

BAI SANDRA S. A. SEMA, PETITIONER, VS. COMMISSION ON ELECTIONS AND DIDAGEN P. DILANGALEN, RESPONDENTS.

G.R. No. 177597. July 16, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

These consolidated petitions[1] seek to annul Resolution No. 7902, dated 10 May 2007, of the Commission on Elections (COMELEC) treating Cotabato City as part of the legislative district of the Province of Shariff Kabunsuan.[2]

The Facts

The Ordinance appended to the 1987 Constitution apportioned two legislative districts for the Province of Maguindanao. The first legislative district consists of Cotabato City and eight municipalities.[3] Maguindanao forms part of the Autonomous Region in Muslim Mindanao (ARMM), created under its Organic Act, Republic Act No. 6734 (RA 6734), as amended by Republic Act No. 9054 (RA 9054).[4] Although under the Ordinance, Cotabato City forms part of Maguindanao's first legislative district, it is not part of the ARMM but of Region XII, having voted against its inclusion in the ARMM in the plebiscite held in November 1989.

On 28 August 2006, the ARMM's legislature, the ARMM Regional Assembly, exercising its power to create provinces under Section 19, Article VI of RA 9054,[5] enacted Muslim Mindanao Autonomy Act No. 201 (MMA Act 201) creating the Province of Shariff Kabunsuan composed of the eight municipalities in the first district of Maguindanao. MMA Act 201 provides:

Section 1. The Municipalities of Barira, Buldon, Datu Odin Sinsuat, Kabuntalan, Matanog, Parang, Sultan Kudarat, Sultan Mastura, and Upi are hereby separated from the Province of Maguindanao and constituted into a distinct and independent province, which is hereby created, to be known as the Province of Shariff Kabunsuan.

x x x x

Sec. 5. The corporate existence of this province shall commence upon the appointment by the Regional Governor or election of the governor and majority of the regular members of the Sangguniang Panlalawigan.

The incumbent elective provincial officials of the Province of Maguindanao shall continue to serve their unexpired terms in the province that they will choose or where they are residents: Provided, that where an elective position in both provinces becomes vacant as a consequence of the creation of the Province of Shariff Kabunsuan, all incumbent elective provincial officials shall have preference for appointment to a higher elective vacant position and for the time being be appointed by the Regional Governor, and shall hold office until their successors shall have been elected and qualified in the next local elections; Provided, further, that they shall continue to receive the salaries they are receiving at the time of the approval of this Act until the new

readjustment of salaries in accordance with law. Provided, furthermore, that there shall be no diminution in the number of the members of the Sangguniang Panlalawigan of the mother province.

Except as may be provided by national law, the existing legislative district, which includes Cotabato as a part thereof, shall remain.

Later, three new municipalities[6] were carved out of the original nine municipalities constituting Shariff Kabunsuan, bringing its total number of municipalities to 11. Thus, what was left of Maguindanao were the municipalities constituting its second legislative district. Cotabato City, although part of Maguindanao's first legislative district, is not part of the Province of Maguindanao.

The voters of Maguindanao ratified Shariff Kabunsuan's creation in a plebiscite held on 29 October 2006.

On 6 February 2007, the Sangguniang Panlungsod of Cotabato City passed Resolution No. 3999 requesting the COMELEC to "clarify the status of Cotabato City in view of the conversion of the First District of Maguindanao into a regular province" under MMA Act 201.

In answer to Cotabato City's query, the COMELEC issued Resolution No. 07-0407 on 6 March 2007 "maintaining the status quo with Cotabato City as part of Shariff Kabunsuan in the First Legislative District of Maguindanao." Resolution No. 07-0407, which adopted the recommendation of the COMELEC's Law Department under a Memorandum dated 27 February 2007,[7] provides in pertinent parts:

Considering the foregoing, the Commission RESOLVED, as it hereby resolves, to adopt the recommendation of the Law Department that pending the enactment of the appropriate law by Congress, to maintain the status quo with Cotabato City as part of Shariff Kabunsuan in the First Legislative District of Maguindanao. (Emphasis supplied)

However, in preparation for the 14 May 2007 elections, the COMELEC promulgated on 29 March 2007 Resolution No. 7845 stating that Maguindanao's first legislative district is composed only of Cotabato City because of the enactment of MMA Act 201.[8]

On 10 May 2007, the COMELEC issued Resolution No. 7902, subject of these petitions, amending Resolution No. 07-0407 by renaming the legislative district in question as "Shariff Kabunsuan Province with Cotabato City (formerly First District of Maguindanao with Cotabato City)."[9]

In G.R. No. 177597, Sema, who was a candidate in the 14 May 2007 elections for Representative of "Shariff Kabunsuan with Cotabato City," prayed for the nullification of COMELEC Resolution No. 7902 and the exclusion from canvassing of the votes cast in Cotabato City for that office. Sema contended that Shariff Kabunsuan is entitled to one representative in Congress under Section 5 (3), Article VI of the Constitution[10] and Section 3 of the Ordinance appended to the Constitution.[11] Thus, Sema asserted that the COMELEC acted without or in excess of its jurisdiction in issuing Resolution No. 7902 which maintained the status quo in Maguindanao's first legislative district despite the COMELEC's earlier directive in Resolution No. 7845 designating Cotabato City as the lone component of Maguindanao's reapportioned first legislative district.[12] Sema further claimed that in issuing Resolution No. 7902, the COMELEC usurped Congress' power to create or reapportion legislative districts.

In its Comment, the COMELEC, through the Office of the Solicitor General (OSG), chose not to reach the merits of the case and merely contended that (1) Sema wrongly availed of the writ of certiorari to nullify COMELEC Resolution No. 7902 because the COMELEC issued the same in the exercise of its administrative, not quasi-judicial, power and (2) Sema's prayer for the writ of prohibition in G.R. No. 177597 became moot with the proclamation of respondent Didagen P. Dilangalen (respondent Dilangalen) on 1 June 2007 as representative of

the legislative district of Shariff Kabunsuan Province with Cotabato City.

In his Comment, respondent Dilangalen countered that Sema is estopped from questioning COMELEC Resolution No. 7902 because in her certificate of candidacy filed on 29 March 2007, Sema indicated that she was seeking election as representative of "Shariff Kabunsuan including Cotabato City." Respondent Dilangalen added that COMELEC Resolution No. 7902 is constitutional because it did not apportion a legislative district for Shariff Kabunsuan or reapportion the legislative districts in Maguindanao but merely renamed Maguindanao's first legislative district. Respondent Dilangalen further claimed that the COMELEC could not reapportion Maguindanao's first legislative district to make Cotabato City its sole component unit as the power to reapportion legislative districts lies exclusively with Congress, not to mention that Cotabato City does not meet the minimum population requirement under Section 5 (3), Article VI of the Constitution for the creation of a legislative district within a city.[13]

Sema filed a Consolidated Reply controverting the matters raised in respondents' Comments and reiterating her claim that the COMELEC acted ultra vires in issuing Resolution No. 7902.

In the Resolution of 4 September 2007, the Court required the parties in G.R. No. 177597 to comment on the issue of whether a province created by the ARMM Regional Assembly under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province. The parties submitted their compliance as follows:

(1) Sema answered the issue in the affirmative on the following grounds: (a) the Court in *Felwa v. Salas*[14] stated that "when a province is created by statute, the corresponding representative district comes into existence neither by authority of that statute — which cannot provide otherwise — nor by apportionment, but by operation of the Constitution, without a reapportionment"; (b) Section 462 of Republic Act No. 7160 (RA 7160) "affirms" the apportionment of a legislative district incident to the creation of a province; and (c) Section 5 (3), Article VI of the Constitution and Section 3 of the Ordinance appended to the Constitution mandate the apportionment of a legislative district in newly created provinces.

(2) The COMELEC, again represented by the OSG, apparently abandoned its earlier stance on the propriety of issuing Resolution Nos. 07-0407 and 7902 and joined causes with Sema, contending that Section 5 (3), Article VI of the Constitution is "self-executing." Thus, every new province created by the ARMM Regional Assembly is ipso facto entitled to one representative in the House of Representatives even in the absence of a national law; and

(3) Respondent Dilangalen answered the issue in the negative on the following grounds: (a) the "province" contemplated in Section 5 (3), Article VI of the Constitution is one that is created by an act of Congress taking into account the provisions in RA 7160 on the creation of provinces; (b) Section 3, Article IV of RA 9054 withheld from the ARMM Regional Assembly the power to enact measures relating to national elections, which encompasses the apportionment of legislative districts for members of the House of Representatives; (c) recognizing a legislative district in every province the ARMM Regional Assembly creates will lead to the disproportionate representation of the ARMM in the House of Representatives as the Regional Assembly can create provinces without regard to the requirements in Section 461 of RA 7160; and (d) Cotabato City, which has a population of less than 250,000, is not entitled to a representative in the House of Representatives.

On 27 November 2007, the Court heard the parties in G.R. No. 177597 in oral arguments on the following issues:

(1) whether Section 19, Article VI of RA 9054, delegating to the ARMM Regional Assembly the power to create provinces, is constitutional; and (2) if in the affirmative, whether a province created under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province.[15]

In compliance with the Resolution dated 27 November 2007, the parties in G.R. No. 177597 filed their respective Memoranda on the issues raised in the oral arguments.[16] On the question of the constitutionality of Section 19, Article VI of RA 9054, the parties in G.R. No. 177597 adopted the following positions:

(1) Sema contended that Section 19, Article VI of RA 9054 is constitutional (a) as a valid delegation by Congress to the ARMM of the power to create provinces under Section 20 (9), Article X of the Constitution granting to the autonomous regions, through their organic acts, legislative powers over "other matters as may be authorized by law for the promotion of the general welfare of the people of the region" and (b) as an amendment to Section 6 of RA 7160.[17] However, Sema concedes that, if taken literally, the grant in Section 19, Article VI of RA 9054 to the ARMM Regional Assembly of the power to "prescribe standards lower than those mandated" in RA 7160 in the creation of provinces contravenes Section 10, Article X of the Constitution.[18] Thus, Sema proposed that Section 19 "should be construed as prohibiting the Regional Assembly from prescribing standards x x x that do not comply with the minimum criteria" under RA 7160.[19]

(2) Respondent Dilangalen contended that Section 19, Article VI of RA 9054 is unconstitutional on the following grounds: (a) the power to create provinces was not among those granted to the autonomous regions under Section 20, Article X of the Constitution and (b) the grant under Section 19, Article VI of RA 9054 to the ARMM Regional Assembly of the power to prescribe standards lower than those mandated in Section 461 of RA 7160 on the creation of provinces contravenes Section 10, Article X of the Constitution and the Equal Protection Clause; and

(3) The COMELEC, through the OSG, joined causes with respondent Dilangalen (thus effectively abandoning the position the COMELEC adopted in its Compliance with the Resolution of 4 September 2007) and contended that Section 19, Article VI of RA 9054 is unconstitutional because (a) it contravenes Section 10 and Section 6,[20] Article X of the Constitution and (b) the power to create provinces was withheld from the autonomous regions under Section 20, Article X of the Constitution.

On the question of whether a province created under Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such new province, Sema and respondent Dilangalen reiterated in their Memoranda the positions they adopted in their Compliance with the Resolution of 4 September 2007. The COMELEC deemed it unnecessary to submit its position on this issue considering its stance that Section 19, Article VI of RA 9054 is unconstitutional.

The pendency of the petition in G.R. No. 178628 was disclosed during the oral arguments on 27 November 2007. Thus, in the Resolution of 19 February 2008, the Court ordered G.R. No. 178628 consolidated with G.R. No. 177597. The petition in G.R. No. 178628 echoed Sema's contention that the COMELEC acted ultra vires in issuing Resolution No. 7902 depriving the voters of Cotabato City of a representative in the House of Representatives. In its Comment to the petition in G.R. No. 178628, the COMELEC, through the OSG, maintained the validity of COMELEC Resolution No. 7902 as a temporary measure pending the enactment by Congress of the "appropriate law."

The Issues

The petitions raise the following issues:

I. In G.R. No. 177597:

(A) Preliminarily -

(1) whether the writs of Certiorari, Prohibition, and Mandamus are proper to test the constitutionality of

COMELEC Resolution No. 7902; and

(2) whether the proclamation of respondent Dilangalen as representative of Shariff Kabunsuan Province with Cotabato City mooted the petition in G.R. No. 177597.

(B) On the merits -

(1) whether Section 19, Article VI of RA 9054, delegating to the ARMM Regional Assembly the power to create provinces, cities, municipalities and barangays, is constitutional; and

(2) if in the affirmative, whether a province created by the ARMM Regional Assembly under MMA Act 201 pursuant to Section 19, Article VI of RA 9054 is entitled to one representative in the House of Representatives without need of a national law creating a legislative district for such province.

II. In G.R. No. 177597 and G.R. No. 178628, whether COMELEC Resolution No. 7902 is valid for maintaining the status quo in the first legislative district of Maguindanao (as "Shariff Kabunsuan Province with Cotabato City [formerly First District of Maguindanao with Cotabato City]"), despite the creation of the Province of Shariff Kabunsuan out of such district (excluding Cotabato City).

The Ruling of the Court

The petitions have no merit. We rule that (1) Section 19, Article VI of RA 9054 is unconstitutional insofar as it grants to the ARMM Regional Assembly the power to create provinces and cities; (2) MMA Act 201 creating the Province of Shariff Kabunsuan is void; and (3) COMELEC Resolution No. 7902 is valid.

On the Preliminary Matters

The Writ of Prohibition is Appropriate
to Test the Constitutionality of
Election Laws, Rules and Regulations

The purpose of the writ of Certiorari is to correct grave abuse of discretion by "any tribunal, board, or officer exercising judicial or quasi-judicial functions." [21] On the other hand, the writ of Mandamus will issue to compel a tribunal, corporation, board, officer, or person to perform an act "which the law specifically enjoins as a duty." [22] True, the COMELEC did not issue Resolution No. 7902 in the exercise of its judicial or quasi-judicial functions. [23] Nor is there a law which specifically enjoins the COMELEC to exclude from canvassing the votes cast in Cotabato City for representative of "Shariff Kabunsuan Province with Cotabato City." These, however, do not justify the outright dismissal of the petition in G.R. No. 177597 because Sema also prayed for the issuance of the writ of Prohibition and we have long recognized this writ as proper for testing the constitutionality of election laws, rules, and regulations. [24]

Respondent Dilangalen's Proclamation
Does Not Moot the Petition

There is also no merit in the claim that respondent Dilangalen's proclamation as winner in the 14 May 2007 elections for representative of "Shariff Kabunsuan Province with Cotabato City" mooted this petition. This case does not concern respondent Dilangalen's election. Rather, it involves an inquiry into the validity of COMELEC Resolution No. 7902, as well as the constitutionality of MMA Act 201 and Section 19, Article VI of RA 9054. Admittedly, the outcome of this petition, one way or another, determines whether the votes cast in Cotabato City for representative of the district of "Shariff Kabunsuan Province with Cotabato City" will be included in the canvassing of ballots. However, this incidental consequence is no reason for us not to proceed with the resolution of the novel issues raised here. The Court's ruling in these petitions affects not only the recently concluded

elections but also all the other succeeding elections for the office in question, as well as the power of the ARMM Regional Assembly to create in the future additional provinces.

On the Main Issues

Whether the ARMM Regional Assembly
Can Create the Province of Shariff Kabunsuan

The creation of local government units is governed by Section 10, Article X of the Constitution, which provides:

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

Thus, the creation of any of the four local government units - province, city, municipality or barangay - must comply with three conditions. First, the creation of a local government unit must follow the criteria fixed in the Local Government Code. Second, such creation must not conflict with any provision of the Constitution. Third, there must be a plebiscite in the political units affected.

There is neither an express prohibition nor an express grant of authority in the Constitution for Congress to delegate to regional or local legislative bodies the power to create local government units. However, under its plenary legislative powers, Congress can delegate to local legislative bodies the power to create local government units, subject to reasonable standards and provided no conflict arises with any provision of the Constitution. In fact, Congress has delegated to provincial boards, and city and municipal councils, the power to create barangays within their jurisdiction,[25] subject to compliance with the criteria established in the Local Government Code, and the plebiscite requirement in Section 10, Article X of the Constitution. However, under the Local Government Code, "only x x x an Act of Congress" can create provinces, cities or municipalities.[26]

Under Section 19, Article VI of RA 9054, Congress delegated to the ARMM Regional Assembly the power to create provinces, cities, municipalities and barangays within the ARMM. Congress made the delegation under its plenary legislative powers because the power to create local government units is not one of the express legislative powers granted by the Constitution to regional legislative bodies.[27] In the present case, the question arises whether the delegation to the ARMM Regional Assembly of the power to create provinces, cities, municipalities and barangays conflicts with any provision of the Constitution.

There is no provision in the Constitution that conflicts with the delegation to regional legislative bodies of the power to create municipalities and barangays, provided Section 10, Article X of the Constitution is followed. However, the creation of provinces and cities is another matter. Section 5 (3), Article VI of the Constitution provides, "Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative" in the House of Representatives. Similarly, Section 3 of the Ordinance appended to the Constitution provides, "Any province that may hereafter be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member x x x."

Clearly, a province cannot be created without a legislative district because it will violate Section 5 (3), Article VI of the Constitution as well as Section 3 of the Ordinance appended to the Constitution. For the same reason, a city with a population of 250,000 or more cannot also be created without a legislative district. Thus, the power to create a province, or a city with a population of 250,000 or more, requires also the power to create a legislative district. Even the creation of a city with a population of less than 250,000 involves the power to create a legislative district because once the city's population reaches 250,000, the city automatically becomes entitled to

one representative under Section 5 (3), Article VI of the Constitution and Section 3 of the Ordinance appended to the Constitution. Thus, the power to create a province or city inherently involves the power to create a legislative district.

For Congress to delegate validly the power to create a province or city, it must also validly delegate at the same time the power to create a legislative district. The threshold issue then is, can Congress validly delegate to the ARMM Regional Assembly the power to create legislative districts for the House of Representatives? The answer is in the negative.

Legislative Districts are Created or Reapportioned Only by an Act of Congress

Under the present Constitution, as well as in past[28] Constitutions, the power to increase the allowable membership in the House of Representatives, and to reapportion legislative districts, is vested exclusively in Congress. Section 5, Article VI of the Constitution provides:

SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

x x x x

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section. (Emphasis supplied)

Section 5 (1), Article VI of the Constitution vests in Congress the power to increase, through a law, the allowable membership in the House of Representatives. Section 5 (4) empowers Congress to reapportion legislative districts. The power to reapportion legislative districts necessarily includes the power to create legislative districts out of existing ones. Congress exercises these powers through a law that Congress itself enacts, and not through a law that regional or local legislative bodies enact. The allowable membership of the House of Representatives can be increased, and new legislative districts of Congress can be created, only through a national law passed by Congress. In *Montejo v. COMELEC*, [29] we held that the "power of redistricting x x x is traditionally regarded as part of the power (of Congress) to make laws," and thus is vested exclusively in Congress.

This textual commitment to Congress of the exclusive power to create or reapportion legislative districts is logical. Congress is a national legislature and any increase in its allowable membership or in its incumbent membership through the creation of legislative districts must be embodied in a national law. Only Congress can enact such a law. It would be anomalous for regional or local legislative bodies to create or reapportion legislative districts for a national legislature like Congress. An inferior legislative body, created by a superior legislative body, cannot change the membership of the superior legislative body.

The creation of the ARMM, and the grant of legislative powers to its Regional Assembly under its organic act, did not divest Congress of its exclusive authority to create legislative districts. This is clear from the Constitution and the ARMM Organic Act, as amended. Thus, Section 20, Article X of the Constitution provides:

SECTION 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national

laws, the organic act of autonomous regions shall provide for legislative powers over:

- (1) Administrative organization;
- (2) Creation of sources of revenues;
- (3) Ancestral domain and natural resources;
- (4) Personal, family, and property relations;
- (5) Regional urban and rural planning development;
- (6) Economic, social, and tourism development;
- (7) Educational policies;
- (8) Preservation and development of the cultural heritage; and
- (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

Nothing in Section 20, Article X of the Constitution authorizes autonomous regions, expressly or impliedly, to create or reapportion legislative districts for Congress.

On the other hand, Section 3, Article IV of RA 9054 amending the ARMM Organic Act, provides, "The Regional Assembly may exercise legislative power x x x except on the following matters: x x x (k) National elections. x x x." Since the ARMM Regional Assembly has no legislative power to enact laws relating to national elections, it cannot create a legislative district whose representative is elected in national elections. Whenever Congress enacts a law creating a legislative district, the first representative is always elected in the "next national elections" from the effectivity of the law.[30]

Indeed, the office of a legislative district representative to Congress is a national office, and its occupant, a Member of the House of Representatives, is a national official.[31] It would be incongruous for a regional legislative body like the ARMM Regional Assembly to create a national office when its legislative powers extend only to its regional territory. The office of a district representative is maintained by national funds and the salary of its occupant is paid out of national funds. It is a self-evident inherent limitation on the legislative powers of every local or regional legislative body that it can only create local or regional offices, respectively, and it can never create a national office.

To allow the ARMM Regional Assembly to create a national office is to allow its legislative powers to operate outside the ARMM's territorial jurisdiction. This violates Section 20, Article X of the Constitution which expressly limits the coverage of the Regional Assembly's legislative powers "[w]ithin its territorial jurisdiction x x x."

The ARMM Regional Assembly itself, in creating Shariff Kabunsuan, recognized the exclusive nature of Congress' power to create or reapportion legislative districts by abstaining from creating a legislative district for Shariff Kabunsuan. Section 5 of MMA Act 201 provides that:

Except as may be provided by national law, the existing legislative district, which includes Cotabato City as a part thereof, shall remain. (Emphasis supplied)

However, a province cannot legally be created without a legislative district because the Constitution mandates that "each province shall have at least one representative." Thus, the creation of the Province of Shariff Kabunsuan without a legislative district is unconstitutional.

Sema, petitioner in G.R. No. 177597, contends that Section 5 (3), Article VI of the Constitution, which provides:

Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative. (Emphasis supplied)

and Section 3 of the Ordinance appended to the Constitution, which states:

Any province that may hereafter be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member or such number of Members as it may be entitled to on the basis of the number of its inhabitants and according to the standards set forth in paragraph (3), Section 5 of Article VI of the Constitution. The number of Members apportioned to the province out of which such new province was created or where the city, whose population has so increased, is geographically located shall be correspondingly adjusted by the Commission on Elections but such adjustment shall not be made within one hundred and twenty days before the election. (Emphasis supplied)

serve as bases for the conclusion that the Province of Shariff Kabunsuan, created on 29 October 2006, is automatically entitled to one member in the House of Representatives in the 14 May 2007 elections. As further support for her stance, petitioner invokes the statement in *Felwa* that "when a province is created by statute, the corresponding representative district comes into existence neither by authority of that statute — which cannot provide otherwise — nor by apportionment, but by operation of the Constitution, without a reapportionment."

The contention has no merit.

First. The issue in *Felwa*, among others, was whether Republic Act No. 4695 (RA 4695), creating the provinces of Benguet, Mountain Province, Ifugao, and Kalinga-Apayao and providing for congressional representation in the old and new provinces, was unconstitutional for "creati[ng] congressional districts without the apportionment provided in the Constitution." The Court answered in the negative, thus:

The Constitution ordains:

"The House of Representatives shall be composed of not more than one hundred and twenty Members who shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, but each province shall have at least one Member. The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts. Each representative district shall comprise as far as practicable, contiguous and compact territory."

Pursuant to this Section, a representative district may come into existence: (a) indirectly, through the creation of a province — for "each province shall have at least one member" in the House of Representatives; or (b) by direct creation of several representative districts within a province. The requirements concerning the apportionment of representative districts and the territory thereof refer only to the second method of creation of representative districts, and do not apply to those incidental to the creation of provinces, under the first method. This is deducible, not only from the general tenor of the provision above quoted, but, also, from the fact that the apportionment therein alluded to refers to that which is made by an Act of Congress. Indeed, when a province is created by statute, the corresponding representative district, comes into existence neither by authority of that statute — which cannot provide otherwise — nor by apportionment, but by operation of the Constitution, without a reapportionment.

There is no constitutional limitation as to the time when, territory of, or other conditions under which a province

may be created, except, perhaps, if the consequence thereof were to exceed the maximum of 120 representative districts prescribed in the Constitution, which is not the effect of the legislation under consideration. As a matter of fact, provinces have been created or subdivided into other provinces, with the consequent creation of additional representative districts, without complying with the aforementioned requirements.[32] (Emphasis supplied)

Thus, the Court sustained the constitutionality of RA 4695 because (1) it validly created legislative districts "indirectly" through a special law enacted by Congress creating a province and (2) the creation of the legislative districts will not result in breaching the maximum number of legislative districts provided under the 1935 Constitution. Felwa does not apply to the present case because in Felwa the new provinces were created by a national law enacted by Congress itself. Here, the new province was created merely by a regional law enacted by the ARMM Regional Assembly.

What Felwa teaches is that the creation of a legislative district by Congress does not emanate alone from Congress' power to reapportion legislative districts, but also from Congress' power to create provinces which cannot be created without a legislative district. Thus, when a province is created, a legislative district is created by operation of the Constitution because the Constitution provides that "each province shall have at least one representative" in the House of Representatives. This does not detract from the constitutional principle that the power to create legislative districts belongs exclusively to Congress. It merely prevents any other legislative body, except Congress, from creating provinces because for a legislative body to create a province such legislative body must have the power to create legislative districts. In short, only an act of Congress can trigger the creation of a legislative district by operation of the Constitution. Thus, only Congress has the power to create, or trigger the creation of, a legislative district.

Moreover, if as Sema claims MMA Act 201 apportioned a legislative district to Shariff Kabunsuan upon its creation, this will leave Cotabato City as the lone component of the first legislative district of Maguindanao. However, Cotabato City cannot constitute a legislative district by itself because as of the census taken in 2000, it had a population of only 163,849. To constitute Cotabato City alone as the surviving first legislative district of Maguindanao will violate Section 5 (3), Article VI of the Constitution which requires that "[E]ach city with a population of at least two hundred fifty thousand x x x, shall have at least one representative."

Second. Sema's theory also undermines the composition and independence of the House of Representatives. Under Section 19,[33] Article VI of RA 9054, the ARMM Regional Assembly can create provinces and cities within the ARMM with or without regard to the criteria fixed in Section 461 of RA 7160, namely: minimum annual income of P20,000,000, and minimum contiguous territory of 2,000 square kilometers or minimum population of 250,000.[34] The following scenarios thus become distinct possibilities:

- (1) An inferior legislative body like the ARMM Regional Assembly can create 100 or more provinces and thus increase the membership of a superior legislative body, the House of Representatives, beyond the maximum limit of 250 fixed in the Constitution (unless a national law provides otherwise);
- (2) The proportional representation in the House of Representatives based on one representative for at least every 250,000 residents will be negated because the ARMM Regional Assembly need not comply with the requirement in Section 461(a)(ii) of RA 7160 that every province created must have a population of at least 250,000; and
- (3) Representatives from the ARMM provinces can become the majority in the House of Representatives through the ARMM Regional Assembly's continuous creation of provinces or cities within the ARMM.

The following exchange during the oral arguments of the petition in G.R. No. 177597 highlights the absurdity of Sema's position that the ARMM Regional Assembly can create provinces:

Justice Carpio:

So, you mean to say [a] Local Government can create legislative district[s] and pack Congress with their own representatives [?]

Atty. Vistan II:[35]

Yes, Your Honor, because the Constitution allows that.

Justice Carpio:

So, [the] Regional Assembly of [the] ARMM can create and create x x x provinces x x x and, therefore, they can have thirty-five (35) new representatives in the House of Representatives without Congress agreeing to it, is that what you are saying? That can be done, under your theory[?]

Atty. Vistan II:

Yes, Your Honor, under the correct factual circumstances.

Justice Carpio:

Under your theory, the ARMM legislature can create thirty-five (35) new provinces, there may be x x x [only] one hundred thousand (100,000) [population], x x x, and they will each have one representative x x x to Congress without any national law, is that what you are saying?

Atty. Vistan II:

Without law passed by Congress, yes, Your Honor, that is what we are saying.

x x x x

Justice Carpio:

So, they can also create one thousand (1000) new provinces, send one thousand (1000) representatives to the House of Representatives without a national law[,] that is legally possible, correct?

Atty. Vistan II:

Yes, Your Honor.[36] (Emphasis supplied)

Neither the framers of the 1987 Constitution in adopting the provisions in Article X on regional autonomy,[37] nor Congress in enacting RA 9054, envisioned or intended these disastrous consequences that certainly would wreck the tri-branch system of government under our Constitution. Clearly, the power to create or reapportion

legislative districts cannot be delegated by Congress but must be exercised by Congress itself. Even the ARMM Regional Assembly recognizes this.

The Constitution empowered Congress to create or reapportion legislative districts, not the regional assemblies. Section 3 of the Ordinance to the Constitution which states, "[A]ny province that may hereafter be created x x x shall be entitled in the immediately following election to at least one Member," refers to a province created by Congress itself through a national law. The reason is that the creation of a province increases the actual membership of the House of Representatives, an increase that only Congress can decide. Incidentally, in the present 14th Congress, there are 219[38] district representatives out of the maximum 250 seats in the House of Representatives. Since party-list members shall constitute 20 percent of total membership of the House, there should at least be 50 party-list seats available in every election in case 50 party-list candidates are proclaimed winners. This leaves only 200 seats for district representatives, much less than the 219 incumbent district representatives. Thus, there is a need now for Congress to increase by law the allowable membership of the House, even before Congress can create new provinces.

It is axiomatic that organic acts of autonomous regions cannot prevail over the Constitution. Section 20, Article X of the Constitution expressly provides that the legislative powers of regional assemblies are limited "[w]ithin its territorial jurisdiction and subject to the provisions of the Constitution and national laws, x x x." The Preamble of the ARMM Organic Act (RA 9054) itself states that the ARMM Government is established "within the framework of the Constitution." This follows Section 15, Article X of the Constitution which mandates that the ARMM "shall be created x x x within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

The present case involves the creation of a local government unit that necessarily involves also the creation of a legislative district. The Court will not pass upon the constitutionality of the creation of municipalities and barangays that does not comply with the criteria established in Section 461 of RA 7160, as mandated in Section 10, Article X of the Constitution, because the creation of such municipalities and barangays does not involve the creation of legislative districts. We leave the resolution of this issue to an appropriate case.

In summary, we rule that Section 19, Article VI of RA 9054, insofar as it grants to the ARMM Regional Assembly the power to create provinces and cities, is void for being contrary to Section 5 of Article VI and Section 20 of Article X of the Constitution, as well as Section 3 of the Ordinance appended to the Constitution. Only Congress can create provinces and cities because the creation of provinces and cities necessarily includes the creation of legislative districts, a power only Congress can exercise under Section 5, Article VI of the Constitution and Section 3 of the Ordinance appended to the Constitution. The ARMM Regional Assembly cannot create a province without a legislative district because the Constitution mandates that every province shall have a legislative district. Moreover, the ARMM Regional Assembly cannot enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Section 20, Article X of the Constitution. Thus, we rule that MMA Act 201, enacted by the ARMM Regional Assembly and creating the Province of Shariff Kabunsuan, is void.

Resolution No. 7902 Complies with the Constitution

Consequently, we hold that COMELEC Resolution No. 7902, preserving the geographic and legislative district of the First District of Maguindanao with Cotabato City, is valid as it merely complies with Section 5 of Article VI and Section 20 of Article X of the Constitution, as well as Section 1 of the Ordinance appended to the Constitution.

WHEREFORE, we declare Section 19, Article VI of Republic Act No. 9054 UNCONSTITUTIONAL insofar as it grants to the Regional Assembly of the Autonomous Region in Muslim Mindanao the power to create provinces and cities. Thus, we declare VOID Muslim Mindanao Autonomy Act No. 201 creating the Province of Shariff Kabunsuan. Consequently, we rule that COMELEC Resolution No. 7902 is VALID.

Let a copy of this ruling be served on the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.

Puno, C.J., Quisumbing, Austria-Martinez, Corona, Carpio-Morales, Nachura, and Reyes, JJ., concur.

Tinga, J., please see dissenting/concurring opinion.

Ynares-Santiago, Azcuna, Chico-Nazario, Leonardo-De Castro, and Brion, JJ., join the dissenting/concurring opinion of Justice Tinga.

Velasco, Jr., J., no part - close relationship to a party.

[1]In G.R. No. 177597, for the writs of certiorari, prohibition and mandamus; in G.R. No. 178628, for "declaratory relief" and for the writs of prohibition and mandamus.

[2] The petitioner in G.R. No. 177597, Bai Sandra S. A. Sema (Sema), further seeks to compel the COMELEC to exclude from the canvassing the votes cast in Cotabato City for representative of the legislative district in question in the 14 May 2007 elections. On the other hand, the petitioner in G.R. No. 178628, Perfecto Marquez, prays that the Court order the COMELEC to conduct a special election for representative of the "First District of Maguindanao with Cotabato City."

[3]Barira, Buldon, Datu Odin Sinsuat, Kabuntalan, Matanog, Parang, Sultan Kudarat, and Upi. The second legislative district is composed of 19 municipalities (Talitay, Talayan, Guindulungan, Datu Saudi Ampatuan, Datu Piang, Shariff Aguak, Datu Unsay, Mamasapano, South Upi, Ampatuan, Datu Abdullah Sangki, Buluan, Datu Paglas, Gen, S.K. Pendatun, Sultan Sa Barongis, Rajah Buayan, Pagalungan, Pagagawan and Paglat).

[4]The enactment of the organic acts for the autonomous regions of the Cordilleras and Muslim Mindanao is mandated under Sections 18 and 19, Article X of the 1987 Constitution.

[5] The provision reads:

SECTION 19. Creation, Division or Abolition of Provinces, Cities, Municipalities or Barangay. — The Regional Assembly may create, divide, merge, abolish, or substantially alter boundaries of provinces, cities, municipalities, or barangay in accordance with the criteria laid down by Republic Act No. 7160, the Local Government Code of 1991, subject to the approval by a majority of the votes cast in a plebiscite in the political units directly affected. The Regional Assembly may prescribe standards lower than those mandated by Republic Act No. 7160, the Local Government Code of 1991, in the creation, division, merger, abolition, or alteration of the boundaries of provinces, cities, municipalities, or barangay. Provinces, cities, municipalities, or barangay created, divided, merged, or whose boundaries are altered without observing the standards prescribed by Republic Act No. 7160, the Local Government Code of 1991, shall not be entitled to any share of the taxes that are allotted to the local governments units under the provisions of the Code.

The financial requirements of the provinces, cities, municipalities, or barangay so created, divided, or merged shall be provided by the Regional Assembly out of the general funds of the Regional Government.

The holding of a plebiscite to determine the will of the majority of the voters of the areas affected by the creation, division, merger, or whose boundaries are being altered as required by Republic Act No. 7160, the Local Government Code of 1991, shall, however, be observed.

The Regional Assembly may also change the names of local government units, public places and institutions, and declare regional holidays. (Emphasis supplied)

Before the enactment of RA 9054, the power to create provinces, cities, municipalities, and barangays was vested in Congress (for provinces, cities and municipalities) and in the sangguniang panlalawigan and sangguniang panlungsod (for barangays). (See Sections 384, 448, and 460 of Republic Act No. 7160 or the Local Government Code of 1991.)

[6]Sultan Mastura (created from Sultan Kudarat), Northern Kabuntulan (created from Kabuntulan) and Datu Blah Sinsuat (created from Upi).

[7] The Memorandum reads in pertinent parts:

The record shows the former province of Maguindanao was divided into two new provinces (Shariff Kabunsuan and Maguindanao), in view of Muslim Mindanao Autonomy Act (MMAA) No. 201, which authority was conferred to under Section 17, Article VI of Republic Act No. 9054 giving the ARMM, thru its Regional Legislative Assembly, the power to legislate laws including the enactment of the Local Government Code of ARMM.

The newly created province of Shariff Kabunsuan comprises the municipalities of Barira, Buldon, Datu Odin Sinsuat, Kabuntalan, Matanog, Parang, Sultan Kudarat, Sultan Mastura, Upi and Datu Blah, including Cotabato City [which] belongs to the first district of Maguindanao province.

It must be emphasized that Cotabato City is not included as part of ARMM although geographically located within the first district of the former Maguindanao province. Cotabato City is not voting for provincial officials. This is the reason why Cotabato City was not specifically mentioned as part of the newly created province of Shariff Kabunsuan.

Geographically speaking since [sic] Cotabato City is located within the newly created province of Shariff Kabunsuan having been bounded by municipalities of Sultan Kudarat, Datu Odin Sinsuat and Kabuntalan as its nearest neighbors. Following the rule in establishing legislative district, it shall comprise, as far as practicable, contiguous, compact and adjacent territory.

However, legally speaking, it may arise question of legality [sic] if Cotabato City will be appended as part of the newly created Shariff Kabunsuan province. Under our Constitution [it is] only Congress that shall make a reapportionment of legislative districts based on the standards provided for under Section 5(1) of Article VI.

x x x x

In order to avoid controversy on the matter, pending the enactment of appropriate law by Congress, it would be prudent and logically feasible to maintain status quo with Cotabato City as part of Shariff Kabunsuan in the first district of Maguindanao.

[8] Resolution No. 7845 pertinently provides:

WHEREAS, the Province of Maguindanao consists of two legislative districts, with Cotabato City as part of the first legislative district.

WHEREAS, Muslim Mindanao Autonomy Act No. 201 provided for the creation of the new Province of Shariff Kabunsuan comprising the municipalities of Barira, Buldon, Datu Odin Sinsuat, Kabuntalan, Matanog, Parang, Sultan Kudarat, Sultan Mastura and Upi, all of the first legislative district of the mother Province of Maguindanao, except Cotabato City which is not part of the Autonomous Region in Muslim Mindanao; while the remaining municipalities of Talisay, Talayan, Guindulungan, Datu Saudi Ampatuan, Datu Piang, Shariff Aguak, Datu Unsay, Mamasapano, South Upi, Ampatuan, Datu Abdullah Sangki, Buluan, Datu Paglas, Gen. S.

K. Pendatun, Sultan Sa Barongis, Rajah Buayan, Pagalungan, Pagagawan, and Paglat, all of the second legislative district of the mother Province of Maguindanao, shall remain with said province;

WHEREAS, the last paragraph of Section 5 of Muslim Mindanao Autonomy (MMA) Act No. 201 provides that "(e)xcept as may be provided by national law, the existing legislative district, which includes Cotabato City as a part thereof, shall remain.";

WHEREAS, by reason of said provision of MMA Act No. 201, the first legislative district of the Province of Maguindanao is now made up of Cotabato City only, and its second legislative district, the municipalities of Talisay, Talayan, Guindulungan, Datu Saudi Ampatuan, Datu Piang, Shariff Aguak, Datu Unsay, Mamasapano, South Upi, Ampatuan, Datu Abdullah Sangki, Buluan, Datu Paglas, Gen. S. K. Pendatun, Sultan Sa Barongis, Rajah Buayan, Pagalungan, Pagagawan, and Paglat[.] (Emphasis supplied)

In the earlier Resolution No. 7801, dated 11 January 2007, the COMELEC allocated one legislative seat each for the provinces of Maguindanao and Shariff Kabunsuan for the 14 May 2007 elections.

[9] Resolution No. 7902 reads in full:

This pertains to the amendment of Minute Resolution No. 07-0407 dated March 6, 2007, entitled, "IN THE MATTER OF THE MEMORANDUM OF ATTY. WYNNE B. ASDALA, ACTING DIRECTOR III, LAW DEPARTMENT, RELATIVE TO THE STUDY/RECOMMENDATION OF SAID DEPARTMENT RE: CONVERSION OF THE FIRST DISTRICT OF MAGUINDANAO INTO A REGULAR PROVINCE PER MINUTE RESOLUTION NO. 07-0297 DATED FEBRUARY 20, 2007". The dispositive portion of which reads:

"Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to adopt the recommendation of the Law Department that pending the enactment of the appropriate law by Congress, to maintain status quo with Cotabato City as part of Shariff Kabunsuan in the First District of Maguindanao."

The Commission RESOLVED, as it hereby RESOLVES, to amend the pertinent portion of Minute Resolution No. 07-0407 to now read, as follows[:]

["]Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, that the district shall be known as Shariff Kabunsuan Province with Cotabato City (formerly First District of Maguindanao with Cotabato City)."

Let the Executive Director advise the Sangguniang Panlalawigan of Cotabato City accordingly. (Emphasis in the original)

[10] "Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative."

[11] "Any province that may hereafter be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member or such number of Members as it may be entitled to on the basis of the number of its inhabitants and according to the standards set forth in paragraph (3), Section 5 of Article VI of the Constitution. The number of Members apportioned to the province out of which such new province was created or where the city, whose population has so increased, is geographically located shall be correspondingly adjusted by the Commission on Elections but such adjustment shall not be made within one hundred and twenty days before the election."

[12] Consistent with her claim that Cotabato City is not part of Shariff Kabunsuan's legislative district, petitioner filed with the COMELEC a petition for the disqualification of respondent Dilangalen as candidate for representative of that province (docketed as SPA No. A07-0).

[13] Respondent Dilangalen asserts, and petitioner does not dispute, that as of 2000, Cotabato City had a population of 163,849, falling short of the minimum population requirement in Section 5 (3), Article VI of the Constitution which provides: "Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative." (Emphasis supplied)

[14] 124 Phil. 1226 (1966).

[15] As provided in the Resolution of 16 October 2007.

[16] The Court also required Sema to submit with her Memorandum the certifications from the Department of Finance, the Lands Management Bureau, the National Statistics Office, and the Department of Interior and Local Government that at the time of the creation of Shariff Kabunsuan on 28 August 2006 it met the requisites for the creation of a province under Section 461 of RA 7160.

[17] "SEC. 6. Authority to Create Local Government Units. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city or municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code."

[18]"SECTION 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."

[19]Rollo, p. 229.

[20] "SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them."

[21] Section 1, Rule 65 of the 1997 Rules of Civil Procedure.

[22] Section 3, Rule 65 of the 1997 Rules of Civil Procedure.

[23] See, however, *Macabago v. Commission on Elections* (440 Phil. 683 [2002]) where the Court held that a petition for certiorari under Rule 65 will lie to question the constitutionality of an election regulation if the COMELEC has acted capriciously or whimsically, with grave abuse of discretion amounting to lack or excess of jurisdiction.

[24] *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571 (2001); *Mutuc v. Commission on Elections*, G.R. No. L-32717, 26 November 1970, 36 SCRA 228.

[25] Sections 385 and 386, RA 7160.

[26]Sections 441, 449 and 460, RA 7160.

[27]Section 20, Article X, Constitution.

[28]See Section 2, Article VIII of the 1973 Constitution and Section 5, Article VI of the 1935 Constitution.

[29] 312 Phil. 492, 501 (1995).

[30] Section 48 of Republic Act No. 8507 (Charter of Parañaque City) provides:

Section 48. Legislative District. — As a highly-urbanized city, the City of Parañaque shall have its own

legislative district with the first representative to be elected in the next national election after the passage of this Act. (Emphasis supplied)

Section 50 of Republic Act No. 7839 (Charter of City of Pasig) provides:

Section 50. Legislative District. — As highly urbanized, the City of Pasig shall have its own legislative district with the first representative to be elected in the next national elections after the passage of this Act. (Emphasis supplied)

Section 58 of Republic Act No. RA 9230 provides:

Section 58. Representative District. — The City of San Jose del Monte shall have its own representative district to commence in the next national election after the effectivity of this Act. (Emphasis supplied)

Section 7 of Republic Act No. 9355 provides:

Section 7. Legislative District. — The Province of Dinagat Islands shall constitute one, separate legislative district to commence in the next national election after the effectivity of this Act. (Emphasis supplied)

[31] In his Concurring Opinion in *Paras v. Commission on Elections* (332 Phil. 56, 66 [1996]), then Associate Justice (later Chief Justice) Hilario G. Davide, Jr. stated:

The term "regular local election" must be confined to the regular election of elective local officials, as distinguished from the regular election of national officials. The elective national officials are the President, Vice-President, Senators and Congressmen. The elective local officials are Provincial Governors, Vice-Governors of provinces, Mayors and Vice-Mayors of cities and municipalities, Members of the Sanggunians of provinces, cities and municipalities, punong barangays and members of the sangguniang barangays, and the elective regional officials of the Autonomous Region of Muslim Mindanao. These are the only local elective officials deemed recognized by Section 2(2) of Article IX-C of the Constitution, which provides:

SEC. 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. (Emphasis supplied)

[32] *Supra* note 13 at 1235-1236.

[33] See note 3.

[34] Section 461 provides: "Requisites for Creation. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (P20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office: Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territory need not be contiguous if it comprise two (2) or more islands or is separated by a chartered city

or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers and non-recurring income."

[35]Atty. Edgardo Carlos B. Vistan II, counsel for petitioner in G.R. No. 177597.

[36]TSN (27 November 2007), pp. 64-69.

[37]Unlike the 1935 and the 1973 Constitutions, the 1987 Constitution mandates, in Section 15, Article X, the creation of autonomous regions in the Cordilleras and Muslim Mindanao to foster political autonomy. See *Cordillera Broad Coalition v. Commission on Audit*, G.R. No. 79956, 29 January 1990, 181 SCRA 495.

[38]Website of House of Representatives as of 12 May 2008.

SEPARATE OPINION

(Dissenting and Concurring)

Tinga, J.:

I agree that the petitions should be denied, but on a wholly different basis from that offered by the majority. I cannot accede to the majority's conclusion, burnished by reasoning most strained, that the Regional Assembly of the Autonomous Region of Muslim Mindanao (Regional Assembly) should be deprived of the power delegated to it by Congress to create provinces. With this ruling, the Court has dealt another severe blow to the cause of local autonomy.

Our Constitution, in reflection of the sovereign wisdom of the people, has prescribed local government rule as a tool for national development and welfare. The majority is unfortunately unmindful of these considerations. The Regional Assembly and the government of the Autonomous Region of Muslim Mindanao exercised constituent functions in establishing the province of Shariff Kabunsuan and providing for its local government. The majority did not bother to hear their side in these petitions, which after all, never put in issue the constitutionality of the creation of the province. The people of Shariff Kabunsuan, by sovereign desire and constitutional design, ratified through a plebiscite the province named in honor of the revered figure who introduced Islam to Central Mindanao. The majority has annihilated the province with nary a word of comfort or concern for its citizens. Sadly, there will be no shelter for the Court from the impact of this decision, which unduly stretches the Constitution to deny the will of the duly elected members of the Regional Assembly, that of the constituents they represent, and most of all, that of the people of Shariff Kabunsuan.

I.

We are dealing with two consolidated petitions which essentially raise the same arguments, but were brought forth by two different parties laboring under different circumstances. The petitioner in G.R. No. 177597, Bai Sandra S.A. Sema, a congressional candidate in the 2007 legislative elections who posits that the newly-created province of Shariff Kabunsuan is entitled to its own exclusive legislative district. The petitioner in G.R. No. 178628, Perfecto F. Marquez, suing in his capacity as a taxpayer and a resident of Cotabato City,[1] argues that with the creation of Shariff Kabunsuan, his home city cannot be conjoined with Shariff Kabunsuan to create just one legislative district for both territories.

As narrated by the majority,[2] four (4) days prior to the 14 May 2007 elections, respondent Commission on

Elections (COMELEC) promulgated Resolution No. 7902, whereby it resolved to maintain the composition of what had been the First District of Maguindanao, composed of Cotabato City, a chartered city, and several other municipalities, even though these municipalities formerly belonging to Maguindanao have since been constituted as part of the province of Shariff Kabunsuan, which was created by the Regional Assembly by virtue of Muslim Mindanao Autonomy Act No. 201 in August of 2006.

Both petitioners challenge the notion of fusing Cotabato City, which is not a part of ARMM, with the ARMM municipalities which now constitute the new province of Shariff Kabunsuan, into one legislative district. To resolve that question on the merits, it is inevitable that the Court examine the validity of the creation of Shariff Kabunsuan in the first place, and the majority has fully adopted that approach. However, there are significant impediments that weigh down both petitioners, and supply the cogent reason for the more prudent approach which is to dismiss the petitions outright.

It is clear that both petitioners rely on constitutional issues in support of their petitions as they posit that under the Constitution Shariff Kabunsuan is entitled to its own separate legislative district. It is cardinal that the Court's power of judicial review may be exercised in constitutional cases only if all the following requisites are complied with, namely: (1) the existence of an actual and appropriate case or controversy; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[3]

With respect to Sema, it is plainly evident, as argued by private respondent Rep. Didagen P. Dilangalen, that she is estopped from bringing forth the present petition. On 29 March 2007, she filed her Certificate of Candidacy before the COMELEC, declaring her candidacy a Member of the House of Representatives representing "the Province of Shariff Kabunsuan w/ Cotabato City." [4] She recognized under oath that she was seeking election for a legislative district that encompassed both Shariff Kabunsuan and Cotabato City, and she should be consequently barred from disavowing the very district which she undertook to serve if elected. Sema appears to have campaigned for election in this conjoined district, and was accordingly defeated by Dilangalen, her votes from both Shariff Kabunsuan and Cotabato City included in the tally.

It would indeed be difficult to assess injury for purposes of *locus standi* on the part of Sema by reason of the assailed COMELEC Resolution, which after all, reaffirms the very legislative district whose seat in Congress she had sought to be elected to. Her standing to raise the present petition is materially affected by her express consent and active campaign for election from the legislative district which she now seeks to invalidate. A party challenging the constitutionality of a law, act or statute must show "not only that the law is invalid, but also that he or she has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement," that party has been or is about to be, denied some right or privilege to which he or she is lawfully entitled.[5] Sema's prior avowal that she was running for the Shariff Kabunsuan with Cotabato City legislative district, and her campaign for election to that district, belie the existence of injury on her part caused by the COMELEC resolution that affirmed that very legislative district.

On the part of Marquez, he first raised his present claims through the petition in G.R. No. 179608, which was filed with this Court in July 2007, or more than two months after the May 2007 elections. As a result, could no longer ask that the holding of the said elections in the conjoined district be restrained, and instead seeks that new or special elections be conducted.

As earlier noted, among the requisites for the Court to be able to exercise judicial review in constitutional cases is that the exercise of judicial review is pleaded at the earliest possible opportunity.[6] Clearly, his petition was not timely filed at the earliest possible opportunity, which would have been at a point prior to the May 2007 elections.

Worse, he filed his petition after the voters in the affected districts had already elected a candidate of their choosing, a sovereign act which he seeks to annul. Considering the grave implications of the step he seeks, as well as the fact that such recourse usually smacks of opportunism and bad faith, it is but proper for the Court to decline review unless all the established requisites for judicial review for constitutional cases have indeed been met. Marquez does not meet this Court's exacting standards.

Moreover, Marquez does not have a valid cause of action before this Court. His prayer is to compel the COMELEC to provide for new congressional elections for Cotabato City. The relief sought does not lie simply because Rep. Dilangalen, by virtue of his electoral victory, lawfully represents the City in addition to the Province of Shariff Kabunsuan. From another perspective, the COMELEC does not have the requisite power to call elections, as the same is part of the plenary legislative power. Only Congress, which was not impleaded as a party to Marquez's petition, has the power to set congressional elections only for Cotabato City, if ever. Even assuming that Congress was impleaded, it would be improper for this Court to compel Congress by judicial fiat to pass a law or resolution for the holding of such elections.

In sum, Marquez's petition should be dismissed outright for having been filed out of time, for lack of cause of action, and for not impleading a real party-in-interest.

II.

One might argue that it is imperative for the Court to resolve the substantive issues, since the situation may emerge again. However, the exception in exercising judicial review if the case is capable of repetition yet evading review applies only if the case is "moot and academic,"^[7] and not when the petitioners lack the requisite standing, have no cause of action, and have failed to join a proper party, which is the case here. In addition, it is entirely possible that between now and the next elections, either Congress or the Regional Assembly would pass new legislation concerning the composition or status of Shariff Kabunsuan, thereby changing the legal complexion and factual milieu of the situation. If that occurs, the questions that will be facing the Court then should a challenge be mounted may very well be different from those currently befalling us.

However, it is apparent that the ponente wishes to settle these cases on the merits. In doing so, he frames two issues-whether Congress can delegate to the Regional Assembly the power to create provinces; and whether the Regional Assembly has the power to create legislative districts. However, with due respect, the majority's discussion makes quite an easy leap when it abruptly fuses these two issues. Worse, the majority fails to take into account certain fundamental constitutional principles which have immense bearing in these cases. The resulting analysis is incomplete and uninformed of the full constitutional milieu under which these petitions should be resolved.

My own framework firstly considers two important principles which underlie the issues presented before us-the rule on delegation of powers, and the constitutionally-ordained paradigms of local government and local autonomy. Without the influence of these principles, any resulting analysis of the two issues cast by the majority will be atomistic in nature.

III.

The laws we are presently impelled to interpret involve multiple instances of Congress delegating power to the Regional Assembly. Explicitly, Rep. Act No. 9054 delegates to the Regional Assembly the power to create provinces and other local government units, though subject to certain specified limitations. The majority likewise asserts that through that mechanism, Congress has also delegated to the Regional Assembly the power to create legislative districts.

The fundamental principles on delegation of powers bear review.

The Constitution expressly vests legislative power in the Congress of the Philippines, consisting of a Senate and a House of Representatives.[8] Traditionally, the delegation of Congress of its legislative powers had been frowned upon. "A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim *potestas delegata non delegare potest* (what has been delegated cannot be delegated). This is based on the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another." [9]

However, the strict application of the non-delegation doctrine has, in recent times, been relaxed, if not minimized altogether, particularly in the context of regulatory jurisdiction of administrative agencies. In every industrialized nation, administrative agencies, which are generally part of the executive branch, have been granted considerable lawmaking power.[10] "Given the volume and variety of interactions in today's society, it is doubtful if the legislature can promulgate laws that will deal adequately with and respond promptly to the minutiae of everyday life. Hence, the need to delegate to administrative bodies—the principal agencies tasked to execute laws in their specialized fields—the authority to promulgate rules and regulations to implement a given statute and effectuate its policies." [11]

In the context of delegation of legislative powers to local governments, a noted authority on the subject has this to say:

The state legislative power - that is, the exercise of the policy-making judgment and discretion on state matters that state constitutions vest and recognize in the legislature - cannot be delegated to some other person or body but must rest with the legislature itself. Thus, the legislature cannot delegate to a commission the power to determine the form of government, powers and functions of proposed municipalities since these matters require legislative judgment. But the details of organization of its own government can be left to a municipality, limited only by general state law; and such basic state powers as the police power, taxing power, and power of eminent domain can be, and almost always are, delegated to local governments for their use for local purposes. The rule against delegation of state legislative authority is no barrier to the delegation of powers of local self government to local units. x x x [12]

Notwithstanding the exceptions that have been carved to the rule of non-delegation, it bears notice that while our Constitution broadly endows legislative powers to Congress it also specifically conditions the emergence of certain rights, duties and obligations upon the enactment of a law oriented towards such constitutional predicate. These include the prohibition of political dynasties as may be defined by law,[13] the reasonable conditions prescribed by law relating to full public disclosure of all the State's transactions involving public interest; [14] the manner by which Philippine citizenship may be lost or reacquired; [15] the date of regular elections for members of Congress; [16] the manner of conduct of special elections to fill in congressional vacancies; [17] the authorization of the President to exercise emergency powers; [18] the system for initiative and referendum; [19] the salaries of the President and Vice-President; [20] the creation and allocation of jurisdiction of lower courts [21]; and on many other matters of grave import.

May these specified functions be delegated by Congress to another body? These specific functions are non-delegable, for they are textually committed by the Constitution to Congress. Perhaps it is possible to segregate these particular functions to those which would, even absent constitutional definition, anyway fall within the plenary legislative power, and those which are not plenary in nature but were especially designated to Congress by the Constitution. Still, in either case, only Congress, and no other body, can carry out that function. As to those powers which would normally fall within the plenary legislative power, the Constitution has decided

to doubly emphasize that it is the Congress which is so empowered to perform such tasks. With respect to the non-plenary functions assigned to Congress, it is clear that the assignment implies the delegation by the Constitution to Congress of specific, wholly original functions.

There shall be further discussion on this point in relation to the questions currently presented. Before we get there, I wish to emphasize a second constitutional principle, local governance and autonomy, that should likewise bear on our deliberations.

IV.

The 1987 Constitution ushered in a new era in local government rule for all citizens, and local autonomy rule for Muslim Mindanao and the Cordillera region. This new paradigm is crystallized under Article X of the Constitution.

Section 2, Article X guarantees that the territorial and political subdivisions in the Philippines shall enjoy local autonomy. The guarantee of local autonomy is actualized through a local government code that delineates the structure and powers of local governments, and through constitutional measures that entitle local government units to generate their own revenue stream and assure the same to their fair share in the national internal revenue.[22] Local government rule, in constitutional contemplation, is a live being that exists to counterbalance the rule of the national government, and is not a mere palliative established in the Constitution to soothe the people with the illusion of having a more direct say in their governance.

By constitutional design, local government rule for the people of Muslim Mindanao and the Cordilleras is even more enhanced, as they are assured of their own autonomous regions. Section 15, Article X of the Constitution mandated that "[t]he shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics..." Following the Constitution, Congress in 1989 passed Republic Act No. 6734, "An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao", leading to the creation of the ARMM. In 2001, Congress further strengthened the Organic Act with the passage of Rep. Act No. 9054, which among others, empowered the Assembly to create provinces. The Organic Acts possess a special status within Philippine laws. While they are classified as statutes, the Organic Acts are more than ordinary statutes because they enjoy affirmation by a plebiscite, and thus could not be amended by ordinary statutes without any plebiscite.[23]

In *Disomangcop v. Datumanong*,[24] the Court explained at length the vital constitutional purposes of local autonomy:

xxx According to Commissioner Jose Nollado, Chairman of the Committee which drafted the provisions, it "is an indictment against the status quo of a unitary system that, to my mind, has ineluctably tied the hands of progress in our country . . . our varying regional characteristics are factors to capitalize on to attain national strength through decentralization."

The idea behind the Constitutional provisions for autonomous regions is to allow the separate development of peoples with distinctive cultures and traditions. These cultures, as a matter of right, must be allowed to flourish.

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Several commissioners echoed the pervasive sentiment in the plenary sessions in their own inimitable way. Thus, Commissioner Bias Ople referred to the recognition that the Muslim Mindanao and the Cordilleras "do not belong to the dominant national community" as the justification for conferring on them a "measure of legal

self-sufficiency, meaning self-government, so that they will flourish politically, economically and culturally," with the hope that after achieving parity with the rest of the country they would "give up their own autonomous region in favor of joining the national mainstream." For his part, the Muslim delegate, Commissioner Ahmad Alonto, spoke of the diversity of cultures as the framework for nation-building. Finally, excerpts of the poignant plea of Commissioner Ponciano Bennagen deserve to be quoted verbatim:

. . . They see regional autonomy as the answer to their centuries of struggle against oppression and exploitation. For so long, their names and identities have been debased. Their ancestral lands have been ransacked for their treasures, for their wealth. Their cultures have been defiled, their very lives threatened, and worse, extinguished, all in the name of national development; all in the name of public interest; all in the name of common good; all in the name of the right to property; all in the name of Regalian Doctrine; all in the name of national security. These phrases have meant nothing to our indigenous communities, except for the violation of their human rights.

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Honorable Commissioners, we wish to impress upon you the gravity of the decision to be made by every single one of us in this Commission. We have the overwhelming support of the Bangsa Moro and the Cordillera Constitution. By this we mean meaningful and authentic regional autonomy. We propose that we have a separate Article on the autonomous regions for the Bangsa Moro and Cordillera people clearly spelled out in this Constitution, instead of prolonging the agony of their vigil and their struggle. This, too is a plea for national peace. Let us not pass the buck to the Congress to decide on this. Let us not wash our hands of our responsibility to attain national unity and peace and to settle this problem and rectify past injustices, once and for all.

The need for regional autonomy is more pressing in the case of the Filipino Muslims and the Cordillera people who have been fighting for it. Their political struggle highlights their unique cultures and the unresponsiveness of the unitary system to their aspirations. The Moros' struggle for self-determination dates as far back as the Spanish conquest in the Philippines. Even at present, the struggle goes on.

Perforce, regional autonomy is also a means towards solving existing serious peace and order problems and secessionist movements. Parenthetically, autonomy, decentralization and regionalization, in international law, have become politically acceptable answers to intractable problems of nationalism, separatism, ethnic conflict and threat of secession.[25]

Petitioner Sema points out that among the terms in the Final Peace Agreement between the Philippine Government and the Moro National Liberation Front was that amendments be introduced to the original Organic Act, including one which authorized the Assembly to "create, divide, merge, abolish or substantially alter boundaries of local government units in the area of autonomy in accordance with the criteria laid down by law subject to approval by a majority of the votes cast in a plebiscite called for the purpose in the political units affected." [26] Indeed, it could hardly be argued that the challenged power of the Assembly was animated by nakedly selfish political purposes. It was, in fact, among the terms negotiated with care by the Philippine Government with the leading armed insurgency group in Muslim Mindanao towards the higher purpose of providing a permanent peace agreement in the strife-torn region. It does come with a measure of surprise and disappointment that the Solicitor General has reached a position that rejects the Final Peace Agreement negotiated by the Government and the MNLF.

Disomangcop further crystallizes the interplay between regional autonomy and national sovereignty, to the extent that the former is accommodated under the latter.

Regional autonomy is the degree of self-determination exercised by the local government unit vis-à-vis the central government.

In international law, the right to self-determination need not be understood as a right to political separation, but rather as a complex net of legal-political relations between a certain people and the state authorities. It ensures the right of peoples to the necessary level of autonomy that would guarantee the support of their own cultural identity, the establishment of priorities by the community's internal decision-making processes and the management of collective matters by themselves.

If self-determination is viewed as an end in itself reflecting a preference for homogeneous, independent nation-states, it is incapable of universal application without massive disruption. However, if self-determination is viewed as a means to an end — that end being a democratic, participatory political and economic system in which the rights of individuals and the identity of minority communities are protected — its continuing validity is more easily perceived.

Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government.

The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.

In the Philippine setting, regional autonomy implies the cultivation of more positive means for national integration. It would remove the wariness among the Muslims, increase their trust in the government and pave the way for the unhampered implementation of the development programs in the region. Again, even a glimpse of the deliberations of the Constitutional Commission could lend a sense of the urgency and the inexorable appeal of true decentralization:

MR. OPLE. . . . We are writing a Constitution, of course, for generations to come, not only for the present but for our posterity. There is no harm in recognizing certain vital pragmatic needs for national peace and solidarity, and the writing of this Constitution just happens at a time when it is possible for this Commission to help the cause of peace and reconciliation in Mindanao and the Cordilleras, by taking advantage of a heaven-sent opportunity. . . .

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MR. ABUBAKAR. . . . So in order to foreclose and convince the rest of the of the Philippines that Mindanao autonomy will be granted to them as soon as possible, more or less, to dissuade these armed men from going outside while Mindanao will be under the control of the national government, let us establish an autonomous Mindanao within our effort and capacity to do so within the shortest possible time. This will be an answer to the Misuari clamor, not only for autonomy but for independence.

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MR. OPLE. . . . The reason for this abbreviation of the period for the consideration of the Congress of the organic acts and their passage is that we live in abnormal times. In the case of Muslim Mindanao and the Cordilleras, we know that we deal with questions of war and peace. These are momentous issues in which the territorial integrity and the solidarity of this country are being put at stake, in a manner of speaking.

We are writing a peace Constitution. We hope that the Article on Social Justice can contribute to a climate of peace so that any civil strife in the countryside can be more quickly and more justly resolved. We are providing for autonomous regions so that we give constitutional permanence to the just demands and grievances of our own fellow countrymen in the Cordilleras and in Mindanao. One hundred thousand lives were lost in that struggle in Mindanao, and to this day, the Cordilleras is being shaken by an armed struggle as well as a peaceful and militant struggle.

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Rather than give opportunity to foreign bodies, no matter how sympathetic to the Philippines, to contribute to the settlement of this issue, I think the Constitutional Commission ought not to forego the opportunity to put the stamp of this Commission through definitive action on the settlement of the problems that have nagged us and our forefathers for so long.[27]

A necessary prerequisite of autonomy is decentralization, which typically involves delegated power wherein a larger government chooses to delegate certain authority to more local governments.[28] Decentralization of power involves an abdication of political power in the favor of local government units declared to be autonomous, which are free to chart their own destiny and shape their future with minimum intervention from central authorities.[29] What the Constitution contemplated with respect to the ARMM was political autonomy. As explained by Justice Cortes for the Court:

It must be clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, sec. 2] refers to the administrative autonomy of local government units or, cast in more technical language, the decentralization of government authority [Villegas v. Subido, G.R. No. L-31004, January 8, 1971, 37 SCRA 1]. Local autonomy is not unique to the 1987 Constitution, it being guaranteed also under the 1973 Constitution [Art. II, sec. 10]. And while there was no express guarantee under the 1935 Constitution, the Congress enacted the Local Autonomy Act (R.A. No. 2264) and the Decentralization Act (R.A. No. 5185), which ushered the irreversible march towards further enlargement of local autonomy in the country [Villegas v. Subido, supra.]

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18].[30]

Disomangcop further elaborates on the import of political autonomy as it relates to the ARMM:

[B]y regional autonomy, the framers intended it to mean "meaningful and authentic regional autonomy." As articulated by a Muslim author, substantial and meaningful autonomy is "the kind of local self-government which allows the people of the region or area the power to determine what is best for their growth and development without undue interference or dictation from the central government."

To this end, Section 16, Article X limits the power of the President over autonomous regions. In essence, the provision also curtails the power of Congress over autonomous regions. Consequently, Congress will have to re-examine national laws and make sure that they reflect the Constitution's adherence to local autonomy. And in case of conflicts, the underlying spirit which should guide its resolution is the Constitution's desire for genuine local autonomy.

The diminution of Congress' powers over autonomous regions was confirmed in *Ganzon v. Court of Appeals*[[31]], wherein this Court held that "the omission (of "as may be provided by law") signifies nothing more than to underscore local governments' autonomy from Congress and to break Congress' 'control' over local government affairs."[[32]

Unfortunately, the majority gives short shrift to the considerations of local autonomy, even as such paradigm partakes of a constitutional mandate. If anything, these provisions should dissuade against a reflexive dismissal of the provisions of the Organic Acts. It should be emphasized that local autonomy cannot be in denigration of the Constitution. It is repeatedly emphasized within Article X that the grant of local autonomy and the subsequent exercise of powers by the autonomous government must remain within the confines of the Constitution. At the

same time, if there is no constitutional bar against the exercise of the powers of government by the autonomous government in Muslim Mindanao, particularly by the Regional Assembly, then there is no basis to thwart the constitutional design by denying such powers to that body.

Having laid down the essential constitutional predicates, I shall proceed to dwell on the core issues raised. May Congress delegate to the Regional Assembly the power to create provinces? Assuming that such delegation is not barred by the Constitution, may the exercise of such power by the Regional Assembly give rise to separate legislative districts for such provinces thus created?

V.

There should be little debate on the origins of the power to create provinces, which had existed as a political unit in the Philippines since the Spanish colonial period, and which all our Constitutions have recognized as a basic level of local governments. Ever since the emergence of our tripartite system of democratic government, the power to create provinces have always been legislative in character. They are created by the people through their representatives in Congress, subject to direct affirmation by the very people who stand to become the constituents of the new putative province.

May such power be delegated by Congress to a local legislative body such as the Regional Assembly? Certainly, nothing in the Constitution bars Congress from doing so. In fact, considering the constitutional mandate of local autonomy for Muslim Mindanao, it can be said that such delegation is in furtherance of the constitutional design.

The only constitutional provision that concerns with the creation of provinces is Section 10, Article X, which reads:

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

Nothing in this provision specifically limits the power to create provinces, cities, municipalities or barangays to Congress alone. The provision does embody a significant limitation - that the creation of these political subdivisions must be in accordance with the criteria established in the local government code, a law which is enacted by Congress. It would thus be proper to say that the Constitution limits the ability to set forth the standards for the creation of a province exclusively to Congress. But to say that the Constitution confines to Congress alone the power to establish the criteria for creating provinces is vastly different from saying that the Constitution confines to Congress alone the power to create provinces. There is nothing in the Constitution that supports the latter proposition.

Section 10, Article X does not specifically designate Congress as the body with the power to create provinces. As earlier stated, the power to create these political subdivisions is part of the plenary legislative power, hence such power can be exercised by Congress even without need of specific constitutional assignation. At the same time, the absence of constitutional language committing Congress with the function of creating political subdivisions ultimately denotes that such legislative function may be delegated by Congress.

In fact, the majority actually concedes that Congress, under its plenary legislative powers, "can delegate to local legislative bodies the power to create local government units, subject to reasonable standards and provided no conflict arises with any provision of the Constitution."^[33] As is pointed out, such delegation is operationalized by the LGC itself, which confers to provincial boards and city and municipal councils, the general power to create barangays within their respective jurisdictions. The Constitution does not confine the exercise of such powers only to the national legislature, and indeed if that were the case, the power to create barangays as granted by the

LGC to local legislative bodies would be unconstitutional

Traditionally, it has been the national legislature which has exercised the power to create provinces. However, the 1987 Constitution ushered in a new era in devolved local government rule, and particularly, a regime of local autonomy for Muslim Mindanao and the Cordilleras. We recognized in *Disomangcop v. Datumanong*, thus:

Autonomy, as a national policy, recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities. It strives to free Philippine society of the strain and wastage caused by the assimilationist approach. Policies emanating from the legislature are invariably assimilationist in character despite channels being open for minority representation. As a result, democracy becomes an irony to the minority group. [34]

It bears reemphasizing that the Constitution also actualizes a preference for local government rule, and thusly provides:

The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.[35]

Attuned with enhanced local government rule, Congress had, through Rep. Act No. 9054, taken the bold step of delegating to a local legislative assembly the power to create provinces, albeit prudently withholding any ability to create legislative districts as well. Section 19 of Rep. Act No. 9054 reads:

Section 19. Creation, Division or Abolition of Provinces, Cities, Municipalities or Barangay. The Regional Assembly may create, divide, merge, abolish, or substantially alter boundaries of provinces, cities, municipalities, or barangays in accordance with the criteria laid down by the Republic Act No. 7160, the Local Government Code of 1991, subject to the approval by the majority of the votes cast in the plebiscite in the political units directly affected. The Regional Assembly may prescribe standards lower than those mandated by Republic Act No. 7160, the Local Government Code of 1991, in the creation, division, merger, abolition, or alteration of the boundaries of provinces, cities, municipalities, or barangay. Provinces, cities, municipalities, or barangays created, divided, merged, or whose boundaries are altered without observing the standards prescribed by Republic Act No. 7160, the Local Government Code of 1991, shall not be entitled to any share of the taxes that are allotted to the local governments units under the provisions of the code.

The financial requirements of the provinces, cities and municipalities, or barangays so created, divided, merged shall be provided by the Regional Assembly out of the general funds of the Regional Government.

The holding of a plebiscite to determine the will of the majority of the voters of the areas affected by the creation, division, merger, or whose boundaries are being altered as required by Republic Act No. 7160, the Local Government Code of 1991, shall, however, be observed.

Because this empowerment scheme is in line with a policy preferred by the Constitution, it becomes utterly necessary to pinpoint a specific constitutional prohibition that bars Congress from authorizing the Regional Assembly to create provinces. No such constitutional limitation exists, and it is not the province, duty or sensible recourse of this Court to nullify an act of Government in furtherance of a constitutional mandate and directly ratified by the affected people if nothing in the Constitution proscribes such act.

The constitutionality of the delegated power of the Regional Assembly to create provinces is further affirmed by the provisions in the Constitution concerning the mandatory creation of autonomous regions in Muslim

Mindanao, as found in Sections 15 to 21, Article X. The organic act enacted by Congress for the autonomous region is to define the basic structure of government.[36] Section 20 specifically allows the organic act of autonomous regions to provide for legislative powers over, among others, administrative organization; creation of sources of revenues; economic, social and tourism development; and such other matters as may be authorized by law for the promotion of the general welfare of the people of the region. The creation of provinces within the autonomous region precisely assists these constitutional aims under Section 20, enhancing as it does the basic administration of government, the delivery of government services, and the promotion of the local economy.

In addition, Section 17, Article X states that "[a]ll powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government". The original Organic Act for Muslim Mindanao did not grant to the regional government the power to create provinces, thus at that point, such power was properly exercised by the National Government. But the subsequent passage of Rep. Act No. 9054 granted to the Regional Assembly the power, function and responsibility to create provinces and other local government units which had been exercised by the National Government.

The majority does not point to any specific constitutional prohibition barring Congress from delegating to the Regional Assembly the power to create provinces. It does cite though that Article 460 of the LGC provides that only by an Act of Congress may a province be created, divided, merged, abolished or its boundary substantially altered. However, Republic Act No. 9054, which was passed ten (10) years after the LGC, unequivocally granted to the ARMM Regional Assembly the power to create provinces, cities, municipalities and barangays within the ARMM.

Any argument that the LGC confines to Congress the creation of provinces is muted by the fact that ten years after the LGC was enacted by Congress, the same legislative body conferred on the Assembly that same power within its territorial jurisdiction, thus amending the LGC to the extent of accommodating these newly-granted powers to the Assembly.

There actually is an obvious unconstitutional dimension to Section 19, albeit one which is not in point in this case. The provision states in part "[t]hat Regional Assembly may prescribe standards lower than those mandated by Republic Act No. 7160, the Local Government Code of 1991, in the creation, division, merger, abolition, or alteration of the boundaries of provinces, cities, municipalities, or barangays." That proviso is squarely inconsistent with Section 10, Article X, which accords to the LGC the sole criteria for the creation, division, merger, abolition or alteration of boundaries of local government units. Said proviso thus cannot receive recognition from this Court.

It bears noting that there is no contention presented thus far that the creation of Shariff Kabunsuan was not in accordance with the criteria established in the LGC, thus this aspect of unconstitutionality of Rep. Act No. 9054 may not be material to the petitions at bar.

VI.

The majority unfortunately asserts that Congress may not delegate to the Regional Assembly the power to create provinces, despite the absence of any constitutional bar in that respect. The reasons offered for such conclusion are actually the same reasons it submits why the Regional Assembly could not create legislative districts, as if the power to create provinces and the power to create legislative districts were one and the same. In contrast, I propose to pinpoint a specific constitutional provision that prohibits the Regional Assembly from creating, directly or indirectly, any legislative district without affecting that body's delegated authority to create provinces.

Let us review this issue as presented before us. Notably, Republic Act No. 9054 does not empower the Regional

Assembly to create legislative districts, and MMA Act No. 201, which created Shariff Kabunsuan, specifically disavows the creation of a new district for that province and maintains the old legislative district shared with Cotabato City. It is the thesis though of the petitioners that following *Felwa v. Salas*,^[37] the creation of the new province ipso facto established as well an exclusive legislative district for Shariff Kabunsuan, "by operation of the Constitution."

How exactly does a legislative district come into being? In theory, Congress does not have any express or plenary legislative power to create legislative districts, except by reapportionment. Under the Constitution, such reapportionment occurs within three years following the return of the census,^[38] but this Court has likewise recognized that reapportionment can also be made through a special law, such as in the charter of a new city.^[39] Still, even in exercising this limited power through the constitutionally mandated reapportionment, Congress cannot substitute its own discretion for the standards set forth in Section 5, Article VI. And should general reapportionment made by Congress violate the parameters set forth by the Constitution, such act may be invalidated by the Court, as it did in *Macias v. COMELEC*.^[40]

There is another constitutional provision which is of critical importance in considering limitations in the creation of legislative districts. Section 5(1), Article VI states that "[t]he House of Representatives shall be composed of not more than two hundred fifty members, unless otherwise fixed by law". The provision textually commits that only through a law may the numerical composition of Congress may be increased or reduced.

The Court has previously recognized that such law increasing the membership of the House of Representatives need not be one specifically devoted for that purpose alone, but it may be one that creates a province or charters a city with a population of more than 250,000. In *Tobias v. Abalos*,^[41] the Court pronounced that the law converting Mandaluyong into a city could likewise serve the purpose of increasing the composition of the House of Representatives:

As to the contention that the assailed law violates the present limit on the number of representatives as set forth in the Constitution, a reading of the applicable provision, Article VI, Section 5 (1), as aforequoted, shows that the present limit of 250 members is not absolute. The Constitution clearly provides that the House of Representatives shall be composed of not more than 250 members, "unless otherwise provided by law." The inescapable import of the latter clause is that the present composition of Congress may be increased, if Congress itself so mandates through a legislative enactment. Therefore, the increase in congressional representation mandated by R.A. No. 7675 is not unconstitutional.^[42]

This point was reemphasized by the Court in *Mariano v. COMELEC*:^[43]

These issues have been laid to rest in the recent case of *Tobias v. Abalos*. In said case, we ruled that reapportionment of legislative districts may be made through a special law, such as in the charter of a new city. The Constitution clearly provides that Congress shall be composed of not more than two hundred fifty (250) members, unless otherwise fixed by law. As thus worded, the Constitution did not preclude Congress from increasing its membership by passing a law, other than a general reapportionment law. This is exactly what was done by Congress in enacting R.A. No. 7854 and providing for an increase in Makati's legislative district.^[44]

From these cases, it is evident that a law creating the province of Shariff Kabunsuan may likewise serve the purpose of increasing the composition of the House of Representatives. In addition, Congress generally has the power to delegate the power of creating local government units to the appropriate local legislative assemblies. The critical question now is thus whether Congress may delegate to local legislative assemblies the power to increase the composition of the House of Representatives? The answer is no.

I have already pointed out that when the Constitution specifically designates a particular function to Congress,

only Congress may exercise such function, as the same is non-delegable. The power to increase the composition of the House of Representatives is restricted by the Constitution to a law passed by Congress, which may not delegate such law-making power to the Regional Assembly. If we were to rule that Congress may delegate the power to increase the composition of the House of Representatives, there would be no impediment for us to similarly rule that those other specific functions tasked by the Constitution to Congress may be delegated as well. To repeat, these include gravely important functions as the enactment of a law defining political dynasties; the enactment of reasonable conditions relating to full public disclosure of all the State's transactions involving public interest; the manner by which Philippine citizenship may be lost or reacquired; the date of regular elections for members of Congress; the provision for the manner of conduct of special elections to fill in congressional vacancies; the authorization of the President to exercise emergency powers; the prescription of a system for initiative and referendum; the salaries of the President and Vice-President; and the creation and allocation of jurisdiction of lower courts.

Considering that all these matters, including the composition of the House of Representatives, are of national interest, it is but constitutionally proper that only a national legislature has the competence to exercise these powers. And the Constitution does textually commit to Congress alone the power to increase the membership of the House of Representatives.

Accordingly, the petitioners' position cannot be sustained, as Shariff Kabunsuan cannot acquire its own legislative district unless Congress itself accedes to the passage of a law that establishes the same. The contrary position is in denigration of the Constitution, which limits to Congress alone the non-delegable power to fix or increase the composition of the House of Representatives. For that, I concur with the result of the majority.

Felwa cannot apply to these petitions. Its pronouncement that the creation of a province automatically leads to the creation of a legislative district "by operation of the Constitution" can only apply when the province is created by Congress itself, since there is no other constitutional impediment to the emergence of the legislative district. However, in cases where it is a body other than Congress which has created, although validly, the legislative district, the Constitution itself bars the emergence of an accompanying legislative district, as this will result in an increase in the composition of the House of Representatives which can only be accomplished through a law passed by Congress.

VII.

Even as Section 19 of Rep. Act No. 9054 constitutionally authorizes the Regional Assembly to create provinces, there are legal limitations that constrict the discretion of that body to exercise such power. I had earlier identified as unconstitutional the discretion of the Regional Assembly to create local government units based on a lower standard than that prescribed under the LGC. Another clear limitation is that the creation of provinces cannot be authorized without the ratification through a plebiscite by the people affected by such act, a requirement imposed by the Organic Act itself and by Section 10, Article X of the Constitution.

The majority itself had raised an alarmist tone that allowing the Assembly to create provinces would not lead to the unholy spectacle of whimsical provinces intended as personal fiefdoms and created irrespective of size, shape and sense. In fact, allowing the Regional Assembly to create provinces will not lead to hundreds or thousands, or even tens or dozens of new provinces. Any new province will have to meet the same criteria set forth by the LGC for the creation of provinces.

To stress how implausible the scenario of dozens-hundred-thousands of ARMM provinces actually is, it bears reviewing what exactly is the criteria set forth under the LGC for the creation of provinces. An Assembly-created province, just as with any other putative province, following Section 461 of the LGC, must possess the following

requisites: (a) an average annual income, as certified by the Department of Finance, of not less than Php20,000,000.00, such income including the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income; (b) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau (excepting when comprised of two (2) or more islands or when separated by a chartered city or cities which do not contribute to the income of the province), or a population of not less than 250,000 inhabitants as certified by the National Statistics Office; (c) that the creation of the province shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed under the Code. These standards, which should bear upon the Assembly, would preclude the emergence of dozens, hundreds or thousands of provinces within the relatively confined spaces of the present Autonomous Region of Muslim Mindanao.

IX.

The concerns raised by the majority on how allowing the Assembly to create provinces would affect the composition of the national Congress are valid issues, yet the approach it adopts is to treat autonomy as invisible and inconsequential, instead of the countervailing constitutional principle that it actually is. It is an approach that will exacerbate political and regional tensions within Mindanao, especially since it shuns the terms of the negotiated peace. This decision today, sad to say, is a decisive step backwards from the previous rulings of this Court that have been supportive of the aims of regional autonomy.

Except for the result, which I join, I respectfully dissent.

[1] G.R. No. 178628, Rollo, p. 5.

[2] See ponencia, *infra*.

[3] *Montesclaros, et. al., v. Comelec, et. al.*, 433 Phil. 620, 633 (2002), citing *Integrated Bar of the Philippines v. Zamora*, 338 SCRA 81 (2000).

[4] Rollo, p. 23.

[5] See e.g., *Integrated Bar of the Philippines v. Zamora*, *supra* note 3 at 478.

[6] See *Estarija v. Ranada*, G. R. No. 159314, 26 June 2006, 492 SCRA 652, 664 citing *Arceta v. Mangrobang*, G.R. No. 152895, June 15, 2004, 432 SCRA 136, 140.

[7] See *Albaña v. Commission on Elections*, 478 Phil. 941, 949 (2004); *Acop v. Guingona, Jr.*, 433 Phil. 62, 67 (2002); *Sanlakas v. Executive Secretary*, 466 Phil. 482, 505-506.

[8] CONST., Art. VI, Sec. 1.

[9] *Gerochi v. DOE*, G.R. No. 159796, 17 July 2007, 527 SCRA 696, 719.

[10] G. STONE, L. SEIDMAN, C. SUNSTEIN AND M. TUSHNET, *CONSTITUTIONAL LAW* (4th ed.), at 365.

[11] *Gerochi v. DOE*, *supra* note 9 at 720.

[12] O. REYNOLDS, JR., *LOCAL GOVERNMENT LAW* (2nd ed., 2001), at 184-185. Emphasis supplied, citations omitted.

[13] CONST., Art. II, Sec. 26.

[14] CONST., Art. II, Sec. 28.

[15] CONST., Art. IV, Sec. 23.

[16] CONST., Art. VI, Sec. 8.

[17] CONST., Art. VI, Sec. 29.

[18] CONST., Art. VI, Sec. 23.

[19] CONST., Art. VI, Sec. 32.

[20] CONST., Art. VII, Sec. 6.

[21] CONST., Art. VIII, Secs. 1 & 2.

[22] See Art. X, Secs. 5, 6 and 7.

[23] *Disomangcop v. Datumanong*, G.R. No. 149848, 25 November 2004, 444 SCRA 203,

[24] *Supra* note 23.

[25] *Id.* at 227-229.

[26] G.R. No. 177597 Rollo, pp. 217-218.

[27] *Id.* at 230-232.

[28] *Disomangcop v. Datumanong*, *supra* note 23 at 233.

[29] *Limbona v. Mangelin*, G.R. No. 80391, 28 February 1989, 170 SCRA 786, 794-795.

[30] *Cordillera Broad Coalition v. Commission on Audit*, G.R. Nos. 79956 and 82217, 29 January 1990, 181 SCRA 495, 506.

[31] G.R. Nos. 93252, 93746, 95245, 5 August 1991, 200 SCRA 271, 281.

[32] *Disomangcop v. Datumanong*, *supra* note 23, at 235-236.

[33] *Id.* at 17.

[34] *Supra* note 23, at 227.

[35] CONST., Art. X, Sec. 3.

[36] CONST., Art. X, Sec. 18.

[37] 124 Phil. 1226 (1966).

[38] See CONST., Art. VI, Sec. 5(1).

[39] See *Mariano v. COMELEC*, G.R. Nos. 118577 & 118627, 7 March 1995, 242 SCRA 211, 217.

[40] 113 Phil. 1 (1961).

[41] G.R. No. 114783, 8 December 1994, 239 SCRA 106.

[42] *Id.*, at 112.

[43] G.R. Nos. 118577 and 118627, 7 March 1995, 242 SCRA 211.

[44] Id. at 217.

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