FOR LOSS OF CONFIDENCE. In a letter dated June 29, 1999, Advincula, as chair of the PRA, invited the Mayor, Vice-Mayor, Station Commander, and thirteen (13) Councilors of Pasay City to witness the formal submission to the Office of the Election Officer on July 2, 1999 of the petition for recall.

As scheduled, the petition for recall was filed on July 2, 1999, accompanied by an affidavit of service of the petition on the Office of the City Mayor. Pursuant to the rules of the COMELEC, copies of the petition were posted on the bulletin boards of the local COMELEC office, the City Hall, the Police Department, the public market at Libertad St. and Taft Avenue, and at the entrance of the Sta. Clara Church on P. Burgos St., all in Pasay City. Subsequently, a verification of the authenticity of the signatures on the resolution was conducted by Ligaya Salayon, the election officer for Pasay City designated by the COMELEC.

Oppositions to the petition were filed by petitioner Jovito O. Claudio, Rev. Ronald Langub, and Roberto L. Angeles, alleging procedural and substantive defects in the petition, to wit: (1) the signatures affixed to the resolution were actually meant to show attendance at the PRA meeting; (2) most of the signatories were only representatives of the parties concerned who were sent there merely to observe the proceedings; (3) the convening of the PRA took place within the one-year prohibited period; (4) the election case,[2] filed by Wenceslao Trinidad in this Court, seeking the annulment of the proclamation of petitioner Claudio as mayor of Pasay City, should first be decided before recall proceedings against petitioner could be filed; and (5) the recall resolution failed to obtain the majority of all the members of the PRA, considering that 10 were actually double entries, 14 were not duly accredited members of the barangays, 40 sangguniang kabataan officials had withdrawn their support, and 60 barangay chairs executed affidavits of retraction.

In its resolution of October 18, 1999, the COMELEC granted the petition for recall and dismissed the oppositions against it. On the issue of whether the PRA was constituted by a majority of its members, the COMELEC held that the 1,073 members who attended the May 29, 1999 meeting were more than necessary to constitute the PRA, considering that its records showed the total membership of the PRA was 1,790, while the statistics of the Department of Interior and Local Government (DILG) showed that the total membership of the PRA was 1,876. In either case, since only a majority is required to constitute the PRA, clearly, a majority had been obtained in support of the recall resolution. Based on the verification made by election officer Ligaya Salayon, the COMELEC found the signatures of 958 members of the PRA sufficient. On whether the pendency of the case questioning the proclamation of petitioner was a prejudicial question which must first be decided before any recall election could be held, the COMELEC ruled that it was not and that petitioner was merely using the pendency of the case to delay the recall proceedings. Finally, on whether the petition for recall violated the bar on recall within one year from the elective official's assumption of office, the COMELEC ruled in the negative, holding that recall is a process which starts with the filing of the petition for recall. Since the petition was filed on July 2, 1999, exactly one year and a day after petitioner Claudio's assumption of office, it was held that the petition was filed on time.

Hence, these petitions. Oral arguments were held in these cases in Baguio City on April 4, 2000, after which the Court, by the vote of 8 to 6 of its members,[3] resolved to dismiss the petition in G.R. No. 140560 for lack of showing that the COMELEC committed a grave abuse of discretion. On the other hand, the Court unanimously dismissed the petition in G.R. No. 140714 on the ground that the issue raised therein had become moot and academic.

We now proceed to explain the grounds for our resolution.

In its Resolution No. 3121, dated March 9, 2000, the COMELEC set the date of the recall elections in Pasay City on April 15, 2000. Consequently, the petition for mandamus in G.R. No. 140714 to compel the COMELEC to fix a date for the recall elections in Pasay City is no longer tenable. We are thus left with only petitioner Claudio's action for certiorari and prohibition.

The bone of contention in this case is §74 of the Local Government Code (LCG)[4] which provides:

Limitations on Recall. - (a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No 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 local election.

As defined at the hearing of these cases on April 4, 2000, the issues are:

WHETHER, under Section 74 of the Local Government Code of 1991 (R.A. No. 7160) ...

A. The word "recall" in paragraph (b) covers a process which includes the convening of the Preparatory Recall Assembly and its approval of the recall resolution.

B. The term "regular local election" in the last clause of paragraph (b) includes the election period for that regular election or simply the date of such election.

(1)

On Whether the Word "Recall" in Paragraph (b) of §74 of the Local Government Code Includes the Convening of the Preparatory Recall Assembly and the Filing by it of a Recall Resolution

Petitioner contends that the term "recall" in §74(b) refers to a process, in contrast to the term "recall election" found in §74(a), which obviously refers to an election. He claims that "when several barangay chairmen met and convened on May 19, 1999 and unanimously resolved to initiate the recall, followed by the taking of votes by the PRA on May 29, 1999 for the purpose of adopting a resolution 'to initiate the recall of Jovito Claudio as Mayor of Pasay City for loss of confidence,' the process of recall began" and, since May 29, 1999 was less than a year after he had assumed office, the PRA was illegally convened and all proceedings held thereafter, including the filing of the recall petition on July 2, 1999, were null and void.

The COMELEC, on the other hand, maintains that the process of recall starts with the filing of the petition for recall and ends with the conduct of the recall election, and that, since the petition for recall in this case was filed on July 2, 1999, exactly one year and a day after petitioner's assumption of office, the recall was validly initiated outside the one-year prohibited period.

Both petitioner Claudio and the COMELEC thus agree that the term "recall" as used in §74 refers to a process. They disagree only as to when the process starts for purposes of the one-year limitation in paragraph (b) of §74.

We can agree that recall is a process which begins with the convening of the preparatory, recall assembly or the gathering of the signatures at least 25% of the registered voters of a local government unit, and then proceeds to the filing of a recall resolution or petition with the COMELEC, the verification of such resolution or petition, the fixing of the date of the recall election, and the holding of the election on the scheduled date.^[5] However, as used in paragraph (b) of § 74, "recall" refers to the election itself by means of which voters decide whether they should retain their local official or elect his replacement. Several reasons can be cited in support of this conclusion.

First, § 74 deals with restrictions on the power of recall. It is in fact entitled "Limitations on Recall." On the other hand, §69 provides that "the power of recall ...shall be exercised by the registered voters of a local government unit to which the local elective official belongs." Since the power vested on the electorate is not the power to initiate recall proceedings^[6] but the power to elect an official into office, the limitations in §74 cannot be deemed to apply to the entire recall proceedings. In other words, the term "recall" in paragraph (b) refers only to the recall election, excluding the convening of the PRA and the filing of a petition for recall with the COMELEC, or the gathering of the signatures of at least 25 % of the voters for a petition for recall.

Thus, there may be several PRAs held (as in the case of Bataan Province in 1993) or petitions for recall filed with the COMELEC - there is no legal limit on the number of times such processes may be resorted to. These are merely preliminary steps for the purpose of initiating a recall. The limitations in §74 apply only to the exercise of the power of recall which is vested in the registered voters. It is this - and not merely, the preliminary steps required to be taken to initiate a recall - which paragraph (b) of §74 seeks to limit by providing that no recall shall take place within one year from the date of assumption of office of an elective local official.

Indeed, this is the thrust of the ruling in *Garcia v. COMELEC*^[7] where two objections were raised against the

legality of PRAs: (1) that even the power to initiate recall proceedings is the sole prerogative of the electorate which cannot be delegated to PRAs, and (2) that by vesting this power in a PRA, the law in effect unconstitutionally authorizes it to shorten the term of office of incumbent elective local officials. Both objections were dismissed on the ground that the holding of a PRA is not the recall itself. With respect to the first objection, it was held that it is the power to recall and not the power to initiate recall that the Constitution gave to the people. With respect to the second objection, it was held that a recall resolution "merely sets the stage for the official concerned before the tribunal of the people so he can justify why he should be allowed to continue in office. [But until] the people render their sovereign judgment, the official concerned remains in office"

If these preliminary proceedings do not produce a decision by the electorate on whether the local official concerned continues to enjoy the confidence of the people, then, the prohibition in paragraph (b) against the holding of a recall, except one year after the official's assumption of office, cannot apply to such proceedings.

The second reason why the term "recall" in paragraph (b) refers to recall election is to be found in the purpose of the limitation itself. There are two limitations in paragraph (b) on the holding of recalls: (1) that no recall shall take place within one year from the date of assumption of office of the official concerned, and (2) that no recall shall take place within one year immediately preceding a regular local election.

The purpose of the first limitation is to provide a reasonable basis for judging the performance of an elective local official. In the *Bower* case^[8] cited by this Court in *Angobung v. COMELEC*,^[9] it was held that "The only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for a recall election is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his policies and decisions." The one-year limitation was reckoned as of the filing of a petition for recall because the Municipal Code involved in that case expressly provided that "no removal petition shall be filed against any officer or until he has actually held office for at least twelve months." But however the period of prohibition is determined, the principle announced is that the purpose of the limitation is to provide a reasonable basis for evaluating the performance of an elective local official. Hence, in this case, as long as the election is held outside the one-year period, the preliminary proceedings to initiate a recall can be held even before the end of the first year in office of a local official.

It cannot be argued that to allow recall proceedings to be initiated before the official concerned has been in office for one-year would be to allow him to be judged without sufficient basis. As already stated, it is not the holding of PRA nor the adoption of recall resolutions that produces a judgment on the performance of the official concerned; it is the vote of the electorate in the Election that does. Therefore, as long as the recall election is not held before the official concerned has completed one year in office, he will not be judged on his performance prematurely.

Third, to construe the term "recall" in paragraph (b) as including the convening of the PRA for the purpose of discussing the performance in office of elective local officials would be to unduly restrict the constitutional right of speech and of assembly of its members. The people cannot just be asked on the day of the election to decide on the performance of their officials. The crystallization and formation of an informed public opinion takes time. To hold, therefore, that the first limitation in paragraph (b) includes the holding of assemblies for the exchange of ideas and opinions among citizens is to unduly curtail one of the most cherished rights in a free society. Indeed, it is wrong to assume that such assemblies will always eventuate in a recall election. To the contrary, they may result in the expression of confidence in the incumbent.

Our esteemed colleague Justice Puno says in his dissent that the purpose of the one-year period in paragraph (b) is to provide the local official concerned a "period of repose" during which "[his] attention should not be distracted by any impediment, especially by disturbance due to political partisanship." Unfortunately, the law cannot really

provide for a period of honeymoon or moratorium in politics. From the day an elective official assumes office, his acts become subject to scrutiny and criticism, and it is not always easy to determine when criticism of his performance is politically motivated and when it is not. The only safeguard against the baneful and enervating effects of partisan politics is the good sense and self restraint of the people and its leaders against such shortcomings of our political system. A respite from partisan politics may, have the incidental effect of providing respite from partisanship, but that is not really the purpose of the limitation on recall under the law. The limitation is only intended to provide a sufficient basis for evaluating and judging the performance of an elected local official.

In any event, it is argued that the judgments of PRAs are not "as politically unassailable as recalls initiated directly by the people." Justice Puno cites the "embarrassing repudiation by the people of [Kaloocan City's] Preparatory Recall Assembly" when, instead of ousting Mayor Rey Malonzo, they reelected him.

Two points may be made against this argument.

One is that it is no disparagement of the PRA that in the ensuing election the local official whose recall is sought is actually reelected. Laws converting municipalities into cities and providing for the holding of plebiscites during which the question of cityhood is submitted to the people for their approval are not always approved by the people. Yet, no one can say that Congress is not a good judge of the will of the voters in the locality. In the case of recall elections in Kaloocan City, had it been shown that the PRA was resorted to only because those behind the move to oust the incumbent mayor failed to obtain the signatures of 25% of the voters of that city to a petition for his recall, there may be some plausibility for the claim that PRAs are not as good a gauge of the people's will as are the 25 % of the voters.

Indeed, recalls initiated directly by 25% of the registered voters of a local government unit cannot be more representative of the sentiments of the people than those initiated by PRAs whose members represent the entire electorate in the local government unit. Voters who directly initiate recalls are just as vulnerable to political maneuverings or manipulations as are those composing PRAs.

The other point regarding Justice Puno's claim is that the question here is not whether recalls initiated by 25% of the voters are better. The issue is whether the one-year period of limitation in paragraph (b) includes the convening of the PRA. Given that question, will convening the PRA outside this period make it any more representative of the people, as the petition filed by 25 % of the registered voters is claimed to be?

To sum up, the term "recall" in paragraph (b) refers to the recall election and not to the preliminary proceedings to initiate recall -

1. Because §74 speaks of limitations on "recall" which, according to §69, is a power which shall be exercised by the registered voters of a local government unit. Since the voters do not exercise such right except in an election, it is clear that the initiation of recall proceedings is not prohibited within the one-year period provided in paragraph (b);
2. Because the purpose of the first limitation in paragraph (b) is to provide voters a sufficient basis for judging an elective local official, and final judging is not done until the day of the election; and
3. Because to construe the limitation in paragraph (b) as including the initiation of recall proceedings would unduly curtail freedom of speech and of assembly guaranteed in the Constitution.

As the recall election in Pasay City is set on April 15, 2000, more than one year after petitioner assumed office as mayor of that city, we hold that there is no bar to its holding on that date.

(2)

On Whether the Phrase "Regular Local Election" in the Same Paragraph (b) of §74 of the Local Government Code includes the Election Period for that Regular Election or Simply the Date of Such Election

Petitioner contends, however, that the date set by the COMELEC for the recall election is within the second period of prohibition in paragraph (b). He argues that the phrase "regular local elections" in paragraph (b) does not only mean "the day of the regular local election" which, for the year 2001 is May 14, but the election period as well, which is normally at least forty five (45) days immediately before the day of the election. Hence, he contends that beginning March 30, 2000, no recall election may be held.

This contention is untenable.

The law is unambiguous in providing that "[n]o recall shall take place within . . . one (1) year immediately preceding a regular local election." Had Congress intended this limitation to refer to the campaign period, which period is defined in the Omnibus Election Code,[10] it could have expressly said so.

Moreover, petitioner's interpretation would severely limit the period during which a recall election may be held. Actually, because no recall election may be held until one year after the assumption of office of an elective local official, presumably on June 30 following his election, the free period is only the period from July 1 of the following year to about the middle of May of the succeeding year. This is a period of only nine months and 15 days, more or less. To construe the second limitation in paragraph (b) as including the campaign period would reduce this period to eight months. Such an interpretation must be rejected, because it would devitalize the right of recall which is designed to make local government units "more responsive and accountable."

Indeed, there is a distinction between election period and campaign period. Under the Omnibus Election Code,[11] unless otherwise fixed by the COMELEC, the election period commences ninety (90) days before the day of the election and ends thirty (30) days thereafter. Thus, to follow petitioner's interpretation that the second limitation in paragraph (b) includes the "election period" would emasculate even more a vital right of the people.

To recapitulate the discussion in parts 1 and 2, §74 imposes limitations on the holding of recall elections. First, paragraph (a) prohibits the holding of such election more than once during the term of office of an elective local official. Second, paragraph (b) prohibits the holding of such election within one year from the date the official assumed office. And third, paragraph (b) prohibits the holding of a recall election within one year immediately preceding a regular local election. As succinctly stated in *Paras v. COMELEC*,[12] "[p]aragraph (b) construed together with paragraph (a) merely designates the period when such elective local official may be subject to recall election, that is, during the second year of office."

(3)

On Whether the Recall RESOLUTION was Signed by a Majority of the PRA and Duly Verified

Petitioner alleges other grounds for seeking the annulment of the resolution of the COMELEC ordering the holding of a recall election. He contends that a majority of the signatures of the members of the PRA was not obtained because 74 members did not really sign the recall resolution. According to petitioner, the 74 merely signed their names on pages 94-104 of the resolution to signify their attendance and not their concurrence. Petitioner claims that this is shown by the word "Attendance" written by hand at the top of the page on which the signatures of the 74 begin.

This contention has no basis. To be sure, this claim is being raised for the first time in this case. It was not raised before the COMELEC, in which the claim made by petitioner was that some of the names in the petition were double entries, that some members had withdrawn their support for the petition, and that Wenceslao Trinidad's

pending election protest was a prejudicial question which must first be resolved before the petition for recall could be given due course. The order of the COMELEC embodying the stipulations of the parties and defining the issues to be resolved does not include the issue now being raised by petitioner.

Although the word "Attendance" appears at the top of the page, it is apparent that it was written by mistake because it was crossed out by two parallel lines drawn across it. Apparently, it was mistaken for the attendance sheet which is a separate document. It is absurd to believe that the 74 members of the PRA who signed the recall resolution signified their attendance at the meeting twice. It is more probable to believe that they signed pages 94-104 to signify their concurrence in the recall resolution of which the pages in question are part.

The other point raised by petitioner is that the recall petition filed in the COMELEC was not duly verified, because Atty. Nelson Ng, who notarized it, is not commissioned as notary public for Pasay City but for Makati City. As in the case of the first claim, this issue was not raised before the COMELEC itself. It cannot, therefore, be raised now.

WHEREFORE, G.R. No. 140560 is DISMISSED for lack of merit, while the petition in G.R. No. 140714 is DISMISSED for having been rendered moot and academic.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Quisumbing, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Melo, and Purisima, JJ., on leave.

Puno, J., see dissenting opinion.

Vitug, J., reiterate his separate opinion in the resolution of 5 Apr. 2000.

Kapunan, J., see attached separate and dissenting opinion.

Panganiban, J., joined the dissents of JJ. Puno and Kapunan.

Pardo, and De Leon, Jr., JJ., join the dissent of J. Puno.

[1] Per Commissioner Manolo B. Gorospe, and concurred in by Commissioner Harriet O. Demetriou. Commissioner Julio F. Desamito was on leave.

[2] The case has since been decided by being dismissed. See *Trinidad v. COMELEC*, G.R. No. 134657, Dec. 15, 1999.

[3] Davide, Jr., C.J., and Bellosillo, Vitug, Mendoza, Quisumbing, Buena, Reyes, and Ynares-Santiago, JJ. Voted to dismiss the petition. Puno, Kapunan, Panganiban, Purisima, Pardo, and De Leon, Jr., JJ., dissented and voted to grant the petitions. Melo, J., who was in Manila for the funeral of his brother, took no part.

[4] R.A. No. 7160.

[5] Thus, the Local Government Code provides:

SEC. 70. Initiation of the Recall Process.-- (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

(1) provincial level. – All mayors, vice mayors, and sangguniang members of the municipalities and

component cities;

(2) City level. – All punong barangay and sangguniang barangay members in the city;

(3) Legislative District level. – In cases where the sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where sangguniang panlungsod members are elected by district, all elective barangay officials in the district; and

(4) Municipal level. – All punong barangay and sangguniang barangay members in the municipality.

(c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.

(d) Recall of any elective provincial, city, municipal, or barangay official may also be validly initiated upon petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

(1) A written petition for recall duly signed before the election register or his representative and in the presence of a representative, of the petitioner and a representative of the official sought to be recalled, 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.

SEC. 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.

[6] Such power is vested in the PRA or in at least 25% of the registered voters. §70(c)(d)

[7] 227 SCRA 100 (1993)

[8] In re Bower 41 Ill. 777, 242 N.E. 2d 252 (1968)

[9] 269 SCRA 245, 256 (1997)

[10] The Omnibus Election Code, § 3, provides:

....

The campaign periods are hereby fixed as follows:

(a) For President, Vice President and Senators, ninety (90) days before the day of the election; and

(b) For Members of the House of Representatives and elective provincial, city and municipal officials, forty-five (45) days before the day of the election....

[11] Id.

[12] 264 SCRA 48, 54 (1996)

DISSENTING OPINION

PUNO, J.:

The cases at bar are one of first impression. At issue is the meaning of Section 74 (b) of the Local Government Code which provides: "No 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 local election." Our interpretation of this provision is significant for, to a large extent, it will determine the use or misuse of the right of recall. The right of recall is part of the cutting edge of the sword of the sovereignty of our people, and its exercise should be shielded from abuses.

I begin with the baseline proposition that the proper interpretation of Section 74 (b) of the Local Government Code should depend on the edifying intent of our legislators. With due respect to the majority, I wish to express my humble reading of the intent of our lawmakers when they engrafted the people's right of recall in the corpus of our laws. Our search should start with the Constitution which provides the matrix of our rights. All our fundamental laws^[1] set in stone the principle that "the Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them." An important component of this sovereign power is the right of the people to elect officials who will wield the powers of government, i.e., the power to make laws and the power to execute laws. These powers are enormous and in the wrong hands can wreak havoc to the people. Our laws therefore regulate their exercise. Among others, they set minimum qualifications for candidates to elective public office. They safeguard the integrity of the procedure of electing these candidates. They also established an independent COMELEC to enhance the laboratory conditions under which elections must be conducted.

Over the years, however, the country experienced the defilement of these ideals. The wrong officials were able to win the scepters of power, the sanctity of our election process has been breached, and unscrupulous politicians perpetuated themselves in public office. The authoritarian regime that prolonged its reign from 1972 to 1986 demonstrated the need to address these problems with greater resolve. Various schemes were installed in the 1987 Constitution and our statutes. Among them are the provisions limiting terms of offices, banning political dynasties, strengthening the power and independence of the COMELEC, sharpening the accountability of public officials and institutionalizing the power of the people to recall their elected officials.

In the ground breaking case of *Garcia v. COMELEC*^[2] we traced the metamorphosis of the people's right of recall from its diaper days. In *Angobung v. COMELEC*^[3] we articulated the rationale of the right of recall, viz.:

"x x x While recall was intended to be an effective and speedy remedy to remove an official who is not giving satisfaction to the electorate regardless of whether or not he is discharging his full duty to the best of his ability and as his conscience dictates, it is a power granted to the people who, in concert, desire to change their leaders for reasons only they, as a collective, can justify. In other words, recall must be pursued by the people, not just by one disgruntled loser in the election or a small percentage of disenchanted electors. Otherwise, its purpose as a direct remedy of the people shall be defeated by the ill motives of a few among them whose selfish resort to recall would destabilize the community and seriously disrupt the running of government.

A scrutiny of the rationale underlying the time bar provisions and the percentage of minimum voter requirement in America recall statutes, unmistakably reveals the vigilance of lawmakers against the abuse of the power of recall. For instance, the Supreme Court of Illinois held in the case of *In Re Bower* that:

'[t]he only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for

a recall election is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his political policies and decisions. We view the statutory provision requiring the number of petition signers to equal at least 45 % of the total votes cast in the last general election for mayor as a further attempt to insure that an official will not have to defend his policies against frivolous attacks launched by a small percentage of disenchanted electors.'

Along the same lines, the Supreme Court of Colorado held in the case of *Bernzen v. City of Boulder* that:

'[t]he framers, by requiring that a recall petition contain the signatures of at least 25% of all votes cast in the last election for all candidates for the position which the person sought to be recalled occupies, assured that a recall election will not be held in response to the wishes of a small and unrepresentative minority. However, once at least 25% of the electorate have expressed their dissatisfaction, the constitution reserves the recall power to the will of the electorate.'

And in the case of *Wallace v. Tripp*, the Supreme Court of Michigan echoed the foregoing posturings in this wise:

'Much of what has been said to justify a limit upon recall clearly not provided or contemplated by the Constitution has revealed fears about an irresponsible electorate x x x. A much cited Nebraska case pertaining to a Nebraska recall statute provides some answers which are equally applicable to the Michigan constitutional right of recall:

'x x x Doubtless the provision requiring 30 per cent of the electors to sign the petition before the council [is] compelled to act was designed to avoid such a contingency. The Legislature apparently assumed that nearly one-third of the electorate would not entail upon the taxpayers the cost of an election unless the charges made approved themselves to their understanding and they were seriously dissatisfied with the services of the incumbent of the office.'"

In fine, democratic experience, here and abroad, shows that the right of recall is a double-edged sword. Rightly used, it can promote the greater good. Wrongly used, it can result in greater evil. There are recalls as pointed out in *Angobung* that should be avoided: (1) recalls borne by the ill motive of a few; (2) recalls that disrupt the smooth running of government; and (3) recalls that destabilize the local government unit. The standard mechanisms in recall statutes to avoid these evils are: (1) the setting of a waiting period before a petition for recall can be initiated, and (2) the fixing of a minimum percentage of voters signatures to kickstart a petition for recall. As clearly explained in *Bowers*, the reason for fixing a waiting period is "to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his political policies and decisions." On the other hand, the reason for requiring a minimum number of voters signatures is "to insure that an official will not have to defend his policies against frivolous attacks launched by a small percentage of disenchanted electors." It will further avoid expenditure of public funds for frivolous elections.

I like to focus on the one-year waiting period provided by Section 74 (b) which is the bedrock issue in the cases at bar. Beyond debate, the ideal interpretation of the waiting period must bring about this pristine purpose - - - to give the voters a sound basis for their decision to recall or not to recall an official whom they have elected just a year ago. That sound basis cannot exist in a vacuum. "Sound basis" requires affording the official concerned a fair and reasonable opportunity to accomplish his program for the people. By no means will there be a reasonable opportunity if from Day One after assumption of office, the process of recall can already be initiated against said official. For it cannot be gainsaid that the more disquieting and destabilizing part of recall is its initiation more than the recall election itself. It is in the too early initiatory process where the baseless criticisms and falsehoods of a few are foisted on the many. Premature initiatives to recall an official are resisted with stronger vim and venom. The reasons are obvious to those whose political innocence has long been slain. The incumbent would not like to lose power just recently won. The challenger, often a loser in the previous election, would not want to lose

a second time. To allow early recall initiative is to encourage divisive, expensive, wasteful politics. It will also put a premium on the politics of compromise - - - the politics where public interest always comes out second best.

With due respect, the interpretation made by the majority of Section 74 (b) of the Local Government Code, which will countenance recall initiatives right on Day One after an official starts his term of office, will breed these political evils. To be sure, the interpretation is based on a narrow rationale and cannot inspire assent. It starts from the premise that recall is a power given to registered voters and "since the voters do not exercise such right except in an election, it is clear that the initiation of recall proceedings is not prohibited within the one-year period" provided by law. The reasoning is based on the misleading perception that the only participation of the people in recall is on election day when they cast their vote electing or rejecting an incumbent. But the role of the people in recall is not limited to being the judge on election day. In truth, the people participate in the initiation of the recall process. There are two (2) kinds of recall - - - recall initiated directly by the people and recall initiated by the people thru the Preparatory Recall Assembly (PRA). In recall initiated by the people, it is self-evident that the people are involved from beginning to the end of the process. But nothing less is true in recall initiated by the PRA. In *Garcia*,^[4] we scoured the history of recall and we held: "[p]etitioners have misconstrued the nature of the initiatory process of recall by the PRAC. They have embraced the view that initiation by the PRAC is not initiation by the people. This is a misimpression for initiation by the PRAC is also initiation by the people, albeit done indirectly through their representatives." We further ruled that "the members of the PRAC are in the PRAC not in representation of their political parties but as representatives of the people."^[5]

There is another reason why I do not share the majority ruling that the one-year waiting period is a limitation on the right of the people to judge an incumbent on election day itself but not a limitation on their right to initiate the recall process. I submit that the rationale for fixing the election day one year after assumption of office is different from the rationale for prohibiting premature recall initiative. The rationale of the first is for the benefit of the people, to give them sufficient time to assess intelligently the performance of an incumbent. The rationale of the second is for the benefit of the incumbent, to give him a fair chance to govern well, to serve the people minus the unnecessary distractions from the itch of too much politics. The ruling of the majority recognizes the rationale of the first but not the rationale of the second. Its ruling that sanctions too early a recall initiative, and worse, that allows endless recall initiatives will deprive an incumbent a fair opportunity to prove himself thru the politics of performance.

The majority also holds that "to construe the limitation in paragraph (b) as including the initiation of recall proceedings would unduly curtail freedom of speech and assembly." Again, I beg to disagree. A dredging even of the subterranean meanings of freedom of speech and assembly will not yield this result. It is one thing to postulate that during the one-year waiting period the people cannot legally start a recall process. It is entirely non sequitur to add that during the said period, the people's freedom of speech and freedom of assembly are suspended. These rights are in no way restricted for critical speeches during the one-year waiting period can serve as valuable inputs in deciding after the said period whether to initiate the recall process. They will assume more importance in the recall election date itself. To stress again, what the law deems impermissible is formally starting the recall process right after Day One of an incumbent's term of office for the purpose of ending his incumbency, an act bereft of any utility.

In my Preliminary Dissenting Opinion, I purveyed the view that the one-year waiting period is a period of repose, of respite from divisive politics in order to give whoever is the sovereign choice of the people a fair chance to succeed in public service. Rejecting this view, the majority holds that "unfortunately, the law cannot really provide for a period of honeymoon or moratorium in politics." With due respect, the ruling betrays historical amnesia. By no means is the one-year waiting period anew, startling legal mechanism. This legal mechanism has

long been installed to regulate our labor-management relations, a volatile relationship, then and now. One of the areas of concern in labor-management relations relates to the choice of employee representative who shall bargain with the employer on the terms and conditions of employment. The choice of the representative is determined in a certification election, a democratic exercise often forcefully contested by unions for at stake is enormous power, both political and economic. In the infant years of our labor-management relations, these representatives were the objects of frequent change thru repeated petitions for new certification elections. These repeated petitions for certification elections weakened employee representatives and resulted in instability in labor-management relations. The instability had a debilitating effect on the economy. As a remedial measure, the Industrial Peace Act insulated the term of the employee representative from change for one year. This is known as the certification year rule pursuant to which no petition for certification election can be ordered in the same bargaining unit more often than once in twelve months.[6] Hence, for one year, the employee representative is shielded from any initiative calling for a certification election to change representative. This progressive mechanism is still contained in Article 231 of our Labor Code. To jog our memory, this legal mechanism was taken from the Wagner Act[7] of the United States which had a provision that no election can be directed in any bargaining unit or in any subdivision, where in the preceding 12-months period, a valid election has been held. This 12-month ban on certification election of the Wagner Act has never been challenged as violative of freedom of speech and of assembly of members of minority unions who wish to be elected as employee bargaining representative. Let us not miss the reason for the twelve-month ban. Authorities in labor law like Professor Forkosch emphasize that the "concepts of political democracy were assimilated in these representation elections in labor law." [8] Needless to state, our own laws and derivative foreign laws repudiate the majority ruling that "x x x the law cannot really provide for a period of honeymoon or moratorium in politics... The only safeguard against the baneful . . . effects of partisan politics is the good sense and self restraint of the people"

I do not have any competing vision to offer against the majority on the need to hike the efficacy of the power of our people to recall elected officials who have lost their confidence. After all, our EDSA experience has taught us that it is the people and the people alone who can end malgovernment when all else fail. Recall is a powerful weapon given to our people but, like any power, it can be abused. For this reason, the legislature carefully defined its limitations for its misuse can bring about the disuse of a valuable means to terminate the misrule of misfits in government. Our lawmakers know that the paradox of power is that to be effective it must be restrained from running riot. Section 74 of the Local Government Code spelled out these restraints. Section 74 (a) limits the number of times an official can be subjected to recall during his term of office to only one time. Section 74 (b) limits the periods when the power can be exercised. It sets two periods: the first, sets the beginning, i.e., one year after an officials' assumption of office; the second, sets the end, i.e., one year immediately preceding a regular election. These limitations should be strictly followed considering the short 3-year term of office of local officials.

It is in this light that the Court should interpret Section 74. Its interpretation should strengthen the right of recall and the best way to do this is to interpret it to prevent its misuse. By way of summation, I respectfully submit that by holding that recall initiatives can start right after Day One of an official's assumption to office, the majority failed to recognize the need for stability of a public office. By holding that these initiatives can be undertaken not once, not twice but endlessly within one year after an official's assumption to office, the majority exposed our people to an overdose of politics. By holding that recall initiatives can be done prematurely, the majority forgot that such initiatives are meaningful only if they are used to adjudge an official's performance in office. By holding that recall initiatives can be done even without giving an official a fair chance to serve the people, the majority has induced incumbents to play the politics of compromise instead of the politics of performance. By holding that recall initiatives can be done at any one's caprice, the majority has cast a blind eye on the expenses that accompany such exercise. These expenses have to be repaid later, an undeniable cause of cronyism and corruption

in government.

The bottomline is that our law intends recall as a mechanism of good government. It can never fulfill that intent if we allow its use to foment too much politics. We need not be adepts in the alleyways of politics to say that too much politics is the root of a lot of evils in our country. Our 1987 Constitution sought to check this bad political cholesterol plaguing our government. Any attempt to restore this fat should draw more than a phlegmatic posture.

I vote to grant the petition.

[1] See section 1, Article II of the 1987 Constitution; section 1, Article II of the 1973 Constitution; section 1, Article II of the 1935 Constitution.

[2] 227 SCRA 100, 108-112 (1993)

[3] 269 SCRA 245 (1997)

[4] Supra, p. 114.

[5] Supra, p. 116.

[6] See Sec. 12 (b) of the Industrial Peace Act.

[7] See Sec. 9 (c)

[8] A Treatise on Labor Law, 1955 ed., p. 564.

SEPARATE AND DISSENTING OPINION

KAPUNAN, J.:

With utmost due respect, I am constrained to disagree with the main opinion that the term "recall" under Section 74(b) of Republic Act No. 7160, otherwise known as the Local Government Code, refers to the recall election alone Section 74 provide:

Sec. 74. Limitation on Recall.-

(a) Any elective official may be the subject of a recall election only once during his term of office for loss of confidence;

(b) No recall shall take place within one year from the date of the official's assumption of office.

Mayor Claudio won the mayoralty race in Pasay City in the 11 May 1998 elections. He assumed office on 1 July 1998.[1] Less than 10 months thereafter, or on 29 May 1999, the People's Recall Assembly (PRA) of Pasay City convened and passed a resolution to initiate the recall of Mayor Claudio.[2] On 2 July 1999, a petition for the recall of Mayor Claudio was filed with the Commission on Elections (COMELEC).[3] In a Resolution, promulgated on 18 October 1999, rendered in E.M. No. 99-005 (RCL), the COMELEC resolved to approve and give due course to the petition for recall. The COMELEC, construing that the word "recall" only begins upon "the time of filing of the recall petition in the Office of the Election Officer of Pasay City up to the date of recall election,"[4] ruled that since the petition was filed on 2 July 1999, the same was already outside the prohibited period of one (1) year after Mayor Claudio assumed his office on 1 July 1998.[5] Hence, the present case where the majority found that the COMELEC did not abuse its discretion in issuing the assailed resolution.

Contrary to the majority view, I humbly submit that "recall" under Section 74(b) is not limited to the election itself, but, rather, it is a process which begins once the PRA makes its first affirmative acts towards the recall of the elective local official concerned, i.e. the convening of the PRA and the passing by the PRA of a recall resolution during a session called for the said purpose, and culminates with the holding of the recall election.

The majority opinion concedes that it "can agree that a process which begins with the convening of the preparatory recall assembly on the gathering of the signatures at least 25% of the registered voters of a local

government unit." Yet, it maintains that "recall" as used in paragraph (b) of Section 74 "refers to the election itself by means of which the voters decide whether they should retain their local official or elect his replacement."

The majority opines that the power of recall can be exercised solely by the electorate and not by the PRA through "the filing of a petition for recall with the COMELEC, or the gathering of the signatures of at least 25% of the voters for a petition for recall." This is so since the majority equates the power of recall with the electorate's power to replace or retain the local official concerned during the recall elections. In furtherance of this premise, the majority concludes that since the "power vested on the electorate is not the power to initiate the recall proceedings but the power to elect an official into office, the limitations in §74 cannot be deemed to apply to the entire recall proceedings." I beg to disagree.

Since our form of government is a representative democracy, it cannot be claimed that the initiation of the recall process by the PRA is not an initiation by the people. This was explained by the Court in the case of *Garcia vs. Commission on Elections*,^[6] wherein it was said:

Again, the contention cannot command our concurrence. Petitioners have misconstrued the nature of the initiatory process of recall by the PRAC. They have embraced the view that initiation by the PRAC is not initiation by the people. This is a misimpression for initiation by the PRAC is also initiation by the people, albeit done indirectly through their representatives. It is not constitutionally impermissible for the people to act through their elected representatives. Nothing less than the paramount task of drafting our Constitution is delegated by the people to their representatives, elected either to act as a constitutional convention or as a congressional constituent assembly. The initiation of a recall process is a lesser act and there is no rhyme or reason why it cannot be entrusted to and exercised by the elected representatives of the People.^[7]

It must be noted that in the above quotation, as well as in all the discussions in the *Garcia* case, recall is always described and referred to as a process. The *Garcia* case does not, either directly or impliedly, state that the term "recall" in Section 74(b) is confined solely to the recall election alone. *Garcia* explains that recall as a process which begins with the convening of the PRA coupled with the passing of a recall resolution and culminating with the recall election itself.^[8] It is the PRA resolution which paves the way for the official sought to be recalled to appear before the electorate so he can justify why he should be allowed to continue in office.^[9] Thereafter, to determine whether the elected official still retains the confidence of the people, a recall election is held. Thus, the recall process may be considered as composed of two distinct but continuous phases, namely: the initiatory phase and the election phase. As such, for purposes of determining whether the recall was instituted within the allowable period under Section 74(b), the reckoning point should be the initiatory phase which is the time of convening and passing of the recall resolution. This should be so since it is from this moment that the process of recall comes into being. It is at this precise moment when the PRA, as representatives of the electorate, concretizes its stand and makes an affirmative act of its intent to recall the elected local official. Nonetheless, it is still up to the people to affirm or reject the move to recall the incumbent official during the election called for the purpose.

The underlying reason behind the time bar provisions, as pronounced by the Court in *Angobung vs. COMELEC*,^[10] is to guard against the abuse of the power of recall. In so holding, the Court authoritatively cited the case of *In Re Bower*,^[11] stating that "the only logical reason which we can ascribe for requiring the electors to wait one year before petitioning for a recall is to prevent premature action on their part in voting to remove a newly elected official before having had sufficient time to evaluate the soundness of his policies and decisions." The phrase "premature action" logically refers to any activity geared towards removing the incumbent official without waiting for sufficient time to elapse to evaluate his performance in office. The convening of the PRA and the passing of the questioned recall resolution in this case were actions or activities proscribed by law, rendering the entire recall process invalid. The term "recall" under Section 74(b) being a process which begins with the convening of the PRA and the passing of the recall resolution, such initiatory exercises within the prohibited

period tend to disrupt the workings of a local government unit and are deleterious to its development and growth.

In a political culture like ours where a losing candidate does not easily concede defeat as demonstrated by numerous election protests pending before our courts and in the COMELEC, all that a disgruntled candidate has to do to undermine the mandate of the victor is to court the other local officials in order to set the stage for the convening of a PRA and the passage of a recall resolution. After this, all that needs to be done is to wait for the lapse of the first time bar and, thereafter, file the petition for recall. In the meantime, the incumbent official sought to be removed and his political opponents engage in a full-scale election campaign which is divisive, destabilizing and disruptive, with its pernicious effects taking their toll on good governance.

In this regard, Senator Aquilino Pimentel, the main author of the Local Government Code of 1991, in his book entitled "The Local Government Code of 1991: The Key to National Development," explained:

Recall resolutions or petitions may not be used whimsically. In fact, they can be resorted to only once during the term of the elective official sought to be recalled. And since there is a prohibition against recalls within the first year of an official's term of office, and within one year immediately preceding a regular local election, the move to recall can only be done in the second year of the three year term of local elective officials.[12]

It can readily be observed that Senator Pimentel used the phrase "move to recall" in describing the activity which can only be undertaken during the freedom period. This is significant because the use of the phrase "move to recall" is instructive of the concept envisioned by the primary author of the law in providing for the limitations on recall. It connotes a progressive course of action or a step-by-step process. As such, the word "move," when used in conjunction with the word "recall," can pertain to no other than the entire recall process which begins with the convening of the PRA and the passing of the recall resolution and ending with the recall election. It cannot, by any stretch of imagination, be construed as referring to the election alone.

I cannot subscribe to the observation of the majority that to construe the limitation in Section 74 (b) "as including the initiation of recall proceedings would unduly curtail freedom of speech and of assembly guaranteed by the Constitution." The people can assemble and discuss their opinions and grievances against the incumbent official, at anytime during his term and as often as they would like, because it is their right to do so. An exercise of their right to peaceably assemble and exchange views about the governance of the local official would not be violative of the limitations set forth in Section 74(b). However, once notice is sent, during the prohibited period, stating that the purpose of the meeting is to convene the PRA and to pass a recall resolution, and the same is actually approved, then Section 74(b) is transgressed. In this instance, the limitation of the electorate's freedom of speech and assembly is not violated since the time bar provision is imposed by the legislature in the exercise of its police power. The limitation in Section 74(b) is analogous to the prohibition under Section 80 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, which prohibits a person from engaging in any election campaign or partisan political activity except during the campaign period.[13] The limitation on the freedom of speech and assembly imposed by Section 80 has never been questioned as being unconstitutional.

Finally, I do not find any logical reason to support the view that the recall process should be counted only from the time of the filing of the recall resolution or petition with the COMELEC. Although the filing of the petition for recall with the COMELEC is, admittedly, an important component in the recall process, it, however, cannot be considered as the starting point of the same. The filing of the petition, being merely a consequential mechanical act, is just a next step in the process of recall after PRA's acts of convening the recall assembly and passing the recall resolution. Once a petition for recall is filed, the only role of the COMELEC is the verification of its authenticity and genuineness. After such verification the COMELEC is mandated by law to set the date of the recall election. Clearly, the role of the COMELEC in the recall process under Section 70 of R.A. 7160 is merely ministerial in nature. Such being the case, it cannot be correctly argued that the crucial moment in the recall

process is the actual filing of the petition with the COMELEC.

I vote, therefore, to grant the petition.

[1] Rollo, p. 54.

[2] Id., at 29.

[3] Id., at 54.

[4] Id., at 54.

[5] Ibid.

[6] 227 SCRA 100 (1993)

[7] Id., at 114. Underscoring supplied.

[8] Id., at 114-115.

[9] Id., at 115.

[10] 269 SCRA 245 (1997)

[11] 41 Ill. 777, 242 N.E. 2nd 252 (1968)

[12] Pimentel, The Local Government Code of 1991: The key to National Development, p. 187. Emphasis supplied.

[13] SEC. 80. Election campaign or partisan political activity outside campaign period. – It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period: Provided, That political parties may hold political conventions or meeting to nominate their official candidates within thirty days before the commencement of the campaign period and forty-five days for Presidential and Vice-Presidential election.

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