

**RODOLFO G. NAVARRO, VICTOR F. BERNAL, AND RENE O. MEDINA,
PETITIONERS, VS. EXECUTIVE SECRETARY EDUARDO ERMITA,
REPRESENTING THE PRESIDENT OF THE PHILIPPINES; SENATE OF
THE PHILI...**

G.R. No. 180050. April 12, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

For consideration of the Court is the Urgent Motion to Recall Entry of Judgment dated October 20, 2010 filed by Movant-Intervenors[1] dated and filed on October 29, 2010, praying that the Court (a) recall the entry of judgment, and (b) resolve their motion for reconsideration of the July 20, 2010 Resolution.

To provide a clear perspective of the instant motion, we present hereunder a brief background of the relevant antecedents--

On October 2, 2006, the President of the Republic approved into law Republic Act (R.A.) No. 9355 (An Act Creating the Province of Dinagat Islands).[2] On December 3, 2006, the Commission on Elections (COMELEC) conducted the mandatory plebiscite for the ratification of the creation of the province under the Local Government Code (LGC).[3] The plebiscite yielded 69,943 affirmative votes and 63,502 negative votes.[4] With the approval of the people from both the mother province of Surigao del

Norte and the Province of Dinagat Islands (Dinagat), the President appointed the interim set of provincial officials who took their oath of office on January 26, 2007. Later, during the May 14, 2007 synchronized elections, the Dinagatnons elected their new set of provincial officials who assumed office on July 1, 2007.[5]

On November 10, 2006, petitioners Rodolfo G. Navarro, Victor F. Bernal and Rene O. Medina, former political leaders of Surigao del Norte, filed before this Court a petition for certiorari and prohibition (G.R. No. 175158) challenging the constitutionality of R.A. No. 9355.[6] The Court dismissed the petition on technical grounds. Their motion for reconsideration was also denied.[7]

Undaunted, petitioners, as taxpayers and residents of the Province of Surigao del Norte, filed another petition for certiorari[8] seeking to nullify R.A. No. 9355 for being unconstitutional. They alleged that the creation of Dinagat as a new province, if uncorrected, would perpetuate an illegal act of Congress, and would unjustly deprive the people of Surigao del Norte of a large chunk of the provincial territory, Internal Revenue Allocation (IRA), and rich resources from the area. They pointed out that when the law was passed, Dinagat had a land area of 802.12 square kilometers only and a population of only 106,951, failing to comply with Section 10, Article X of the Constitution and of Section 461 of the LGC, on both counts, viz.--

Constitution, Article X - Local Government

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 the approval by a majority of the votes cast in a plebiscite in the political units directly affected.

LGC, Title IV, Chapter I

Section 461. 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 continuous 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 comprises 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. (Emphasis supplied.)

On February 10, 2010, the Court rendered its Decision^[9] granting the petition.^[10] The Decision declared R.A. No. 9355 unconstitutional for failure to comply with the requirements on population and land area in the creation of a province under the LGC. Consequently, it declared the proclamation of Dinagat and the election of its officials as null and void. The Decision likewise declared as null and void the provision on Article 9(2) of the Rules and Regulations Implementing the LGC (LGC-IRR), stating that, "[t]he land

area requirement shall not apply where the proposed province is composed of one (1) or more islands" for being beyond the ambit of Article 461 of the LGC, inasmuch as such exemption is not expressly provided in the law.^[11]

The Republic, represented by the Office of the Solicitor General, and Dinagat filed their respective motions for reconsideration of the Decision. In its Resolution^[12] dated May 12, 2010,^[13] the Court denied the said motions.^[14]

Unperturbed, the Republic and Dinagat both filed their respective motions for leave of court to admit their second motions for reconsideration, accompanied by their second motions for reconsideration. These motions were eventually "noted without action" by this Court in its June 29, 2010 Resolution.^[15]

Meanwhile, the movants-intervenors filed on June 18, 2010 a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. They alleged that the COMELEC issued Resolution No. 8790, relevant to this case, which provides--

RESOLUTION NO. 8790

WHEREAS, Dinagat Islands, consisting of seven (7) municipalities, were previously components of the First Legislative District of the Province of Surigao del Norte. In December 2006 pursuant to Republic Act No. 9355, the Province of Dinagat Island[s] was created and its creation was ratified on 02 December 2006 in the Plebiscite for this purpose;

WHEREAS, as a province, Dinagat Islands was, for purposes of the May 10, 2010 National and Local

Elections, allocated one (1) seat for Governor, one (1) seat for Vice Governor, one (1) for congressional seat, and ten (10) Sangguniang Panlalawigan seats pursuant to Resolution No. 8670 dated 16 September 2009;

WHEREAS, the Supreme Court in G.R. No. 180050 entitled "Rodolfo Navarro, et al., vs. Executive Secretary Eduardo Ermita, as representative of the President of the Philippines, et al." rendered a Decision, dated 10 February 2010, declaring Republic Act No. 9355 unconstitutional for failure to comply with the criteria for the creation of a province prescribed in Sec. 461 of the Local Government Code in relation to Sec. 10, Art. X, of the 1987 Constitution;

WHEREAS, respondents intend to file Motion[s] for Reconsideration on the above decision of the Supreme Court;

WHEREAS, the electoral data relative to the: (1) position for Member, House of Representatives representing the lone congressional district of Dinagat Islands, (2) names of the candidates for the aforementioned position, (3) position for Governor, Dinagat Islands, (4) names of the candidates for the said position, (5) position of the Vice Governor, (6) the names of the candidates for the said position, (7) positions for the ten (10) Sangguniang Panlalawigan Members and, [8] all the names of the candidates for Sangguniang Panlalawigan Members, have already been configured into the system and can no longer be revised within the remaining period before the elections on May 10, 2010.

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in Navarro vs. Ermita is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

- If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two (2) separate provinces;

- If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

But because of the current system configuration, the ballots for the Province of Dinagat Islands will, for the positions of Member, House of Representatives, Governor, Vice Governor and Members, Sangguniang Panlalawigan, bear only the names of the candidates for the said positions.

Conversely, the ballots for the First Legislative District of Surigao del Norte, will, for the position of Governor, Vice Governor, Member, House of Representatives, First District of Surigao del Norte and Members, Sangguniang Panlalawigan, show only candidates for the said position. Likewise, the whole Province of Surigao del Norte, will, for the position of Governor and Vice Governor, bear only the names of the candidates for the said position[s].

Consequently, the voters of the Province of Dinagat Islands will not be able to vote for the candidates of Members, Sangguniang Panlalawigan, and Member, House [of] Representatives, First Legislative District, Surigao del Norte, and candidates for Governor and Vice Governor for Surigao del Norte. Meanwhile, voters of the First Legislative District of Surigao del Norte, will not be able to vote for Members, Sangguniang Panlalawigan and Member, House of Representatives, Dinagat Islands. Also, the voters of the whole Province of Surigao del Norte, will not be able to vote for the Governor and Vice Governor, Dinagat Islands. Given this situation, the Commission will postpone the elections for Governor, Vice Governor, Member, House of Representatives, First Legislative District, Surigao del Norte, and Members, Sangguniang Panlalawigan, First Legislative District, Surigao del Norte, because the election will result in [a] failure to elect, since, in actuality, there are no candidates for Governor, Vice Governor, Members, Sangguniang Panlalawigan, First Legislative District, and Member, House of Representatives, First Legislative District (with Dinagat Islands) of Surigao del Norte.

- If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

X X X X

SO ORDERED.

They further alleged that, because they are the duly elected officials of Surigao del Norte whose positions will be affected by the nullification of the election results in the event that the May 12, 2010 Resolution is not reversed, they have a legal interest in the instant case and would be directly affected by the declaration of nullity of R.A. No. 9355. Simply put, movants-intervenors' election to their respective offices would necessarily be annulled since Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte and a special election will have to be conducted for governor, vice governor, and House of Representatives member and Sangguniang Panlalawigan member for the First Legislative District of Surigao del Norte. Moreover, as residents of Surigao del Norte and as public servants representing the interests of their constituents, they have a clear and strong interest in the outcome of this case inasmuch as the reversion of Dinagat as part of the First Legislative District of Surigao del Norte will affect the latter province such that: (1) the whole administrative set-up of the province will have to be restructured; (2) the services of many employees will have to be terminated; (3) contracts will have to be invalidated; and (4) projects and other developments will have to be discontinued. In addition, they claim that their rights cannot be adequately pursued and protected in any other proceeding since their rights would be foreclosed if the May 12, 2010 Resolution would attain finality.

In their motion for reconsideration of the May 12, 2010 Resolution, movants-intervenors raised three (3) main arguments to challenge the above Resolution, namely: (1) that the passage of R.A. No. 9355 operates as an act of Congress amending Section 461 of the LGC; (2) that the exemption from territorial contiguity, when the intended province consists of two or more islands, includes the exemption from the application of the minimum land area requirement; and (3) that the Operative Fact Doctrine is applicable in the instant case.

In the Resolution dated July 20, 2010,[16] the Court denied the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 on the ground that the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the Court, and that the appropriate time to file the said motion was before and not after the resolution of this case.

On September 7, 2010, movants-intervenors filed a Motion for Reconsideration of the July 20, 2010 Resolution, citing several rulings[17] of the Court, allowing intervention as an exception to Section 2, Rule 19 of the Rules of Court that it should be filed at any time before the rendition of judgment. They alleged that, prior to the May 10, 2010 elections, their legal interest in this case was not yet existent. They averred that prior to the May 10, 2010 elections, they were unaware of the proceedings in this case. Even for the sake of argument that they had notice of the pendency of the case, they pointed out that prior to the said elections, Sol T. Matugas was a simple resident of Surigao del Norte, Arturo Carlos A. Egay, Jr. was a member of the Sangguniang Panlalawigan of the Second District of Surigao del Norte, and Mamerto D. Galanida was the Municipal Mayor of Socorro, Surigao del Norte, and that, pursuant to COMELEC Resolution No. 8790, it was only after they were elected as Governor of Surigao del Norte, Vice Governor of Surigao del Norte and Sangguniang Panlalawigan Member of the First District of Surigao del Norte, respectively, that they became possessed with legal interest in this controversy.

On October 5, 2010, the Court issued an order for Entry of Judgment, stating that the decision in this case had

become final and executory on May 18, 2010. Hence, the above motion.

At the outset, it must be clarified that this Resolution delves solely on the instant Urgent Motion to Recall Entry of Judgment of movants-intervenors, not on the second motions for reconsideration of the original parties, and neither on Dinagat's Urgent Omnibus Motion, which our

esteemed colleague, Mr. Justice Arturo D. Brion considers as Dinagat's third motion for reconsideration. Inasmuch as the motions for leave to admit their respective motions for reconsideration of the May 12, 2010 Resolution and the aforesaid motions for reconsideration were already noted without action by the Court, there is no reason to treat Dinagat's Urgent Omnibus Motion differently. In relation to this, the Urgent Motion to Recall Entry of Judgment of movants-intervenors could not be considered as a second motion for reconsideration to warrant the application of Section 3, Rule 15 of the Internal Rules of the Supreme Court.[18] It should be noted that this motion prays for the recall of the entry of judgment and for the resolution of their motion for reconsideration of the July 20, 2010 Resolution which remained unresolved. The denial of their motion for leave to intervene and to admit motion for reconsideration of the May 12, 2010 Resolution did not rule on the merits of the motion for reconsideration of the May 12, 2010 Resolution, but only on the timeliness of the intended intervention. Their motion for reconsideration of this denial elaborated on movants-intervenors' interest in this case which existed only after judgment had been rendered. As such, their motion for intervention and their motion for reconsideration of the May 12, 2010 Resolution merely stand as an initial reconsideration of the said resolution.

With due deference to Mr. Justice Brion, there appears nothing in the records to support the claim that this was a ploy of respondents' legal tactician to reopen the case despite an entry of judgment. To be sure, it is actually COMELEC Resolution No. 8790 that set this controversy into motion anew. To reiterate, the pertinent portion of the Resolution reads:

c. If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted. (Emphasis supplied.)

Indeed, COMELEC Resolution No. 8790 spawned the peculiar circumstance of proper party interest for movants-intervenors only with the specter of the decision in the main case becoming final and executory. More importantly, if the intervention be not entertained, the movants-intervenors would be left with no other remedy as regards to the impending nullification of their election to their respective positions. Thus, to the Court's mind, there is an imperative to grant the Urgent Motion to Recall Entry of Judgment by movants-intervenors.

It should be remembered that this case was initiated upon the filing of the petition for certiorari way back on October 30, 2007. At that time, movants-intervenors had nothing at stake in the outcome of this case. While it may be argued that their interest in this case should have commenced upon the issuance of COMELEC Resolution No. 8790, it is obvious that their interest in this case then was more imaginary than real. This is because COMELEC Resolution No. 8790 provides that should the decision in this case attain finality prior to the May 10, 2010 elections, the election of the local government officials stated therein would only have to be postponed. Given such a scenario, movants-intervenors would not have suffered any injury or adverse effect with respect to the reversion of Dinagat as part of Surigao del Norte since they would simply have remained candidates for the respective positions they have vied for and to which they have been elected.

For a party to have locus standi, one must allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Because constitutional cases are often public actions in which the relief sought is likely to affect other persons, a preliminary question frequently arises as to this interest in the constitutional question raised.[19]

It cannot be denied that movants-intervenors will suffer direct injury in the event their Urgent Motion to Recall Entry of Judgment dated October 29, 2010 is denied and their Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 is denied with finality. Indeed, they have sufficiently shown that they have a personal and substantial interest in the case, such that if the May 12, 2010 Resolution be not reconsidered, their election to their respective positions during the May 10, 2010 polls and its concomitant effects would all be nullified and be put to naught. Given their unique circumstances, movants-intervenors should not be left without any remedy before this Court simply because their interest in this case became manifest only after the case had already been decided. The consequences of such a decision would definitely work to their disadvantage, nay, to their utmost prejudice, without even them being parties to the dispute. Such decision would also violate their right to due process, a right that cries out for protection. Thus, it is imperative that the movants-intervenors be heard on the merits of their cause. We are not only a court of law, but also of justice and equity, such that our position and the dire repercussions of this controversy should be weighed on the scales of justice, rather than dismissed on account of mootness.

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will decide cases, otherwise moot and academic, if: (1) there is a grave violation of the Constitution; (2) there is an exceptional character of the situation and the paramount public interest is involved; (3) the constitutional issue raised requires formation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.[20] The second exception attends this case.

This Court had taken a liberal attitude in the case of *David v. Macapagal-Arroyo*,[21] where technicalities of procedure on locus standi were brushed aside, because the constitutional issues raised were of paramount public interest or of transcendental importance deserving the attention of the Court. Along parallel lines, the motion for intervention should be given due course since movants-intervenors have shown their substantial legal interest in the outcome of this case, even much more than petitioners themselves, and because of the novelty, gravity, and weight of the issues involved.

Undeniably, the motion for intervention and the motion for reconsideration of the May 12, 2010 Resolution of movants-intervenors is akin to the right to appeal the judgment of a case, which, though merely a statutory right that must comply with the requirements of the rules, is an essential part of our judicial system, such that courts should proceed with caution not to deprive a party of the right to question the judgment and its effects, and ensure that every party-litigant, including those who would be directly affected, would have the amplest opportunity for the proper and just disposition of their cause, freed from the constraints of technicalities.[22]

Verily, the Court had, on several occasions, sanctioned the recall entries of judgment in light of attendant extraordinary circumstances.[23] The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final.[24] In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the LGC with respect to the creation of local government units. In this manner, the thrust of the Constitution with respect to local autonomy and of the LGC with respect to decentralization and the attainment of national goals, as hereafter elucidated, will effectively be realized.

On the merits of the motion for intervention, after taking a long and intent look, the Court finds that the first and second arguments raised by movants-intervenors deserve affirmative consideration.

It must be borne in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the LGC, i.e., income, population and land area, are all designed to accomplish these results. In this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration.

Without doubt, the primordial criterion in the creation of local government units, particularly of a province, is economic viability. This is the clear intent of the framers of the LGC. In this connection, the following excerpts from congressional debates are quoted hereunder--

HON. ALFELOR. Income is mandatory. We can even have this doubled because we thought...

CHAIRMAN CUENCO. In other words, the primordial consideration here is the economic viability of the new local government unit, the new province?

x x x x

HON. LAGUDA. The reason why we are willing to increase the income, double than the House version, because we also believe that economic viability is really a minimum. Land area and population are functions really of the viability of the area, because you have an income level which would be the trigger point for economic development, population will naturally increase because there will be an immigration. However, if you disallow the particular area from being converted into a province because of the population problems in the beginning, it will never be able to reach the point where it could become a province simply because it will never have the economic take off for it to trigger off that economic development.

Now, we're saying that maybe Fourteen Million Pesos is a floor area where it could pay for overhead and provide a minimum of basic services to the population. Over and above that, the provincial officials should be able to trigger off economic development which will attract immigration, which will attract new investments from the private sector. This is now the concern of the local officials. But if we are going to tie the hands of the proponents, simply by telling them, "Sorry, you are now at 150 thousand or 200 thousand," you will never be able to become a province because nobody wants to go to your place. Why? Because you never have any reason for economic viability.

x x x x

CHAIRMAN PIMENTEL. Okay, what about land area?

HON. LUMAUG. 1,500 square kilometers

HON. ANGARA. Walang problema `yon, in fact that's not very critical, `yong land area because...

CHAIRMAN PIMENTEL. Okay, ya, our, the Senate version is 3.5, 3,500 square meters, ah, square kilometers.

HON. LAGUDA. Ne, Ne. A province is constituted for the purpose of administrative efficiency and delivery of basic services.

CHAIRMAN PIMENTEL. Right.

HON. LAGUDA. Actually, when you come down to it, when government was instituted, there is only one central government and then everybody falls under that. But it was later on subdivided into provinces for purposes of administrative efficiency.

CHAIRMAN PIMENTEL. Okay.

HON. LAGUDA. Now, what we're seeing now is that the administrative efficiency is no longer there precisely because the land areas that we are giving to our governors is so wide that no one man can possibly administer all of the complex machineries that are needed.

Secondly, when you say "delivery of basic services," as pointed out by Cong. Alfelor, there are sections of the province which have never been visited by public officials, precisely because they don't have the time nor the energy anymore to do that because it's so wide. Now, by compressing the land area and by reducing the population requirement, we are, in effect, trying to follow the basic policy of why we are creating provinces, which is to deliver basic services and to make it more efficient in administration.

CHAIRMAN PIMENTEL. Yeah, that's correct, but on the assumption that the province is able to do it without being a burden to the national government. That's the assumption.

HON. LAGUDA. That's why we're going into the minimum income level. As we said, if we go on a minimum income level, then we say, "this is the trigger point at which this administration can take place." [25]

Also worthy of note are the requisites in the creation of a barangay, a municipality, a city, and a province as provided both in the LGC and the LGC-IRR, viz.--

For a Barangay:

LGC: SEC. 386. Requisites for Creation. - (a) A barangay may be created out of a contiguous territory which has a population of at least two thousand (2,000) inhabitants as certified by the National Statistics Office except in cities and municipalities within Metro Manila and other metropolitan political subdivisions or in highly urbanized cities where such territory shall have a certified population of at least five thousand (5,000) inhabitants: Provided, That the creation thereof shall not reduce the population of the original barangay or barangays to less than the minimum requirement prescribed herein.

To enhance the delivery of basic services in the indigenous cultural communities, barangays may be created in such communities by an Act of Congress, notwithstanding the above requirement.

(b) The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The governor or city mayor may prepare a consolidation plan for barangays, based on the criteria prescribed in this Section, within his territorial jurisdiction. The plan shall be submitted to the sangguniang panlalawigan or sangguniang panlungsod concerned for appropriate action. In the case of municipalities within the Metropolitan Manila area and other metropolitan political subdivisions, the barangay consolidation plan can be prepared and approved by the sangguniang bayan concerned.

LGC-IRR: ARTICLE 14. Barangays. - (a) Creation of barangays by the sangguniang panlalawigan shall require prior recommendation of the sangguniang bayan.

(b) New barangays in the municipalities within MMA shall be created only by Act of Congress, subject to the limitations and requirements prescribed in this Article.

(c) Notwithstanding the population requirement, a barangay may be created in the indigenous cultural communities by Act of Congress upon recommendation of the LGU or LGUs where the cultural community is located.

(d) A barangay shall not be created unless the following requisites are present:

(1) Population - which shall not be less than two thousand (2,000) inhabitants, except in municipalities and

cities within MMA and other metropolitan political subdivisions as may be created by law, or in highly-urbanized cities where such territory shall have a population of at least five thousand (5,000) inhabitants, as certified by the NSO. The creation of a barangay shall not reduce the population of the original barangay or barangays to less than the prescribed minimum/

(2) Land Area - which must be contiguous, unless comprised by two (2) or more islands. The territorial jurisdiction of a barangay sought to be created shall be properly identified by metes and bounds or by more or less permanent natural boundaries.

Municipality:

LGC: SEC. 442. Requisites for Creation. - (a) A municipality may be created if it has an average annual income, as certified by the provincial treasurer, or at least Two million five hundred thousand pesos (P2,500,000.00) for the last two (2) consecutive years based on the 1991 constant prices; a population of at least twenty-five thousand (25,000) inhabitants as certified by the National Statistics Office; and a contiguous territory of at least fifty (50) square kilometers as certified by the Lands

Management Bureau: Provided, That the creation thereof shall not reduce the land area, population or income of the original municipality or municipalities at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

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

(d) Municipalities existing as of the date of effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of this Code shall henceforth be considered regular municipalities.

LGC-IRR: ARTICLE 13. Municipalities. - (a) Requisites for Creation - A municipality shall not be created unless the following requisites are present:

(i)

Income - An average annual income of not less than Two Million Five Hundred Thousand Pesos (P2,500,000.00), for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by the provincial treasurer. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income;

(ii)

Population - which shall not be less than twenty five thousand (25,000) inhabitants, as certified by NSO; and

(iii)

Land area - which must be contiguous with an area of at least fifty (50) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands. The requirement on land area shall

not apply where the proposed municipality is composed of one (1) or more islands. The territorial jurisdiction of a municipality sought to be created shall be properly identified by metes and bounds.

The creation of a new municipality shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.

City:

LGC: SEC. 450. Requisites for Creation. - (a) A municipality or a cluster of barangays may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million pesos (P20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisities:

(i)

a contiguous territory of at least one hundred (100) square kilometers, as certified by the Lands Management Bureau; or,

(ii)

a population of not less than one hundred fifty thousand (150,000) 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 territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

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

LGC-IRR: ARTICLE 11. Cities. - (a) Requisites for creation - A city shall not be created unless the following requisites on income and either population or land area are present:

(1) Income - An average annual income of not less than Twenty Million Pesos (P20,000,000.00), for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2) Population or land area - Population which shall not be less than one hundred fifty thousand (150,000) inhabitants, as certified by the NSO; or land area which must be contiguous with an area of at least one hundred (100) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed city is composed of one (1) or more islands. The territorial jurisdiction of a city sought to be created shall be properly identified by metes and bounds.

The creation of a new city shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.

Provinces:

LGC: SEC. 461. 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

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 comprises 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.

LGC-IRR: ARTICLE 9. Provinces. - (a) Requisites for creation - A province shall not be created unless the following requisites on income and either population or land area are present:

(1) Income - An average annual income of not less than Twenty Million pesos (P20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and non-recurring income; and

(2) Population or land area - Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

The creation of a new province shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners. (Emphasis supplied.)

It bears scrupulous notice that from the above cited provisions, with respect to the creation of barangays, land area is not a requisite indicator of viability. However, with respect to the creation of municipalities, component cities, and provinces, the three (3) indicators of viability and projected capacity to provide services, i.e., income, population, and land area, are provided for.

But it must be pointed out that when the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9(2) of the LGC-IRR.

There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact, considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article

9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC - and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9(2) of the LGC-IRR.

This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.

Section 2 of the LGC, of which paragraph (a) is pertinent to this case, provides--

Sec. 2. Declaration of Policy. - (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

This declaration of policy is echoed in Article 3(a) of the LGC-IRR[26] and in the Whereas clauses of Administrative Order No. 270,[27] which read--

WHEREAS, Section 25, Article II of the Constitution mandates that the State shall ensure the autonomy of local governments;

WHEREAS, pursuant to this declared policy, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, affirms, among others, that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals;

WHEREAS, Section 533 of the Local Government Code of 1991 requires the President to convene an Oversight Committee for the purpose of formulating and issuing the appropriate rules and regulations necessary for the efficient and effective implementation of all the provisions of the said Code; and

WHEREAS, the Oversight Committee, after due deliberations and consultations with all the concerned sectors of society and consideration of the operative principles of local autonomy as provided in the Local Government Code of 1991, has completed the formulation of the implementing rules and regulations; x x x

Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict interpretation adopted by the February 10, 2010 Decision could prove to be counter-productive, if not outright absurd, awkward, and impractical. Picture an intended province that consists of several municipalities and component cities which, in themselves, also consist of islands. The component cities and municipalities which consist of islands are exempt from the minimum land area requirement, pursuant to Sections 450 and 442, respectively, of the LGC. Yet, the province would be made to comply with the minimum land area criterion of 2,000 square kilometers, even if it consists of several islands. This would mean that Congress has opted to assign a distinctive preference to create a province with contiguous land area over one composed of islands -- and negate the greater imperative of development of self-reliant communities, rural progress, and the delivery of basic services to the constituency. This preferential option would prove more difficult and burdensome if the 2,000-square-kilometer territory of a province is scattered because the islands are separated by bodies of water, as compared to one with a contiguous land mass.

Moreover, such a very restrictive construction could trench on the equal protection clause, as it actually defeats the purpose of local autonomy and decentralization as enshrined in the Constitution. Hence, the land area

requirement should be read together with territorial contiguity.

Another look at the transcript of the deliberations of Congress should prove enlightening:

CHAIRMAN ALFELOR. Can we give time to Congressman Chiongbian,[28] with respect to his...

CHAIRMAN LINA. Okay.

HON. CHIONGBIAN. At the outset, Chairman Lina, we would like to apprise the distinguished Senator about the action taken by the House, on House Bill No. 7166. This was passed about two years ago and has been pending in the Senate for consideration. This is a bill that I am not the only one involved, including our distinguished Chairman here. But then we did want to sponsor the bill, being the Chairman then of the Local Government.

So, I took the cudgels for the rest of the Congressmen, who were more or less interested in the creation of the new provinces, because of the vastness of the areas that were involved.

At any rate, this bill was passed by the House unanimously without any objection. And as I have said a while ago, that this has been pending in the Senate for the last two years. And Sen. Pimentel himself was just in South Cotabato and he delivered a speech that he will support this bill, and he says, that he will incorporate this in the Local Government Code, which I have in writing from him. I showed you the letter that he wrote, and naturally, we in the House got hold of the Senate version. It becomes an impossibility for the whole Philippines to create a new province, and that is quite the concern of the respective Congressmen.

Now, insofar as the constitutional provision is concerned, there is nothing to stop the mother province from voting against the bill, if a province is going to be created.

So, we are talking about devolution of powers here. Why is the province not willing to create another province, when it can be justified. Even Speaker Mitra says, what will happen to Palawan? We won't have one million people there, and if you look at Palawan, there will be about three or four provinces that will comprise that island. So, the development will be hampered.

Now, I would like to read into the record the letter of Sen. Pimentel, dated November 2, 1989. This was practically about a year after 7166 was approved by the House, House Bill 7166.

On November 2, 1989, the Senator wrote me:

"Dear Congressman Chiongbian:

We are in receipt of your letter of 17 October. Please be informed that your House No. 7166 was incorporated in the proposed Local Government Code, Senate Bill No. 155, which is pending for second reading.

Thank you and warm regards.

Very truly yours,"

That is the very context of the letter of the Senator, and we are quite surprised that the Senate has adopted another position.

So, we would like - because this is a unanimously approved bill in the House, that's the only bill that is involving the present Local Government Code that we are practically considering; and this will be a slap on the House, if we do not approve it, as approved by the lower House. This can be [an] irritant in the approval of the Conference Committee Report. And I just want to manifest that insofar as the creation of the province, not only in my province, but the other provinces. That the mother province will participate in the plebiscite, they can defeat the province, let's say, on the basis of the result, the province cannot be created if they lose in the plebiscite, and I don't see why, we should put this stringent conditions to the private people of the devolution

that they are seeking.

So, Mr. Senator, I think we should consider the situation seriously, because, this is an approved version of the House, and I will not be the one to raise up and question the Conference Committee Report, but the rest of the House that are interested in this bill. And they have been approaching the Speaker about this. So, the Speaker reminded me to make sure that it takes the cudgel of the House approved version.

So, that's all what I can say, Mr. Senator, and I don't believe that it is not, because it's the wish of the House, but because the mother province will participate anyhow, you vote them down; and that is provided for in the Constitution. As a matter of fact, I have seen the amendment with regards to the creation of the city to be urbanized, subject to the plebiscite. And why should we not allow that to happen in the provinces! In other words, we don't want the people who wants to create a new province, as if they are left in the devolution of powers, when they feel that they are far away from civilization.

Now, I am not talking about other provinces, because I am unaware, not aware of their situation. But the province of South Cotabato has a very unique geographical territorial conglomerations. One side is in the other side of the Bay, of Sarangani Bay. The capital town is in the North; while these other municipalities are in the East and in the West. And if they have to travel from the last town in the eastern part of the province, it is about one hundred forty kilometers to the capital town. And from the West side, it is the same distance. And from the North side, it is about one hundred kilometers. So that is the problem there. And besides, they have enough resources and I feel that, not because I am interested in the province, I am after their welfare in the future. Who am I to dictate on those people? I have no interest but then I am looking at the future development of these areas.

As a matter of fact, if I am in politics, it's incidental; I do not need to be there, but I can foresee what the creation of a new province will bring to these people. It will bring them prosperity; it will bring them more income, and it will encourage even foreign investors. Like the PAP now, they are concentrating in South Cotabato, especially in the City of

General Santos and the neighboring municipalities, and they are quite interested and even the AID people are asking me, "What is holding the creation of a new province when practically you need it?" It's not 20 or 30 kilometers from the capital town; it's about 140 kilometers. And imagine those people have to travel that far and our road is not like Metropolitan Manila. That is as far as from here to Tarlac. And there are municipalities there that are just one municipality is bigger than the province of La Union. They have the income. Of course, they don't have the population because that's a part of the land of promise and people from Luzon are migrating everyday because they feel that there are more opportunities here.

So, by creating the new provinces, not only in my case, in the other cases, it will enhance the development of the Philippines, not because I am interested in my province. Well, as far as I am concerned, you know, I am in the twilight years of my life to serve and I would like to serve my people well. No personal or political interest here. I hope the distinguished Chairman of the Committee will appreciate the House Bill 7166, which the House has already approved because we don't want them to throw the Conference Committee Report after we have worked that the house Bill has been, you know, drawn over board and not even considered by the Senate. And on top of that, we are considering a bill that has not yet been passed. So I hope the Senator will take that into account.

Thank you for giving me this time to explain.

CHAIRMAN LINA. Thank you very much, Congressman James. We will look into the legislative history of the Senate version on this matter of creation of provinces. I am sure there was an amendment. As I said, I'll look into it. Maybe the House version was incorporated in toto, but maybe during the discussion, their amendments were introduced and, therefore, Senator Pimentel could not hold on to the original version and as a result new criteria were introduced.

But because of the manifestation that you just made, we will definitely, when we reach a book, Title IV, on the matter of provinces, we will look at it sympathetically from your end so that the objective that you want [to] achieve can be realized. So we will look at it with sympathy. We will review our position on the matter, how we arrived at the Senate version and we will adopt an open mind definitely when we come into it.

CHAIRMAN ALFELOR. Kanino `yan?

CHAIRMAN LINA. Book III.

CHAIRMAN ALFELOR. Title?

CHAIRMAN LINA. Title IV.

CHAIRMAN ALFELOR. I have been pondering on the case of James, especially on economic stimulation of a certain area. Like our case, because I put myself on our province, our province is quite very big. It's composed of four (4) congressional districts and I feel it should be five now. But during the Batasan time, four of us talked and conversed proposing to divide the province into two.

There are areas then, when since time immemorial, very few governors ever tread on those areas. That is, maybe you're acquainted with the Bondoc Peninsula of Quezon, fronting that is Ragay Gulf. From Ragay there is a long stretch of coastal area. From Albay going to Ragay, very few governors ever tread [there] before, even today. That area now is infested with NPA. That is the area of Congressman Andaya.

Now, we thought that in order to stimulate growth, maybe provincial aid can be extended to these areas. With a big or a large area of a province, a certain administrator or provincial governor definitely will have no sufficient time. For me, if we really would like to stimulate growth, I believe that an area where there is physical or geographical impossibilities, where administrators can penetrate, I think we have to create certain provisions in the law where maybe we can treat it with special considerations.

Now, we went over the graduate scale of the Philippine Local Government Data as far as provinces are concerned. It is very surprising that there are provinces here which only composed of six municipalities, eight municipalities, seven municipalities. Like in Cagayan, Tuguegarao, there are six municipalities. Ah, excuse me, Batanes.

CHAIRMAN LINA. Will you look at the case of --- how many municipalities are there in Batanes province?

CHAIRMAN ALFELOR. Batanes is only six.

CHAIRMAN LINA. Six town. Siquijor?

CHAIRMAN ALFELOR. Siquijor. It is region?

CHAIRMAN LINA. Seven.

CHAIRMAN ALFELOR. L Seven. Anim.

CHAIRMAN LINA. Six also.

CHAIRMAN ALFELOR. Six also.

CHAIRMAN LINA. It seems with a minimum number of towns?

CHAIRMAN ALFELOR. The population of Siquijor is only 70 thousand, not even one congressional district. But tumaas in 1982. Camiguin, that is Region 9. Wala dito. Nagtatataka nga ako ngayon.

CHAIRMAN LINA. Camiguin, Camiguin.

CHAIRMAN ALFELOR. That is region? Camiguin has five municipalities, with a population of 63 thousand.

But we do not hold it against the province because maybe that's one stimulant where growth can grow, can start. The land area for Camiguin is only 229 square kilometers. So if we hard fast on requirements of, we set a minimum for every province, palagay ko we just leave it to legislation, eh. Anyway, the Constitution is very clear that in case we would like to divide, we submit it to a plebiscite. Pabayaan natin ang tao. Kung maglalagay tayo ng set ng minimum, tila yata mahihirapan tayo, eh. Because what is really the thrust of the Local Government Code? Growth. To devolve powers in order for the community to have its own idea how they will stimulate growth in their respective areas.

So, in every geographical condition, mayroon sariling id[i]osyncracies eh, we cannot make a generalization.

CHAIRMAN LINA. Will the creation of a province, carved out of the existing province because of some geographical id[i]osyncracies, as you called it, stimulate the economic growth in the area or will substantial aid coming from the national government to a particular area, say, to a municipality, achieve the same purpose?

CHAIRMAN ALFELOR. Ano tayo dito sa budget. All right, here is a province. Usually, tinitingnan lang yun, provision eh, hindi na yung composition eh. You are entitled to, say, 20% of the area.

There's a province of Camarines Sur which have the same share with that of Camiguin and Siquijor, but Camiguin is composed only of five municipalities; in Siquijor, it's composed of six, but the share of Siquijor is the same share with that of the province of Camarines Sur, having a bigger area, very much bigger.

That is the budget in process.

CHAIRMAN LINA. Well, as I said, we are going to consider this very seriously and even with sympathy because of the explanation given and we will study this very carefully.[29]

The matters raised during the said Bicameral Conference Committee meeting clearly show the manifest intention of Congress to promote development in the previously underdeveloped and uninhabited land areas by allowing them to directly share in the allocation of funds under the

national budget. It should be remembered that, under Sections 284 and 285

of the LGC, the IRA is given back to local governments, and the sharing is based on land area, population, and local revenue.[30]

Elementary is the principle that, if the literal application of the law results in absurdity, impossibility, or injustice, then courts may resort to extrinsic aids of statutory construction, such as the legislative history of the law,[31] or may consider the implementing rules and regulations and pertinent executive issuances in the nature of executive and/or legislative construction. Pursuant to this principle, Article 9(2) of the LGC-IRR should be deemed incorporated in the basic law, the LGC.

It is well to remember that the LGC-IRR was formulated by the Oversight Committee consisting of members of both the Executive and Legislative departments, pursuant to Section 533[32] of the LGC. As Section 533 provides, the Oversight Committee shall formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution. It was also mandated by the Constitution that a local government code shall be enacted by Congress, to wit--

Section 3. 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. (Emphasis supplied.)

These State policies are the very reason for the enactment of the LGC, with the view to attain decentralization and countryside development. Congress saw that the old LGC, Batas Pambansa Bilang 337, had to be replaced with a new law, now the LGC of 1991, which is more dynamic and cognizant of the needs of the Philippines as an archipelagic country. This accounts for the exemption from the land area requirement of local government units composed of one or more islands, as expressly stated under Sections 442 and 450 of the LGC, with respect to the creation of municipalities and cities, but inadvertently omitted from Section 461 with respect to the creation of provinces. Hence, the void or missing detail was filled in by the Oversight Committee in the LGC-IRR.

With three (3) members each from both the Senate and the House of Representatives, particularly the chairpersons of their respective Committees on Local Government, it cannot be gainsaid that the inclusion by the Oversight Committee of the exemption from the land area requirement with respect to the creation of provinces consisting of one (1) or more islands was intended by Congress, but unfortunately not expressly stated in Section 461 of the LGC, and this intent was echoed through an express provision in the LGC-IRR. To be sure, the Oversight Committee did not just arbitrarily and whimsically insert such an exemption in Article 9(2) of the LGC-IRR. The Oversight Committee evidently conducted due deliberation and consultations with all the concerned sectors of society and considered the operative principles of local autonomy as provided in the LGC when the IRR was formulated.[33] Undoubtedly, this amounts not only to an executive construction, entitled to great weight and respect from this Court,[34] but to legislative construction as well, especially with the inclusion of representatives from the four leagues of local government units as members of the Oversight Committee.

With the formulation of the LGC-IRR, which amounted to both executive and legislative construction of the LGC, the many details to implement the LGC had already been put in place, which Congress understood to be impractical and not too urgent to immediately translate into direct amendments to the LGC. But Congress, recognizing the capacity and viability of Dinagat to become a full-fledged province, enacted R.A. No. 9355, following the exemption from the land area requirement, which, with respect to the creation of provinces, can only be found as an express provision in the LGC-IRR. In effect, pursuant to its plenary legislative powers, Congress breathed flesh and blood into that exemption in Article 9(2) of the LGC-IRR and transformed it into law when it enacted R.A. No. 9355 creating the Island Province of Dinagat.

Further, the bill that eventually became R.A. No. 9355 was filed and favorably voted upon in both Chambers of Congress. Such acts of both Chambers of Congress definitively show the clear legislative intent to incorporate into the LGC that exemption from the land area requirement, with respect to the creation of a province when it consists of one or more islands, as expressly provided only in the LGC-IRR. Thereby, and by necessity, the LGC was amended by way of the enactment of R.A. No. 9355.

What is more, the land area, while considered as an indicator of viability of a local government unit, is not conclusive in showing that Dinagat cannot become a province, taking into account its average annual income of P82,696,433.23 at the time of its creation, as certified by the Bureau of Local Government Finance, which is four times more than the minimum requirement of P20,000,000.00 for the creation of a province. The delivery of basic services to its constituents has been proven possible and sustainable. Rather than looking at the results of the plebiscite and the May 10, 2010 elections as mere fait accompli circumstances which cannot operate in favor of Dinagat's existence as a province, they must be seen from the perspective that Dinagat is ready and capable of becoming a province. This Court should not be instrumental in stunting such capacity. As we have held in *League of Cities of the Philippines v. Commission on Elections*[35] --

Ratio legis est anima. The spirit rather than the letter of the law. A statute must be read according to its spirit or intent, for what is within the spirit is within the statute although it is not within its letter, and that which is

within the letter but not within the spirit is not within the statute. Put a bit differently, that which is within the intent of the lawmaker is as much within the statute as if within the letter, and that which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Withal, courts ought not to interpret and should not accept an interpretation that would defeat the intent of the law and its legislators.

So as it is exhorted to pass on a challenge against the validity of an act of Congress, a co-equal branch of government, it behooves the Court to have at once one principle in mind: the presumption of constitutionality of statutes. This presumption finds its roots in the tri-partite system of government and the corollary separation of powers, which enjoins the three great departments of the government to accord a becoming courtesy for each other's acts, and not to interfere inordinately with the exercise by one of its official functions. Towards this end, courts ought to reject assaults against the validity of statutes, barring of course their clear unconstitutionality. To doubt is to sustain, the theory in context being that the law is the product of earnest studies by Congress to ensure that no constitutional prescription or concept is infringed. Consequently, before a law duly challenged is nullified, an unequivocal breach of, or a clear conflict with, the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court.

WHEREFORE, the Court resolved to:

1. GRANT the Urgent Motion to Recall Entry of Judgment by movants-intervenors, dated and filed on October 29, 2010;
2. RECONSIDER and SET ASIDE the July 20, 2010 Resolution, and GRANT the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated July 20, 2010;
3. GRANT the Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. The May 12, 2010 Resolution is RECONSIDERED and SET ASIDE. The provision in Article 9(2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared VALID. Accordingly, Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) is declared as VALID and CONSTITUTIONAL, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared VALID; and
4. The petition is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro, Bersamin, Abad, and Perez, JJ., concur.

Carpio, J., I join the dissenting opinion of J. Disodado Peralta and J. Brion and reserve the right to write a separate dissenting opinion.

Carpio Morales, J., as I join J. Brion's dissent, I maintain my original vote, hence, I dissent.

Brion and Peralta, JJ., pls. see dissenting opinion.

Del Castillo, J., see concurring opinion subject also to internal rule of S.C.

Villarama, Jr., J., See: dissenting opinion of J. Peralta- I join it.

Mendoza, J., concurring subject to internal rules

Sereno, J., I dissent and join J. Peralta in his opinion. I also join J. Brion in his dissent.

[1] Congressman Francisco T. Matugas (incumbent Congressman of the First Legislative District of Surigao del Norte), Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr. (incumbent Governor and Vice Governor,

respectively, of the Province of Surigao del Norte), Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol (incumbent Board Members of the First Provincial District of Surigao del Norte).

[2] Passed by the House of Representatives and the Senate on August 28, 2006 and August 14, 2006, respectively.

[3] R.A. No. 7160, Sec. 10.

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

[4] Rollo, pp. 124-127.

[5] Id. at 143.

[6] Rollo (G.R. No. 175158), pp. 3-20.

[7] Per the November 28, 2006 Resolution, the Court dismissed the petition due to its defective or insufficient verification and certification of non-forum shopping and the failure of petitioners' counsel to indicate an updated Integrated Bar of the Philippines official receipt. In its February 13, 2007 Resolution, the Court dismissed the petition with finality. On April 11, 2007, an Entry of Judgment was issued. (Id. at 77A and 112.)

[8] Rollo, pp. 3-43.

[9] Id. at 736-765.

[10] Penned by Associate Justice Diosdado M. Peralta, with Chief Justice Reynato S. Puno (now retired) and Associate Justices Antonio T. Carpio, Conchita Carpio Morales, Arturo D. Brion, Mariano C. Del Castillo, Martin S. Villarama, Jr., Jose Portugal Perez, and Jose Catral Mendoza, concurring.

[11] Dissented to by Associate Justice Antonio Eduardo B. Nachura, joined by Associate Justices Renato C. Corona (now Chief Justice), Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Lucas P. Bersamin, and Roberto A. Abad.

[12] Penned by Associate Justice Diosdado M. Peralta, with Chief Justice Reynato S. Puno (now retired) and Associate Justices Antonio T. Carpio, Conchita Carpio-Morales, Arturo D. Brion, Mariano C. Del Castillo, Martin S. Villarama, Jr., and Jose Catral Mendoza, concurring.

[13] Dissented to by Associate Justice Jose Portugal Perez, joined by Associate Justices Renato C. Corona (now Chief Justice), Antonio Eduardo B. Nachura, Teresita J. Leonardo-De Castro, Lucas P. Bersamin, and Roberto A. Abad.

[14] Rollo, pp. 984-997.

[15] Id. at 1153-1154.

[16] Id. at 1155- 1158.

[17] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385; *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, February 27, 2008, 547 SCRA 148; *Pinlac v. Court of Appeals*, 457 Phil. 527 (2003); *Mago v. Court of Appeals*, 363 Phil. 225 (1999); *Lim v. Pacquing*, G.R. No. 115044,

January 27, 1995, 240 SCRA 649; *Tahanan Development Corporation v. Court of Appeals*, 203 Phil. 652 (1982); and *Director of Lands v. Court of Appeals*, 181 Phil. 432 (1979).

[18] Sec. 3. Second Motion for Reconsideration. - The Court shall not entertain a second motion for reconsideration and any exception to this rule can only be granted in the higher interest of just by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

[19] *The Province of North Cotabato v. Republic*, G.R. No. 183591, October 14, 2008, 568 SCRA 402, citing *Firestone Ceramics, Inc. v. Court of Appeals*, 372 Phil. 401 (1999) and *Vicente V. Mendoza*, JUDICIAL REVIEW OF CONSTITUTIONAL QUESTIONS 137 (2004).

[20] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[21] *Id.* at 223.

[22] See *Tan Tiac Chiong v. Hon. Rodrigo Cosico*, 434 Phil. 753 (2002); *People v. Hon. Chavez*, 411 Phil. 482 (2001).

[23] *Id.*

[24] *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468, 492.

[25] Bicameral Conference Committee Meeting of the Committee on Local Government, May 22, 1991, 4[th] Regular Session, pp. 57-67.

[26] ARTICLE 3. Declaration of Policy. - (a) It is hereby declared the policy of the Sate that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units (LGUs) shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the LGUs.

[27] Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991.

[28] Congressman Chiongbian is one of the sponsors of House Bill No. 34061, the House of Representatives version of the proposed Local Government Code.

[29] Bicameral Conference Committee on Local Government (Book III), March 13, 1991, pp. 18-28.

[30] Section 284. Allotment of Internal Revenue Taxes. - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

(a) On the first year of the effectivity of this Code, thirty percent (30%);

(b) On the second year, thirty-five percent (35%); and

(c) On the third year and thereafter, forty percent (40%):

Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of the Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

Section 285. Allocation to Local Government Units. - The share of local government units in the internal revenue allotment shall be allocated in the following manner:

- (a) Provinces - Twenty-three percent (23%);
- (b) Cities - Twenty-three percent (23%);
- (c) Municipalities - Thirty-four percent (34%); and
- (d) Barangays - Twenty percent (20%):

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

- (a) Population - Fifty percent (50%);
- (b) Land Area - Twenty-five percent (25%) and
- (c) Equal Sharing - Twenty-five percent (25%):

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand pesos (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

- (1) Population - Forty percent (40%); and
- (2) Equal Sharing - Sixty percent (60%)

(b) On the second year:

- (1) Population - Fifty percent (50%); and
- (2) Equal Sharing - Fifty percent (50%)

(c) On the third year and thereafter:

- (1) Population - Sixty percent (60%); and
- (2) Equal Sharing - Forty percent (40%):

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

[31] *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 129-131, 416 SCRA 436 (2003); *Republic v. Court of Appeals*, 359 Phil. 530, 559; 299 SCRA 199 (1998).

[32] Sec. 533. Formulation of Implementing Rules and Regulations.--(a) Within one (1) month after the approval

of this Code, the President shall convene the Oversight Committee as herein provided for. The said Committee shall formulate and issue the appropriate rules and regulations necessary for the efficient and effective implementation of any and all provisions of this Code, thereby ensuring compliance with the principles of local autonomy as defined under the Constitution.

(b) The Committee shall be composed of the following:

(1) The Executive Secretary, who shall be the Chairman;

(2) Three (3) members of the Senate to be appointed by the President of the Senate, to include the Chairman of the Committee on Local Government;

(3) Three (3) members of the House of Representatives to be appointed by the Speaker, to include the Chairman of the Committee on Local Government;

(4) The Cabinet, represented by the following:

(i) Secretary of the Interior and Local Government;

(ii) Secretary of Finance;

(iii) Secretary of Budget and Management; and

(5) One (1) representative from each of the following:

(i) The League of Provinces;

(ii) The League of Cities;

(iii) The League of Municipalities; and

(iv) The Liga ng mga Barangay.

(c) The Committee shall submit its report and recommendation to the President within two (2) months after its organization. If the President fails to act within thirty (30) days from receipt thereof, the recommendation of the Oversight Committee shall be deemed approved. Thereafter, the Committee shall supervise the transfer of such powers and functions mandated under this Code to the local government units, together with the corresponding personnel, properties, assets and liabilities of the offices or agencies concerned, with the least possible disruptions to existing programs and projects. The Committee shall likewise recommend the corresponding appropriations necessary to effect the said transfer.

For this purpose, the services of a technical staff shall be enlisted from among the qualified employees of Congress, the government offices, and the leagues constituting the Committee.

(d) The funding requirements and the secretariat of the Committee shall be provided by the Office of the Executive Secretary.

(e) The sum of Five million pesos (P5,000,000.00), which shall be charged against the Contingent Fund, is hereby allotted to the Committee to fund the undertaking of an information campaign on this Code. The Committee shall formulate the guidelines governing the conduct of said campaign, and shall determine the national agencies or offices to be involved for this purpose. (Emphasis supplied.)

[33] As found in the Whereas clauses of Administrative Order No. 270 prescribing the Implementing Rules and Regulations of the Local Government Code of 1991, viz.:

WHEREAS, the Oversight Committee, after due deliberations and consultations with all the concerned sectors of society and consideration of the operative principles of local autonomy as provided in the Local Government Code of 1991, has completed the formulation of the implementing rules and regulations. (Emphasis supplied.)

[34] Galarosa v. Valencia, G.R. No. 109455, November 11, 1993, 227 SCRA 728.

[35] G.R. Nos. 176951, 177499, and 178056, December 21, 2009, 608 SCRA 636, 644-645.

CONCURRING OPINION

DEL CASTILLO, J.:

Great cases, like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.

Justice Oliver Wendell Holmes

Northern Securities Co. v. United States [1]

On the abstract principles which govern courts in construing legislative acts, no difference of opinion can exist. It is only in the application of those principles that the difference discovers itself.

Chief Justice John Marshall

United States v. Fisher[2]

Considering the circumstances which supervened after the promulgation of the Decision on February 10, 2010 and Resolution dated May 12, 2010, I find myself reconsidering my previous position. Mr. Justice Antonio Eduardo B. Nachura has himself identified factors not previously considered by this Court, which, in my view, warrant a reversal of our previous rulings.

The case before us concerns the proper interpretation of Section 461 of Republic Act (RA) No. 7160, also known as the Local Government Code (LGC), which prescribes the criteria for the creation of a province as follows:

SEC. 461. 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 comprises 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.[3] (Underscoring supplied)

To implement the provisions of the LGC, the Oversight Committee (created pursuant to Sec. 533 of the LGC) formulated the Implementing Rules and Regulations to carry out the provisions of the law. Article 9 of said Rules and Regulations provides:

Art. 9 Provinces - (a) Requisites for Creation. - A province shall not be created unless the following requisites on income and either population or land area are present:

(i) Income - An average annual income of not less than Twenty million pesos (P20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by the DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and non-recurring income; and

(ii) Population or land area - Population shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.

Since our May 12, 2010 ruling (which denied respondents' respective Motions for Reconsideration), the Office of the Solicitor General (representing the Republic of the Philippines) and Gov. Geraldine Ecleo Villaroman (representing the new Province of the Dinagat Islands), each sought leave to file a Second Motion for Reconsideration on May 27, 2010 and May 26, 2010, respectively, which motions were noted without action. The winning candidates for provincial and congressional seats in Surigao del Norte also sought to intervene in this case; however, their motion for intervention was denied on July 20, 2010.

Subsequent to the Motions for Reconsideration, Justice Nachura has taken pains to compare the requisites for the creation of the different local government units (LGUs) in order to highlight what, in my view, is a glaring inconsistency in the provisions of the law. To summarize:

LGU

Land Area Requirement

Barangay

No minimum land area requirement. Rather, the barangay must be created out of a contiguous territory with a population of at least two thousand (2,000) inhabitants [Sec. 386(a), LGC] The territory need not be contiguous if it comprises two (2) or more islands. [Sec. 386(b), LGC]

Municipality

Contiguous territory of at least fifty (50) square kilometers Note - the land area requirement is IN ADDITION to the income requirement of at least Two Million Five Hundred Thousand Pesos (PhP2,500,000.00) in average annual income for the last 2 consecutive years AND the population requirement of at least Twenty Five Thousand (25,000) inhabitants. [Sec. 442(a), LGC] The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands. [Sec. 442(b), LGC]

City

Contiguous territory of at least one hundred (100) square kilometers Note - a city must have an average annual income of at least Twenty Million Pesos (PhP20,000,000.00) for the last 2 consecutive years AND comply with either the land area requirement OR have a population of at least one hundred fifty thousand (150,000) inhabitants. [Sec. 450(a), LGC] The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or

more islands. [Sec 450(b), LGC]

Province

Contiguous territory of at least two thousand (2,000) square kilometers. Note - a province must have an average annual income of at least Twenty Million Pesos (PhP20,000,000.00) AND comply with either the land area requirement OR have a population of at least two hundred fifty thousand (250,000) inhabitants. [Sec. 461(a), LGC] The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. [Sec 461(b), LGC]

As Justice Nachura points out, as regards the creation of barangays, land area is not included as a requirement. However, a minimum land area is provided for the creation of municipalities, cities, and provinces. Furthermore, while an exemption^[4] is provided for municipalities and cities in cases where the LGU concerned is composed of one or more islands, in stark contrast, no such exemption exists with respect to provinces.

It is not difficult to see why no exemption is needed for barangays - why exempt them from a requirement that does not even apply to them? In fact, the inclusion of the clause "[t]he territory need not be contiguous if it comprises two (2) or more islands" in Sec. 386(b) of the LGC appears to be surplusage. But I cannot see why there would be a difference in treatment between cities and municipalities, on one hand, and provinces, on the other. In fact, as Justice Nachura points out, this may lead to anomalous results. This leads me to conclude that Justice Nachura's interpretation is indeed correct - that the legislature fully intended to exempt LGUs from the land area requirement in cases where the LGU concerned encompassed two or more islands, as provided in Section 442 (for municipalities) and Section 450 (for cities), but this legislative policy was not carried over to Section 461 (for provinces). Consequently, Article 9(2) of the LGC's Implementing Rules and Regulations were precisely enacted in order to correct the congressional oversight.

Our esteemed colleague, Mr. Justice Diosdado M. Peralta, suggests that this interpretation is implausible because even if there were any such oversight, Congress had every opportunity in the last 19 years to correct its mistake. To this I would only observe that Congress has never, in the last 19 years, been faced with a situation where an amendment to Section 461 of the LGC was necessary or desirable, and no case concerning the land area requirement for provinces has ever been brought before this Court since the LGC's enactment.^[5] The only case that has mentioned the land area requirement for provinces, *Tan v. Commission on Elections*,^[6] (regarding the invalidation of *Batas Pambansa Bilang 885* which created the province of *Negros Del Norte*) dealt with the matter only tangentially, at best.^[7]

Justice Peralta also opines that there is no need to search for the legislative intent, since the language of the law is plain, clear, and unambiguous. I would submit, however, that it is equally true that the statute must be read as a whole, that its clauses and phrases are not detached and isolated expressions, but that each and every part must be considered in order to ascertain its meaning.^[8]

Therefore, the statute, read as a whole, in the light of its legislative history, cannot be said to preclude the interpretation placed on it by the majority. But in interpreting a statute [such as the Local Government Code], we cannot take one sentence, one section, or even the entire statute alone and say that it has a "plain meaning" as if there were an objective formula in the few words simply waiting to be grasped by the courts. Instead the statute must be read as a whole, taking all of its provisions and reading them in the context of the legal fabric to which they are to be applied. An interpretation that creates an admittedly anomalous result is not salvaged by the majority's apologia that, if we read the statute in that fashion, Congress created the anomaly. Instead the question is whether the statute read as a whole was intended by Congress to create such results. The law is not an isolated bundle of capricious and inconsistent commands by a legislature presumed to react mindlessly.^[9]

It is also relevant that the Senate and the House of Representatives, represented by the Office of the Solicitor

General, have asserted that Congress intended that provinces composed of one or more islands should be exempted from the 2,000 sq. km. land area requirement. Surely, the legislature's will in this case should be given deference, as a co-equal branch of government operating within its area of constitutional authority.

I also cannot help but note that the Dinagat Islands is not the first small island-province which has been separated from a larger province through legislative imprimatur. The Court may take judicial notice of the fact that the island-provinces of Batanes (previously annexed to Cagayan),^[10] Camiguin (previously a sub-province of Misamis Oriental),^[11] Siquijor (previously a sub-province of Negros Oriental),^[12] Biliran (previously a sub-province of Leyte),^[13] Guimaras (previously a sub-province of Iloilo),^[14] and Marinduque (previously annexed to Tayabas)^[15] also have land areas of well below 1,000 square kilometers each.

To be clear, I am not making an equal protection argument, since none of these provinces were created under the auspices of the LGC. I only point this out to show that Congress, in drafting the LGC, was cognizant of the special circumstances surrounding the creation of island-provinces, and evidently intended that economic development be a more significant consideration than size. The Congressional deliberations bear this out:

CHAIRMAN LINA:

Will you look at the case of - how many municipalities are there in Batanes province?

CHAIRMAN ALFELOR:

Batanes is only six.

CHAIRMAN LINA:

Six town. Siquijor?

CHAIRMAN ALFELOR:

Siquijor. It is region?

CHAIRMAN LINA:

Seven.

CHAIRMAN ALFELOR:

Seven. Anim.

CHAIRMAN LINA:

Six also.

CHAIRMAN ALFELOR:

Six also.

CHAIRMAN LINA:

It seems with a minimum number of towns?

CHAIRMAN ALFELOR:

The population of Siquijor is only 70 thousand, not even one congressional district. But tumaas in 1982. Camiguin, that is Region 9. Wala dito. Nagtataka nga ako ngayon.

CHAIRMAN LINA:

Camiguin, Camiguin.

CHAIRMAN ALFELOR:

That is region? Camiguin has five municipalities, with a population of 63 thousand. But we do not hold it against the province because maybe that's one stimulant where growth can grow, can start. The land area for Camiguin is only 229 square kilometers. So if we hard fast on requirements of, we set a minimum for every province, palagay ko we just leave it to legislation, eh. Anyway, the Constitution is very clear that in case we would like to divide, we submit it to a plebiscite. Pabayaang natin ang tao. Kung maglalagay tayo ng set ng minimum, tila yata mahihirapan tayo eh. Because what is really the thrust of the Local Government Code? Growth. To devolve powers in order for the community to have its own idea how they will stimulate growth in their respective areas.

So in every geographical condition, mayroong sariling idiosyncrasies eh. We cannot make a generalization.[16]

Though this Court certainly has the authority to override the legislative interpretation, I do not believe it is appropriate or necessary in this instance. Rather, we should acknowledge the "strong presumption that a legislature understands and correctly appreciates the needs of its own people [and] that its laws are directed to problems made manifest by experience." [17]

I do not propose that the Court overturn its settled precedent to the effect that Implementing Rules and Regulations cannot go beyond the terms of the statute. But under these limited circumstances - where a reading of the entire law reveals inconsistencies which this Court must reconcile, where the legislature has informed the Court of its intentions in drafting the law, and where the legislative history of the LGC leads one to the inescapable conclusion that the primary consideration in the creation of provinces is actually administrative convenience, economic viability, and capacity for development - then it would be far more just to give effect to the will of the legislature in this case.

In the words of Mr. Justice Isagani Cruz:

But as has also been aptly observed, we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.

Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are

inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.

As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the law maker's will.

The spirit, rather than the letter of a statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the letter but although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute. Stated differently, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.[18]

For these reasons, I thus concur in the opinion of Justice Nachura.

[1] 193 U.S. 197, 400-411 (1904) (Holmes, J. dissenting).

[2] 6 U.S. 358 (1805).

[3] Article X, Section 10 of the Constitution also provides that "[n]o 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."

[4] That "[t]he requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands."

[5] Since the effectivity of the Local Government Code on January 11, 1992, no issue has been raised concerning the land area requirement of provinces. The following provinces have been successfully created since 1992 - Biliran, Guimaras, Sarangani, Kalinga, Apayao, Compostela Valley, and Zamboanga Sibugay, and all of them had land areas of more than 2,000 sq. km. each.

Biliran and Guimaras (previously subprovinces of Leyte and Iloilo, respectively) were converted into regular provinces, pursuant to Sec. 462 of the Local Government Code. Sec. 462 provides:

SEC. 462. Existing Sub-Provinces. - Existing sub- provinces are hereby converted into regular provinces upon approval by a majority of the votes cast in a plebiscite to be held in the said subprovinces and the original provinces directly affected. The plebiscite shall be conducted by the Comelec simultaneously with the national elections following the effectivity of this Code.

Sarangani was separated from South Cotabato in accordance with Republic Act No. 7228, An Act Creating The Province Of Sarangani (1992). It has a land area of 3,972 sq. km. (<http://www.sarangani.gov.ph/seventowns.php>).

Kalinga-Apayao was separated into the provinces of Kalinga and Apayao by virtue of Republic Act No. 7878, An Act Converting The Sub-Provinces Of Kalinga And Apayao Into Regular Provinces To Be Known As The Province Of Kalinga And The Province Of Apayao, Amending For The Purpose Republic Act No. 4695 (1995). Kalinga has a land area of 3,164.3 sq. km. (http://www.nscb.gov.ph/rucar/fnf_kalinga.htm) while Apayao has a land area of 4,120 sq. km. (http://www.nscb.gov.ph/rucar/fnf_apayao.htm)

Compostela Valley was separated from Davao by virtue of Republic Act No. 8470, An Act Creating The Province Of Compostela Valley From The Province Of Davao Del Norte, And For Other Purposes (1998), and has a land area of 4,667 sq. km. (http://www.nscb.gov.ph/ru11/prov_profile/comval.htm).

Zamboanga Sibugay was separated from Zamboanga del Sur by virtue of Republic Act No. 8973, An Act Creating The Province Of Zamboanga Sibugay From The Province Of Zamboanga Del Sur And For Other Purposes (2000). It has a land area of 3,362.22 sq. km. (<http://www.zamboanga.com/zs/>).

[6] 226 Phil. 624 (1986).

[7] *Tan v. Commission on Elections* did not directly discuss the requirement of land area under Batas Pambansa Bilang 337, but rather, concerned the proper construction of the "unit or units affected" for a plebiscite. However, the Court did state that the "territory" in Section 197 of Batas Pambansa Bilang 337 was intended to apply to land area only.

[8] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, citing *Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971, October 15, 2008, 569 SCRA 154, 183, *Mactan-Cebu International Airport Authority v. Urgello*, G.R. No. 162288, April 4, 2007, 520 SCRA 515, 535, and *Smart Communications, Inc. v. The City of Davao*, G.R. No. 155491, September 16, 2008, 565 SCRA 237, 247-248.

[9] *United States v Acres of Land Situated in Grenada and Yalobusha Counties Mississippi Jg* [1983] USCA5 583; 704 F.2d 800; 20 ERC 1025 (12 May 1983).

[10] Act No. 1952, An Act to Provide for the Establishment of the Province of Batanes; to Amend Paragraph Seven of Section Sixty Eight of Act Numbered Eleven Hundred Eighty Nine in Certain Particulars; to Authorize the Approval of the Governor-General to extend the Time for the Payment without Penalty and Taxes and Licenses; to Amend Section Five of Act Numbered Fifteen Hundred and Eighty Two entitled the "Election Law" by Increasing the Number of Delegates to the Philippine Assembly to Eighty One, and for other Purposes (1909).

[11] Republic Act No. 4669, An Act Separating the Subprovince of Camiguin from the Province of Misamis Oriental and Establishing it as an Independent Province (1966).

[12] Republic Act No. 6398, An Act Separating the Subprovince of Siquijor from the Province of Oriental Negros and Establishing it as an Independent Province (1971).

[13] Sec. 462 of the Local Government Code.

[14] *Id.*

[15] Act No. 2880, An Act Authorizing the Separation of the Subprovince of Marinduque from the Province of Tayabas and the Reestablishment of the Former Province of Marinduque, and for other Purposes (1920).

[16] Bicameral Conference Committee on Local Government (Book III), March 13, 1991, pp. 18-28, in FN 14 of Justice Nachura's Reflections.

[17] *Enron Corp. v. Spring Independent School District*, 922 S.W. 2d 931; *Middleton v. Texas Power & Light Co.*

(1919), 249 U.S. 152, at 157.

[18] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 272-273 (1987).

CONCURRING OPINION

ABAD, J.:

I fully concur in the resolution that Justice Antonio Eduardo Nachura wrote for the majority. I would want, however, to reply briefly to the somewhat harsh criticism hurled against the Court in connection with its action.

The Court is accused of "flip-flopping" in this case as in the others before it, specifically the case of the sixteen municipalities that Congress converted into cities. Since the Court is a collegial body, the implication is that its members or the majority collectively flip-flopped in their decisions.

But, as I said in my concurring opinion in the Court's April 12, 2011 resolution in the *League of Cities* case,[1] the charge is unfair, as it is baseless. The Court is not a living person whose decisions and actions are ruled by the whims of one mind. As a collegial body, the Court acts by consensus among its fifteen members.

In the *League of Cities*,[2] neither all the Justices nor most of them did a somersault as implicitly suggested. Congress passed a number of laws converting sixteen municipalities into cities. The *League of Cities* assailed these laws as unconstitutional on the ground that the sixteen municipalities involved did not meet the P100 million minimum income requirement of the Local Government Code. For their part, the municipalities countered that their laws constituted valid legislative amendments of such requirement.

The Court originally voted in the case on November 18, 2008. A majority of six Justices voted to annul the laws, five members dissented, and four took no part (6-5-4). The lead of those who voted to annul the laws firmed up with an increase of 2 votes when the Court took up the motion for reconsideration of the sixteen municipalities on March 31, 2009. The vote was 7-5-2.

But when on April 28, 2009 the Court acted on the sixteen municipalities' second motion for reconsideration, the vote resulted in a tie, 6-6-3. The Court was divided in its interpretation of this 6-6 result. One group argued that the failure of the minority to muster a majority vote had the effect of maintaining the Court's last ruling. Some argued, however, that since the Constitution required a majority vote for declaring laws passed by Congress unconstitutional, the new voting restored the constitutionality of the subject laws. When a re-voting took place on December 21, 2009 to clear up the issue, the result shifted in favor of upholding the constitutionality of the laws of the sixteen municipalities, 6-4-3 (2 vacancies), with the new majority voting to uphold the constitutionality of the laws that converted the sixteen municipalities into cities.

But when the Court voted on the motion for reconsideration of the losing *League of Cities* on August 24, 2010, the majority shifted anew on a vote of 7-6-2. The sixteen municipalities filed a motion for reconsideration of the new decision and voting took place on February 15, 2011, resulting in a vote of 7-6-2 in favor of again upholding the constitutionality of the laws of the sixteen municipalities.

To repeat what I said in my concurring opinion in the *League of Cities*,[3] those who say that the Court, acting through its members, flipped-flopped in the *League of Cities* case should consider the following:

One. The Justices did not on each occasion simply decide to change their minds. There were pending motions for reconsideration in the case and the Justices had a duty to vote on them on the dates the matters came up for decision.

The Court is no orchestra with its members playing one tune under the baton of a maestro. They bring with them a diversity of views, which is what the Constitution prizes, for it is this diversity that filters out blind or dictated conformity.

Two. Of twenty-three Justices who voted in the case at any of its various stages, twenty stood by their original positions. They never reconsidered their views. Only three did so and not on the same occasion, showing no wholesale change of votes at any time.

Three. To flip-flop means to vote for one proposition at first (take a stand), shift to the opposite proposition upon the second vote (flip), and revert to his first position upon the third (flop). Not one of the twenty-three Justices flipped-flopped.

Four. The three Justices who changed their votes did not do so in one direction. Justice Velasco changed his vote from a vote to annul to a vote to uphold; Justice Villarama from a vote to uphold to a vote to annul; and Justice Mendoza from a vote to annul to a vote to uphold. None of them flipped-flopped since the three never changed their votes afterwards.

Notably, no one can dispute the right of a judge, acting on a motion for reconsideration that the losing party files, to change his mind regarding the case. The rules are cognizant of the fact that human judges could err and that it would merely be fair and right for them to correct their perceived errors upon a motion for reconsideration. Even God, who had decided to destroy the Israelites for worshipping a golden calf, reconsidered after Moses stood in the gap for them.[4]

Five. Evidently, the voting in the League of Cities is not a case of massive flip-flopping by the Justices of the Court. Rather, it is a case of tiny shifts in the votes, occasioned by the consistently slender margin that one view held over the other. This reflected the nearly even soundness of the opposing advocacies of the contending sides.

Six. It did not help that in one year alone in 2009, seven Justices retired and were replaced by an equal number. It is such that the resulting change in the combinations of minds produced multiple shifts in the outcomes of the voting. No law or rule requires succeeding Justices to adopt the views of their predecessors. Indeed, preordained conformity is anathema to a democratic system.

In this Dinagat Islands case the vote changed when, acting on the intervention of a third party with genuine interest in the outcome of the case, the majority in the Court was persuaded to change its mind and uphold the act of Congress in creating the province. The previous voting was too close and it took the vote of just two Justices, changing their previous positions, to ensnare the victory from those who oppose the conversion of the Dinagat Islands into a province.

Neither the Court nor its Justices flip-flopped in this case. They did not take one position, later moved to the opposite position, and then reverted to the first. They merely exercised their right to reconsider an erroneous ruling.

The charge of flip-flopping is unfair.

[1] G.R. 176951, League of Cities, et al., vs. Commission on Elections, et al., April 12, 2011,

[2] Supra.

[3] Supra.

[4] Exodus 32:7-14.

DISSENTING OPINION

CARPIO, J.:

I join Justice Diosdado M. Peralta and Justice Arturo D. Brion in their dissents. I file this separate dissenting opinion because the majority's ruling today, legitimizing the creation of a province in blatant violation of the Constitution and the Local Government Code, opens the floodgates to the proliferation of pygmy provinces and legislative districts, mangling sacred and fundamental principles governing our democratic way of life and exacerbating the scourge of local dynastic politics.

First. The Dinagat Islands province simply does not meet the criteria for the creation of a province. To implement the Constitution and for reasons of political practicality and economic viability, Section 461 of the Local Government Code bars the creation of provinces unless two of three minimum requirements are met. Section 461 of the Code provides:

SEC. 461. 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 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 comprises 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. (Emphasis supplied)

Section 461 requires a province to meet the minimum income requirement and either the minimum land area or minimum population requirement. In short, two of the three minimum requirements must be satisfied, with the minimum income requirement one of the two. The Dinagat Islands province, whose income at the time of its creation in 2006 was P82,696,433.22, satisfies only the minimum income requirement. The Dinagat Islands province does not meet either the minimum land area requirement or the minimum population requirement. Indisputably, Dinagat Islands cannot qualify as a province under Section 461 of the Local Government Code, the law that governs the creation of provinces.

Based on the 2000 census, Dinagat Islands' population stood only at 106,951, less than half of the statutory minimum of 250,000. In the census conducted seven years later in 2007, one year after its creation, its population grew by only 13,862, reaching 120,813, still less than half of the minimum population required. The province does not fare any better in land area, with its main island, one sub-island and around 47 islets covering only 802.12 square kilometers, less than half of the 2,000 square kilometers minimum land area required.

The Local Government Code contains no exception to the income and population or land area requirements in creating provinces. What the Code relaxed was the contiguity rule for provinces consisting of "two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province." [The

minimum land area of 2,000 square kilometers in the Code for the creation of a province was never changed, and no exception was ever created by law. Hence, the exception created in the implementing rule[1] of the Local Government Code, exempting provinces "composed of one (1) or more islands" from the minimum land area requirement, is void for being ultra vires, granting a statutory exception that the Local Government Code clearly withheld. The implementing rule, being a mere administrative regulation to implement the Local Government Code, cannot amend the Code but must conform to the Code. Only Congress, and not any other body, is constitutionally empowered to create, through amendatory legislation, exceptions to the land area requirement in Section 461 of the Code.

The majority argues that since the exception of island provinces from the minimum land area requirement was inserted in the implementing rules by the congressional Oversight Committee, the Court should extend great weight to this "legislative construction" of the Code. This is gross error. First, in *Macalintal v. Comelec*, [2] we ruled that a congressional oversight committee has no power to approve or disapprove the implementing rules of laws because the implementation of laws is purely an executive function. The intrusion of the congressional Oversight Committee in the drafting of implementing rules is a violation of the separation of powers enshrined in the Constitution. This Court cannot allow such intrusion without violating the Constitution. Second, Congress has no power to construe the law. Only the courts are vested with the power to construe the law. Congress may provide in the law itself a definition of terms but it cannot define or construe the law through its Oversight Committee after it has enacted the law because such power belongs to the courts.

It is not difficult to see why Congress allowed an exception to the land area requirement in the creation of municipalities [3] and cities [4] but withheld it for provinces. The province, as the largest political and corporate subdivision of local governance in this country, serves as the geographic base from which municipalities, cities and even another province will be carved, fostering local development. Today's majority ruling, allowing the creation of an island province irrespective of population and land area so long as it has P20 million annual income, wipes away the territorial and population tiering among provinces, cities and municipalities the Local Government Code has carefully structured, reducing provinces to the level of a rich municipality, [5] unable to host otherwise qualified new smaller local government units for sheer lack of space.

Despite the majority's ingenious resort to "legislative construction" in the implementing rules to exempt Dinagat Islands from the minimum land area requirement, the majority cannot escape one glaring fact: Dinagat Islands province satisfies only the minimum income requirement under Section 461 of the Local Government Code. Even assuming that the minimum land area requirement does not apply to island provinces, an assumption that is devoid of any legal basis, Dinagat Islands still fail to meet the minimum population requirement. Under Section 461 of the Code, two of the three minimum requirements must be satisfied in the creation of a province, with the income requirement being one of the two minimum requirements. The majority's ruling today creates the Dinagat Islands province despite the indisputable fact that it satisfies only one of the two necessary requirements prescribed in Section 461. The majority's ruling clearly violates Section 461 of the Code, no question about it.

Second. It is mandatory that a province must have a population of at least 250,000. The 1987 Constitution mandates that "each province[,] shall have at least one representative." [6] In *Sema v. Commission on Elections*, [7] we categorically ruled that "the power to create a province or city inherently involves the power to create a legislative district." Thus, when Congress creates a province it necessarily creates at the same time a legislative district. The province must comply with the minimum population of 250,000 because the Constitution mandates that 250,000 shall be the minimum population for the creation of legislative districts. [8]

The Constitution provides for proportional representation in the House of Representatives when it declares that "legislative districts [shall be] apportioned among provinces, cities, and the Metropolitan Manila area in

accordance with the number of their respective inhabitants x x x ." This means that for every given number of inhabitants, "provinces, cities and the Metropolitan Manila area" will be entitled to one representative. In consonance with this constitutional rule on proportional representation and in compliance with the Equal Protection Clause, the minimum population for the creation of legislative districts in provinces and cities must be the same. Since the Constitution expressly provides that the minimum population of legislative districts in cities shall be 250,000,[9] then it necessarily follows that the minimum population of legislative districts in provinces shall also be 250,000. Otherwise, there will be a blatant violation of two fundamental principles of our democratic system - the constitutional requirement of proportional representation in the House of Representatives for "provinces, cities and the Metropolitan Manila area" and the "one person, one vote" rule rooted in the Equal Protection Clause.

Moreover, to treat land area as an alternative to the minimum population requirement (based on the conjunctive "either" in Section 461) destroys the supremacy of the Constitution, making the statutory text prevail over the clear constitutional language mandating a minimum population through the requirement of proportional representation in the apportionment of all legislative districts. In short, in the creation of a province neither Congress nor the Executive can replace the minimum population requirement with a land area requirement because the creation of a province necessarily creates at the same time a legislative district, which under the Constitution must have a minimum population of 250,000.

Because of the majority's ruling today, the House of Representatives will now count among its members a representative of a "premium" district consisting, as of the 2007 census, of only 120,813 constituents, well below the minimum population of 250,000 his peers from the other regular districts represent. This malapportionment tolerates, on the one hand, vote undervaluation in overpopulated districts, and, on the other hand, vote overvaluation in underpopulated ones, in clear breach of the "one person, one vote" rule rooted in the Equal Protection Clause. To illustrate, the 120,813 inhabitants of Dinagat Islands province are entitled to send one representative to the House of Representatives. In contrast, a legislative district in Metro Manila needs 250,000 inhabitants to send one representative to the House of Representatives. Thus, one vote in Dinagat Islands has the weight of more than two votes in Metro Manila for the purpose of representation in the House of Representatives. This is not what our "one person, one vote" representative democracy is all about.

What special and compelling circumstances have the majority found that entitle the inhabitants of Dinagat Islands to such a privileged position? Do the inhabitants of Dinagat Islands have more than twice the IQ of inhabitants of Metro Manila? Do the inhabitants of Dinagat Islands pay more than twice the amount of taxes that inhabitants of Metro Manila pay? Are the inhabitants of Dinagat Islands the chosen people of God to lead this country to greatness? Have the Filipino people, in a plebiscite, agreed to confer on the inhabitants of Dinagat Islands such privileged position, which is the only constitutionally justifiable way to grant such privileged status? Indeed, the gross malapportionment this case presents is just as constitutionally damaging as that in *Aquino v. Commission on Elections*[10] where the population of the reapportioned five legislative districts in Camarines Sur, based on relevant census, fluctuated from a high of 439,043 (Third District) to a low of 176,383 (First District).

Aquino v. Commission on Elections, and now this Dinagat Islands province case, will mangle beyond recognition the bedrock constitutional principles of proportional representation in the House of Representatives, as well as the egalitarian rule of "one person, one vote" universally honored in all modern civilized societies and rooted in the Equal Protection Clause. With *Aquino v. Commission on Elections*, a legislative district in provinces can be created with no minimum population requirement. Thus, a municipality with a population of only 25,000 can have a legislative district. With this Dinagat Islands province case, a province, and necessarily a legislative district, can be created with a population of only 120,000 or even less. In fact, under both *Aquino v. Commission on Elections*

and this Dinagat Islands province case, there is no minimum population requirement whatsoever in the creation of legislative districts in provinces, and thus even a barangay with a population of 1,000 can be a legislative district. In sharp contrast, a legislative district in cities can only be created with a minimum population of 250,000 as expressly required in the Constitution. To repeat, the majority has thrown into the dustbin of history the bedrock democratic principles of proportional representation in the House of Representatives and the "one person, one vote" rule rooted in the Equal Protection Clause – both of which are enshrined in our Constitution and in our democratic way of life. Where is the majority of this Court bringing our representative democracy?

Third. Quasi-malapportionment laws like RA 9355 are double-edged knives thrust at the heart of the anti-dynastic vision of the 1987 Constitution - it fosters entrenchment of political dynasties and fuels feudalistic practices by assuring political dynasties easy access to public funds.

Members of Congress are entitled to an equal share of pork barrel funds regardless of the size of their constituencies. Thus, each seat in the House of Representatives translates to a potent platform for congressmen to cultivate patronage by doling out development, livelihood and support projects using pork barrel funds allocated in annual budgets. For each new province created - entailing at the same time the creation of a legislative district - a pipeline to a huge pool of resources is opened, with the Congressman enjoying wide discretion on how and where he will dispense such legislative largesse.

Under the majority's ruling, not only land area but also population is immaterial in creating island provinces. This is an open invitation to ruling political clans strategically situated in this country's thousands of islands to sponsor the creation of more underpopulated provinces within their political bailiwicks,[11] enabling them to capture more pork barrel funds, thus tightening their grip on the levers of power. This inevitably fuels the feudal practices plaguing Philippine local politics by fortifying patron (congressman) -- ward (constituents) relations upon which dynastic politics thrive. All this at the expense of taxpayers, mostly residing in city legislative districts with minimum populations of 250,000, who surely would not want their taxes to be spent as pork barrel funds of political dynasties in underpopulated legislative districts in island provinces.

The 1987 Constitution is not neutral on the scourge of dynastic politics, a phenomenon that concentrates political power and public resources within the control of few families whose members alternately hold elective offices, deftly skirting term limits. Its exclusionary effect on access to public service led the framers of the 1987 Constitution to mandate that the State "guarantee equal access to opportunities for public service" and that Congress "prohibit political dynasties x x x." [12] To the Filipino people's misfortune, Congress' non-implementation of this constitutional directive is now aggravated by this Court's wantonly loose translation of the Constitution's apportionment standard of proportional representation.[13] Thus, instead of ensuring compliance with the Constitution's mandate prohibiting political dynasties, this Court has turned complicit to local politicians' predilection for dynastic entrenchment.

Fourth. Far from being dispensable components in the creation of local government units, population and land area - not income - are the pivotal factors in funding local government units. Under the Local Government Code, these components determine 75% of the share from the national taxes (Internal Revenue Allotment or IRA) each local government unit receives, the lifeblood of their operations, based on the following formula:

- (a) Population - Fifty percent (50%)
 - (b) Land Area - Twenty-five percent (25%)
 - (c) Equal sharing - Twenty-five percent (25%).[14]
- x x x x

Thus, population, with a weight of 50%, ranks first in importance in determining the financial entitlement of local

government units, followed by land area with a weight of 25%.

By treating Dinagat Islands' land area of 802.12 square kilometers as compliant with the 2,000 square kilometers minimum under Section 461, the majority effectively included in their land area computation the enclosed marine area or waters of Dinagat Islands. This disposition not only reverses, without cause, decades' old jurisprudence,[15] it also wreaks havoc on the national government's allocation of the internal revenue allotment to existing island provinces which would be justified in invoking today's ruling to clamor for increased revenue shares due to increased "land area." In short, other island provinces, like Romblon, Marinduque, Sulu, Tawi-Tawi and Palawan, can now claim their enclosed marine areas as part of their "land area" in computing their share of the IRA.[16]

On the part of landlocked provinces hosting large bodies of water, like Rizal, Laguna, Batangas, Cavite and Lanao del Sur, the situation is reversed. Finding themselves holding, but not surrounded by, water, the submerged territory, no matter how large, is excluded from the computation of their land area, thus proportionately lowering their share in the revenue allotment compared to their island counterparts.

Thus, in its zeal to legalize the creation of an obviously disqualified local government unit, the majority unwittingly creates classes of elite and disadvantaged provinces, using the most arbitrary factor of geographic accident as basis for classification. Even under the most benign equal protection analysis, this does not pass constitutional muster.

Fifth. The Constitution and the Local Government Code are normative guides for courts to reasonably interpret and give expression to the will of the Filipino people as encoded in their provisions. Members of this Court go beyond the bounds of their sworn duties when they second guess the intent of the Constitution's framers and the people's elected representatives, pretending to act as if they themselves have been accorded electoral mandate to amend statutes as they see fit. No amount of rhetoric singing paeans to the virtues of promoting local autonomy can hide the blatant judicial legislation the majority has succeeded in doing here today, to the detriment of the Constitution's requirements of proportional representation in the House of Representatives, equal protection under the law and the prohibition against political dynasties, not to mention the blatant violation of Section 461 of the Local Government Code.

Accordingly, I vote to DENY the Motion to Recall Entry of Judgment, the Motion for Leave to Intervene and to File and Admit Intervenors' Motion for Reconsideration of the Resolution dated 20 July 2010, and the Motion for Reconsideration of the Resolution dated 12 May 2010 filed by the intervenors.

[1] Article 9, paragraph 2 ("[T]he land area requirement shall not apply where the proposed province is composed of one or more islands. x x x")

[2] G.R. No. 157013, 10 July 2003.

[3] Section 442 (b) ("The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. x x x") (emphasis supplied).

[4] Section 450 (b) ("The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. x x x") (emphasis supplied).

[5] Which, under Section 442, must have minimum income, population and land area of P2.5 million (based on

1991 prices), 25,000 and 50 square kilometers (contiguous), respectively.

[6] Section 5(3), Article VI of the 1987 Constitution 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)

[7] G.R. Nos. 177597 & 178628, 16 July 2008.

[8] Id.

[9] Id.

[10] G.R. No. 189793, 617 SCRA 623 (2010).

[11] Much like in the creation of legislative districts, the creation of local government units is done at the behest of legislators representing the relevant locality.

[12] Section 26, Article II (emphasis supplied).

[13] Paradigmatically shown in *Aquino v. Commission on Elections*, G.R. No. 189793, 617 SCRA 623 (2010).

[14] Section 285.

[15] In *Tan v. Commission on Elections* (No. L-73155, 11 July 1986, 142 SCRA 727), we rejected as baseless the claim that "territory" for purposes of the creation of a province, includes submerged land: "The use of the word territory in this particular provision of the Local Government Code and in the very last sentence thereof, clearly reflects that "territory" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control." (Id. at 749; emphasis supplied).

[16] Others island provinces would be Cebu, Bohol, Masbate, Catanduanes, Batanes, Basilan, Siquijor, and Camiguin.

DISSENTING OPINION

BRION, J.:

I join the Dissents of Justices Antonio T. Carpio and Diosdado M. Peralta on the strict merits of the case - on why, based on the merits, Republic Act No. 9355 (RA 9355), otherwise known as An Act Creating the Province of Dinagat Islands, should be declared unconstitutional.

Additionally, I submit this Dissenting Opinion to express my objections in the strongest terms against the transgressions the Court committed in ruling on this case. The result, which is obvious to those who have been following the developments in this case and current Supreme Court rulings, is another flip-flop, made worse by the violations of the Court's own Internal Rules.[1] This is not, of course, the Court's first flip-flop in recent memory; we did a couple of remarkable somersaults in our rulings in the case of *League of Cities of the Philippines, et al. v. Comelec*. [2] This Dissent is written in the hope that the Court's violation of its own rules in this case will be the last, and that the Court will re-think its disposition of this case.

The Court rendered its Decision in this case on February 10, 2010, declaring RA 9355 unconstitutional. The Office of the Solicitor General (OSG), in behalf of the respondents, and respondent Governor Geraldine Ecleo-Villaroman filed their separate Motions for Reconsideration. These were their first motions for reconsideration.

On May 12, 2010, the Court denied these motions for lack of merit.

On May 26 and 28, 2010, respondent Governor Ecleo-Villaroman and the OSG respectively filed their 2nd Motions for Reconsideration. The Court simply noted these motions without action as they are prohibited pleadings under Section 2, Rule 52 of the Rules of Court. This procedural rule states:

Sec. 2. Second Motion for Reconsideration. - No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The Court's Decision of February 10, 2010 became final and executory, and Entry of Judgment was made by the Clerk of Court on May 18, 2010. At that point, the Decision of the Court should have been beyond recall.

On June 18, 2010 (or a full month after entry of judgment), new parties, namely - Congressman Francisco T. Matugas, Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr., Hon. Vicente G. Castrence, Hon. Mamerto D. Galamida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol, filed a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. They prayed that they be allowed to intervene in the case since they were the newly elected officials of Surigao del Norte in the May 10, 2010 elections, who were in danger of losing their positions once the Court's February 10, 2010 decision, declaring R.A. No. 9355 unconstitutional, attained finality. Effectively, they took up the cause of the original respondent Province of Surigao del Norte then represented by former Governor Robert Ace Barbers.

The Court denied the motion in its Resolution of July 20, 2010, pursuant to Section 2, Rule 19 of the Rules of Court which allows a motion for intervention only before the rendition of judgment by the trial court. Applying this rule to an action originally filed with the Court, we ruled that a motion for intervention could only be filed before, and not after, the final judgment in the case.

Respondent Governor Ecleo-Villaroman filed, on October 22, 2010, an Urgent Omnibus Motion (To Resolve Motion for Leave of Court to Admit 2nd Motion for Reconsideration and, to Set Aside Entry of Judgment). Thus, despite the Entry of Judgment, she sought the Court's ruling on her 2nd Motion for Reconsideration that had simply been Noted Without Action by the Court for being a prohibited pleading. The ploy to reopen the case and escape from the consequences of the final judgment was apparent from the move to set aside the Entry of Judgment. Effectively, she was moving for the third time to secure the review of the February 10, 2010 Decision that had been declared final, and to re-submit the case for another deliberation on the merits.

Side by side with the original respondent, the would-be intervenors - despite the lack of personality to act on the case - filed on October 29, 2010 an Urgent Motion to Recall Entry of Judgment. Of course, this move was duly orchestrated with the respondents whose own motions were filed a week earlier. This was a motion the would-be intervenors had no personality to file since their proposed intervention, at that point, stood denied.

The Court en banc deliberated on the case and by a vote of 9 in favor and 6 against, decided to lift the entry of judgment and allow the intervention of the new parties. By the same vote, it voted to completely reverse the Decision of February 10, 2010 and declare RA 9355, entitled An Act Creating the Province of Dinagat Islands, constitutional.

In acting as it did, the Court did not hesitate, by a 9-6 vote, to disregard existing rules that the Court itself created.

After this vote, the ponente modified the majority resolution in reaction to the original version of this Dissent. This time, the majority Resolution claimed that it was acting only on the would-be intervenors' Motion to Lift Entry of Judgment, not on the original respondents' motion to set aside judgment. The ploy apparently was to avoid the Dissent's position that the Court acted on a prohibited 2nd motion for reconsideration without the required vote.

The Court, for reasons of its own, has chosen to live with the public fiction that 2nd motions for reconsideration are prohibited pleadings pursuant to Section 2, Rule 52 of the Rules of Court, cited and quoted above. In actual practice, exceptions to this Rule are allowed and what governs is Section 3, Rule 15 of the Internal Rules of the Supreme Court which provides:

Sec. 3. Second Motion for Reconsideration. - The Court shall not entertain a second motion for reconsideration and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. [Emphases supplied.]

In the present case, the Court simply noted without action respondent Governor Ecleo-Villaroman's and the OSG's 2nd motions for reconsideration because they are prohibited pleadings. The Court thereafter declared its judgment final, and entry of judgment followed. Thus, when Governor Ecleo-Villaroman sought to lift the entry of judgment, her motion - which sought to reopen the case for another review - was effectively a third motion for reconsideration that should have been governed by Section 3, Rule 15 of the Internal Rules. With the modified position that the Court was acting on the movants-intervenors' motion to lift entry of judgment, the majority sought to avoid the restrictive rule on 2nd motions for reconsideration.

How the Court acted on the respondents' and would-be intervenors' motions is interesting.

a. Violation of the Rule on Reconsideration. By a 9-6 vote, the Court declared the entry of judgment lifted. In so doing, it completely disregarded its own rule that any 2nd motion for reconsideration can only be entertained through a vote of 2/3 of the actual membership, or of 10 members, of the Court. It likewise disregarded the rule that a second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. It conveniently forgot, too, when it subsequently claimed that the motion it was considering was not by respondent Governor Ecleo but by the would-be intervenors, that what an original party could no longer do with respect to a final decision, would-be intervenors - practically representing the same interests and who had not even been recognized by this Court - cannot also do; otherwise, what is directly prohibited is allowed through indirect means. Unbelievably, among the majority's supporting arguments to support their violation, was that (1) a motion to lift entry of final judgment is not a motion for reconsideration of the decision sought to be declared non-final; and that (2) no exact provision of the Internal Rules covers the lifting of an entered final judgment.

b. Violation of the Rule on Finality of Judgments. Worse than the above transgression, the Court turned a blind eye to the finality of the judgment it had reached in the case.

The judgment in a case becomes final by operation of law (after the lapse of fifteen [15] days from the parties' receipt of the judgment) or upon the Court's declaration of the judgment's finality. Entry of Judgment by the Clerk of Court follows the finality of a judgment, i.e., if no motion for reconsideration is filed with the Court within fifteen (15) days from the parties' receipt of the judgment.

As mentioned above, no second motion for reconsideration can be entertained once a judgment has become final. In this case, the Court disregarded its own rules and entertained a motion to lift the entry of judgment and to reopen the case. It was not an ordinary violation as the judgment lifted was already final. The respondent Governor's motion to lift entry of judgment was effectively a third motion for reconsideration (as its objective is to open the final decision for another consideration) and its consequences need no elaborate argument to be

understood. For the would-be intervenors, it was a matter of putting the cart before the horse - a move to lift the entry of judgment even before the would-be intervenors had their personality recognized by the Court.

The principle of immutability of a final judgment stands as one of the pillars supporting a strong, credible and effective court. To quote what this Court has repeatedly stated on this principle:

"It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.

The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. [x x x], the Supreme Court reiterated that the doctrine of immutability of judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would "be even more intolerable than the wrong and injustice it is designed to protect." [3] [Emphases supplied.]

This same principle, incidentally, is what we teach students in law schools as a basic bedrock principle in the administration of justice. This is the same principle, too, that is often asked in the bar examinations. Unfortunately, this is the same principle that the Court violated, through a 9-6 vote, when it decided to lift its Entry of Judgment and to entertain the reopening of the final judgment in the case for renewed consideration. This, indeed, is a most unusual move. Did the Majority truly fail to appreciate that the lifting of the entry of judgment is no different in effect from entertaining a motion for reconsideration, and can be made, if at all, by the actual parties, not by would-be intervenors? If a 2[nd] motion for reconsideration is prohibited and requires a 2/3 vote, can a vote that removes the character of finality from a judgment be any less?

c. Violation of the Rule on Intervention. The Court disregarded as well the rule on interventions.[4] The motion for intervention was initially denied since the Court's decision was already final, and intervention could no longer be allowed. To go around this rule, the would-be intervenors, without first successfully securing leave to intervene, instead filed its own motion to lift entry of judgment - the same 2[nd] motion from the original respondents that the Court previously simply noted without action. The Court granted the motion to lift judgment by a 9-6 vote, under the fiction that it was an intervening party, not the barred original respondents, who had asked for it.

To complete this blow-by-blow account, the respondents' legal tactician used the ploy of first reopening the case (initially through the original respondents, and subsequently solely through the would-be intervenors), and thereafter moved to allow intervention since the original respondents had by then exhausted their arguments for the constitutionality of RA 9355. On two previous attempts, the original respondents had failed. To get around the insurmountable block posed by the rule on 2[nd] motions for reconsideration, they fell back on their modified Resolution with the position that another party - the would-be intervenors - wanted to lift the entry of judgment. Once the entry of judgment was lifted and intervention was allowed, it was an easy step to reopen the arguments, add to what the original respondents presented, and submit the case for a ruling on the merits. The same magic numbers of course prevailed all throughout: 9 to 6.

In this manner, the original and final ruling of the Court, in what is commonly known as the "Dinagat case" was reversed. Unlike the case of Lazarus who rose from the dead through a miracle, Dinagat resurrected because the Court disregarded its own rules and established jurisprudential principles. Of course, it can similarly be called a miracle as no reversal could have taken place if just one of the series of transgressions pointed out did not take place. How such resurrection can happen in the Supreme Court is a continuing source of wonder!

[1] A.M. No. 10-4-20-SC, The Internal Rules of the Supreme Court, effective May 22, 2010.

[2] G.R. Nos. 176951, 177499 & 178056, February 15, 2011.

[3] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIIS v. Coca-Cola Bottlers, Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507, 513-514; *Apo Fruits Corp. v. CA*, G.R. No. 164195, December 4, 2009, citing *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162, *Kline v. Murray*, 257 P. 465, 79 Mont. 530, *Flores v. Court of Appeals*, G.R. Nos. 97556 & 101152, July 29, 1996, *Land Bank of the Philippines v. Arceo*, G.R. No. 158270, July 21, 2008, 559 SCRA 85, *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW v. Federation of Free Workers (FFW)*, G.R. No. 160993, May 20, 2008, 554 SCRA 122, 134; *Session Delights Ice and Cream Fast Foods v. CA*, G.R. No. 172149, February 8, 2010, citing *Equitable Bank Corp. v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380, 417; and *Navarro v. Metropolitan Bank and Trust Company*, G.R. No. 165697, August 4, 2009, citing *Yau v. Silverio, Sr.*, G.R. No. 158848, February 4, 2008, 543 SCRA 520, *Social Security System v. Isip*, G.R. No. 165417, April 4, 2007, 520 SCRA 310, *Lim v. Jabalde*, G.R. No. 36786, April 17, 1989, 172 SCRA 211 (1983).

[4] Section 2, Rule 19 of the 1997 Rules of Civil Procedure reads: Time to intervene. - The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

DISSENTING OPINION

PERALTA, J.:

With due respect to the ponente, I register my dissent.

On February 10, 2010, the Court rendered a Decision in the instant case, the dispositive portion of which reads:

WHEREFORE, the petition is GRANTED. Republic Act No. 9355, otherwise known as An Act Creating the Province of Dinagat Islands, is hereby declared unconstitutional. The proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared NULL and VOID. The provision in Article 9 (2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared NULL and VOID.

The Office of the Solicitor General (OSG) filed a motion for reconsideration in behalf of public respondents, and respondent Governor Geraldine Ecleo-Villaroman, representing the New Province of Dinagat Islands, also filed a separate motion for reconsideration of the Decision dated February 10, 2010.

On May 12, 2010, the Court issued a Resolution denying the motions for reconsideration of the OSG and respondent Governor Geraldine Ecleo-Villaroman, representing the New Province of Dinagat Islands, for lack of merit. A copy of the Resolution dated May 12, 2010 was received by the OSG on May 13, 2010, while respondent Governor Geraldine Ecleo-Villaroman, representing the New Province of Dinagat Islands, received a copy of the said Resolution on May 14, 2010.

The Decision dated February 10, 2010 became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[1] issued by the Clerk of Court.

On May 26, 2010, respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman, filed a Motion for Leave to Admit Motion for Reconsideration (of the Resolution dated May 12, 2010) and the said Motion for Reconsideration, while on May 28, 2010, the OSG filed a Motion for Leave to File the Attached 2nd Motion for Reconsideration (of the Resolution dated May 12, 2010) and the aforesaid Motion for Reconsideration. On June 29, 2010, the Court noted without action the foregoing motions of respondents, as the said pleadings were considered second motions for reconsideration of the Decision, which shall not be entertained by the Court, in accordance with Section 2, Rule 52 of the Rules of Court, thus:

SEC. 2. Second motion for reconsideration. -- No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

On June 18, 2010, movants-intervenors Congressman Francisco T. Matugas, Hon. Sol T. Matugas, Hon. Arturo Carlos A. Egay, Jr., Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol filed a Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010.

Movants-intervenors claimed that they have legal interest in this case as they are the duly elected officials[2] of Surigao del Norte in the May 10, 2010 elections, and their positions will be affected by the nullification of the election results in the event that the Resolution dated May 12, 2010 in this case is not reversed and set aside.

On March 9, 2010, the Commission on Elections issued Resolution No. 8790,[3] the pertinent portion of which reads:

x x x x

NOW, THEREFORE, with the current system configuration, and depending on whether the Decision of the Supreme Court in *Navarro vs. Ermita* is reconsidered or not, the Commission RESOLVED, as it hereby RESOLVES, to declare that:

- If the Decision is reversed, there will be no problem since the current system configuration is in line with the reconsidered Decision, meaning that the Province of Dinagat Islands and the Province of Surigao del Norte remain as two separate provinces;

- If the Decision becomes final and executory before the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District, Surigao del Norte.

x x x x

- If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte.

The result of the election will have to be nullified for the same reasons given in item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District, Surigao del Norte (with Dinagat Islands) will have to be conducted.

Since movants-intervenors' elective positions would be adversely affected if the Resolution dated May 12, 2010 would not be reversed, they prayed that they be allowed to intervene in this case and to file their Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010, and that their motion for reconsideration be admitted by the Court.

In a Resolution dated July 20, 2010, the Court denied the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. The Court held that,

fundamentally, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[4] Under Section 2, Rule 19 of the Rules of Court, a motion to intervene may be filed at any time before rendition of judgment by the trial court. The Court ruled that since this case originated from an original action filed before this Court, the appropriate time to file the motion-in-intervention is before and not after resolution of this case, citing *Republic v. Gingoyon*.^[5]

It should be noted that this case was decided on February 10, 2010, and the motions for reconsideration of the Decision were denied in the Resolution dated May 12, 2010. The Decision dated February 10, 2010 became final and executory on May 18, 2010. Movants-intervenors' Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 was filed only on June 18, 2010, clearly after the Decision dated February 10, 2010 had become final and executory; hence, the said motion was correctly denied.

The ponente submits that the Court should grant movants-intervenors' motion for reconsideration of the July 20, 2010 Resolution, in full agreement with their position that their interest in this case arose only after they were elected to their respective positions during the May 10, 2010 elections.

As stated by the ponente, in their motion for reconsideration of the May 12, 2010 Resolution, movants-intervenors raised three main arguments: (1) that the passage of R.A. No. 9355 operates as an act of Congress amending Section 461 of R.A. No. 7160 (the Local Government Code of 1991); (2) that the exemption from territorial contiguity, when the intended province consists of two or more islands, includes the exemption from the application of the minimum land area requirement; and (3) that the Operative Fact Doctrine is applicable in the instant case.

On the merits of the motion for intervention, the ponente urges the Court to take a hard and intent look at the first and second arguments raised by movants-intervenors.

Movants-intervenors contended that R.A. No. 9355 is equivalent to the passage of an amendatory law to the Local Government Code, as

instructed in the case of *League of Cities of the Phils., et al. v. COMELEC, et al.*:^[6]

Consistent with its plenary legislative power on the matter, Congress can, via either a consolidated set of laws or a much simpler, single-subject enactment, impose the said verifiable criteria of viability. These criteria need not be embodied in the local government code, albeit this code is the ideal repository to ensure, as much as possible, the element of uniformity. Congress can even, after making a codification, enact an amendatory law, adding to the existing layers of indicators earlier codified, just as efficaciously as it may reduce the same. In this case, the amendatory RA 9009 upped the already codified income requirement from PhP 20 million to PhP 100 million. At the end of the day, the passage of amendatory laws is no different from the enactment of laws, i.e., the cityhood laws specifically exempting a particular political subdivision from the criteria earlier mentioned. Congress, in enacting the exempting law/s, effectively decreased the already codified indicators. (Emphasis and [u]nderscoring supplied [by movants-intervenors].)

Defining legislative power, movants-intervenors cited *Yakazi Torres Manufacturing, Inc. v. Court of Appeals*,^[7] thus:

The legislative power has been described generally as the power to make, alter, and repeal laws. The authority to amend, change, or modify a law is thus part of such legislative power. It is the peculiar province of the legislature to prescribe general rules for the government of society. (Emphasis and [u]nderscoring supplied [by movants-intervenors].)

In view of the foregoing, movants-intervenors argued that the Local Government Code is susceptible to all

legislative processes, including amendments, repeals or modifications. They asserted that there is no impediment for another statute, including R.A. No. 9355, to amend or modify the Local Government Code as regards the criteria established for the creation of a province. They noted that R.A. No. 9355 relied on Article 9 (paragraph 2) of the Rules and Regulations Implementing the Local Government Code of 1991, particularly the provision that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Movants-intervenors asserted that the said provision should be deemed incorporated in R.A. No. 9355; hence, they purported that the land area requirement in the Local Government Code was modified by R.A. No. 9355. They contended that "R.A. No. 9355, with the incorporated Article 9 (2) of the IRR of the Local Government Code, became part of the Local Government Code."

Movants-intervenors' argument is unmeritorious. As cited in *Yakazi Torres Manufacturing, Inc. v. Court of Appeals*, legislative power is the power to make, alter, and repeal laws; thus, the authority to amend, change, or modify a law is part of such legislative power. However, in this case, R.A. No. 9355, is not a law amending the Local Government Code on the criteria for the creation of a province. Instead, R.A. No. 9355 is a statute creating the Province of Dinagat Islands; hence, subject to the constitutional provision on the creation of a province. The constitutional provision on the creation of a province found in Section 10, Article X of the Constitution states:

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.[8]

Pursuant to the Constitution, the Local Government Code of 1991, in Section 461 thereof, prescribed the criteria for the creation of a province.[9] Hence, R.A. No. 9355 did not amend the Local Government Code, but was subject to the criteria contained in Section 461 of the Local Government Code in creating the Province of Dinagat Islands.

Moreover, Section 6 of the Local Government Code provides:

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, 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. (Emphasis and underscoring supplied.)

Thus, even the Local Government Code clearly provides that Congress may enact a law creating a local government unit, which in this case involves the creation of a province, but such creation is subject to such limitations and requirements prescribed in the Local Government Code. Hence, the creation of the Province of Dinagat Islands is subject to the requirements contained in Section 461 of the Local Government Code. Since R.A. No. 9355 failed to comply with the land area or population requirement in the creation of the province, it was declared unconstitutional in the Decision dated February 10, 2010.

League of Cities of the Philippines v. Commission on Elections, which was cited by movants-intervenors, does not apply to this case. The Court held in its Resolution dated May 12, 2010, thus:

In *League of Cities of the Philippines v. Commission on Elections*, the Court held that the 16 cityhood laws, whose validity were questioned therein, were constitutional mainly because it found that the said cityhood laws merely carried out the intent of R.A. No. 9009, now Sec. 450 of the Local Government Code, to exempt therein respondents local government units (LGUs) from the P100 million income requirement since the said LGUs had pending cityhood bills long before the enactment of R.A. No. 9009. Each one of the 16 cityhood laws contained a provision exempting the municipality covered from the P100 million income requirement.

In this case, R.A. No. 9355 was declared unconstitutional because there was utter failure to comply with either the population or territorial requirement for the creation of a province under Section 461 of the Local Government Code.

Contrary to the contention of the movants-intervenors, Article 9 (2) of the Rules and Regulations Implementing the Local Government Code, which exempts a proposed province from the land area requirement if it is composed of one or more islands, cannot be deemed incorporated in R.A. No. 9355, because rules and regulations cannot go beyond the terms and provisions of the basic law. Thus, in the Decision dated February 10, 2010, the Court held that Article 9 (2) of the Implementing Rules of the Local Government Code is null and void, because the exemption is not found in Section 461 of the Local Government Code.[10] There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[11]

Next, movants-intervenors stated that assuming that Section 461 of the Local Government Code was not amended by R.A. No. 9355, they still sought reconsideration of the Resolution dated May 12, 2010, as they adopted the interpretation of the ponente and Justice Perez of Section 461 of the Local Government Code in their respective dissenting opinions. They asserted that the correct interpretation of Section 461 of the Local Government Code is that of Justice Nachura.

It must be stressed that the movants-intervenors' assertion was already answered in the Resolution dated May 12, 2010, denying the motions for reconsideration of the OSG and Governor Geraldine Ecleo-Villaroman, representing the Province of Dinagat Islands. The Court, in the said Resolution, answered the same contention, thus:

The movants now argue that the correct interpretation of Sec. 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio B. Nachura.

In his Dissenting Opinion, Justice Nachura agrees that R.A. No. 9355 failed to comply with the population requirement. However, he contends that the Province of Dinagat Islands did not fail to comply with the territorial requirement because it is composed of a group of islands; hence, it is exempt from compliance not only with the territorial contiguity requirement, but also with the 2,000-square-kilometer land area criterion in Sec. 461 of the Local Government Code, which is reproduced for easy reference:

SEC. 461. 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 comprises 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.

Justice Nachura contends that the stipulation in paragraph (b) qualifies not merely the word "contiguous" in paragraph (a) (i) in the same provision, but rather the entirety of paragraph (a) (i) that reads:

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

He argues that the whole paragraph on contiguity and land area in paragraph (a) (i) above is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, he contends that if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 square kilometers. He asserts that this is because as the law is worded, contiguity and land area are not two distinct and separate requirements, but they qualify each other. An exemption from one of the two component requirements in paragraph (a) (i) allegedly necessitates an exemption from the other component requirement because the non-attendance of one results in the absence of a reason for the other component requirement to effect a qualification.

Similarly, the OSG contends that when paragraph (b) of Section 461 of the Local Government Code provides that the "territory need not be contiguous if it comprises two (2) or more islands," it necessarily dispenses the 2,000 sq. km. land area requirement, lest such exemption would not make sense. The OSG argues that in stating that a "territory need not be contiguous if it comprises two (2) or more islands," the law could not have meant to define the obvious. The land mass of two or more island will never be contiguous as it is covered by bodies of water. It is then but logical that the territory of a proposed province that is composed of one or more islands need not be contiguous or be at least 2,000 sq. km.

The Court is not persuaded.

Section 7, Chapter 2 (entitled General Powers and Attributes of Local Government Units) of the Local Government Code provides:

SEC. 7. Creation and Conversion.--As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income.--It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population.--It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land area.--It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

It must be emphasized that Section 7 above, which provides for the general rule in the creation of a local government unit, states in paragraph (c) thereof that the land area must be contiguous and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Therefore, there are two requirements for land area: (1) The land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of

the Local Government Code.

Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of "a contiguous territory of at least two thousand (2,000) square kilometers."

Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000 square kilometers are distinct and separate requirements for land area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus:

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands or when the territory of a province is separated by a chartered city or cities, such province need not comply with the land area requirement of at least 2,000 square kilometers or the requirement in paragraph (a) (i) of Section 461 of the Local Government Code.

Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated, nor construe its provisions by taking into account questions of expediency, good faith, practical utility and other similar reasons so as to relax non-compliance therewith. Where the law speaks in clear and categorical language, there is no room for interpretation, but only for application.

Further, movants-intervenors pointed out that pursuant to R.A. No. 9355, the Province of Dinagat Islands has been organized and is functioning as a province, which cannot just be ignored. Thus, a more realistic and pragmatic view should have been adopted by the Court in its Resolution dated May 12, 2010 following the Operative Fact Doctrine, citing *Planters Products, Inc. v. Fertiphil Corporation*.^[12]

In *Planters Products, Inc. v. Fertiphil Corporation*, petitioner *Planters Products, Inc. (PPI)* and private respondent *Fertiphil* were private corporations, which were both engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals. On June 3, 1985, then President Ferdinand Marcos issued LOI No. 1465, which provides:

3. The Administrator of the Fertilizer Pesticide Authority to include in its fertilizer pricing formula a capital contribution component of not less than P10 per bag. This capital contribution shall be collected until adequate capital is raised to make PPI viable. Such capital contribution shall be applied by FPA to all domestic sales of fertilizers in the Philippines. (Underscoring supplied)

Pursuant to the LOI, *Fertiphil* paid P10.00 for every bag of fertilizer it sold in the domestic market to the Fertilizer and Pesticide Authority (FPA), which amount FPA remitted to the depository bank of PPI. *Fertiphil* paid FPA P6,689,144.00 from July 8, 1985 to January 24, 1986.

After the 1986 EDSA Revolution, FPA voluntarily stopped the imposition of the P10.00 levy. *Fertiphil* demanded from PPI a refund of the amounts it paid under LOI No. 1465, but PPI refused to accede to the demand. *Fertiphil*

filed a complaint for collection and damages against FPA and PPI with the Regional Trial Court (RTC) of Makati City. It questioned the constitutionality of LOI No. 1465 for being unjust, unreasonable, oppressive, invalid and an unlawful imposition that amounted to a denial of due process of law. Fertiphil alleged that the LOI solely favored PPI, a privately owned corporation, which used the proceeds to maintain its monopoly of the fertilizer industry.

The RTC ruled in favor of Fertiphil, and ordered PPI to pay Fertiphil the sum of P6,698,144.00 with interest at 12% from the time of judicial demand; the sum of P100,000.00 as attorney's fees; and the cost of suit. Ruling that the imposition of the P10.00 levy was an exercise of the State's inherent power of taxation, the RTC invalidated the levy for violating the basic principle that taxes can only be levied for public purpose. On appeal, the Court of Appeals affirmed the RTC Decision, but deleted the award of attorney's fees.

The Court upheld the decision of the Court of Appeals as LOI No. 1465 failed to comply with the public purpose requirement for tax laws. As regards the argument of PPI that Fertiphil cannot seek a refund based on the Operative Fact Doctrine, the Court held:

The general rule is that an unconstitutional law is void; the doctrine of operative fact is inapplicable.

PPI also argues that Fertiphil cannot seek a refund even if LOI No. 1465 is declared unconstitutional. It banks on the doctrine of operative fact, which provides that an unconstitutional law has an effect before being declared unconstitutional. PPI wants to retain the levies paid under LOI No. 1465 even if it is subsequently declared to be unconstitutional.

We cannot agree. It is settled that no question, issue or argument will be entertained on appeal, unless it has been raised in the court a quo. PPI did not raise the applicability of the doctrine of operative fact with the RTC and the CA. It cannot belatedly raise the issue with Us in order to extricate itself from the dire effects of an unconstitutional law.

At any rate, We find the doctrine inapplicable. The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:

ART. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary.

When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.

Here, We do not find anything iniquitous in ordering PPI to refund the amounts paid by Fertiphil under LOI No. 1465. It unduly benefited from the levy. It was proven during the trial that the levies paid were remitted and deposited to its bank account. Quite the reverse, it would be inequitable and unjust not to order a refund. To do so would unjustly enrich PPI at the expense of Fertiphil. Article 22 of the Civil Code explicitly provides that "every person who, through an act of performance by another comes into possession of something at the expense of the latter without just or legal ground shall return the same to him." We cannot allow PPI to profit from an unconstitutional law. Justice and equity dictate that PPI must refund the amounts paid by Fertiphil.[13]

In this case, the general rule applies that an unconstitutional law is void, and produces no legal effect. As stated in the decision above, the doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. The said doctrine recognizes that the actual existence of a statute prior to a determination of unconstitutionality is an operative fact, and may have consequences which cannot always be ignored. The doctrine was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy[14] or would put in limbo the acts done by a municipality in reliance upon a law creating it in the case of *Municipality of Malabang v. Benito*. [15]

In *Municipality of Malabang v. Benito*, the Court ruled that Executive Order 386 creating the Municipality of Malabang is void, and respondent officials were permanently restrained from performing the duties and functions of their respective offices. Nevertheless, the Court stated there was no basis for respondent officials' apprehension that the invalidation of the executive order creating Balabagan would have the effect of unsettling many an act done in reliance upon the validity of the creation of that municipality, citing *Chicot County Drainage District v. Baxter State Bank*, thus:[16]

x x x The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects - with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[17]

Therefore, based on the foregoing, any question on the validity of acts done before the invalidation of R.A. No. 9355 may be raised before the courts.

Lastly, movants-intervenors contended that the inhabitants of the Province of Dinagat Islands have expressed their will, through their votes in a plebiscite, to be a province; hence, the Court should uphold the will of the people and uphold the validity of R.A. No. 9355.

The contention does not persuade. The validity of R.A. No. 9355 creating the province of Dinagat Islands depends on its compliance with Section 10, Article X of the Constitution, which states:

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.[18]

Although the political units directly affected by the creation of the Province of Dinagat Islands approved the creation of the said province, R.A. No. 9355 failed to comply with the criteria for the creation of the province contained in Section 461 of the Local Government Code; hence, it was declared unconstitutional.

As cited in the Resolution dated May 12, 2010, *Tan v. Comelec*[19] held:

x x x [T]he fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province which petitioners strongly profess to have been illegally born, deserves to be inquired into by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetuation of such wrong. For this court to yield to the respondents' urging that, as there has been fait accompli, then this Court should passively accept and accede to the prevailing situation is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose is a proposition fraught with mischief. Respondents' submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and with ulterior motives, create, merge, divide and/or alter the boundaries of political subdivisions, either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a fait accompli.

In view of the foregoing, the Court acted in accordance with its sound discretion in denying movants-intervenors' Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 as the issues raised by them lacked merit or had already been resolved by the Court in its Decision dated February 10, 2010 and its Resolution dated May 12, 2010 denying respondents' Motion for Reconsideration. Moreover, under Section 2, Rule 19 of the Rules of Court, a motion to intervene may be filed at any time before rendition of judgment by the trial court. Since this case originated from an original action filed before this Court, the Court properly ruled that the appropriate time to file the motion-in-intervention is before and not after resolution of this case, citing *Republic v. Gingoyon*.^[20] Further, when movants-intervenors filed their Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 on June 18, 2010, the Decision of February 10, 2010 had already become final and executory on May 18, 2010.

Aside from urging the Court to take a hard look on the first and second arguments raised by movants-intervenors, the ponente also wants the Court to consider his arguments for a reconsideration of the Decision in this case.

The ponente states that the Court must bear in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration and capability to deliver basic services, and the criteria prescribed by the Local Government Code, i.e., income, population and land area, are all designed to accomplish these results. He adds that in this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration. The ponente calls the attention of the majority to the primordial criterion of economic viability in the creation of local government units, particularly of a province, as intended by the framers of R.A. No. 7160.

The argument of the ponente has been discussed in his earlier Dissenting Opinion. It must be pointed out that from the congressional debates cited by the ponente, the framers of R.A. No. 7160 or the Local Government Code of 1991 finally came out with the end result, that is, Section 461 of R.A. No. 7160, which is the basis for the creation of a province. Section 461 of R.A. No. 7160 provides:

SEC. 461. 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 comprises 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.

Thus, the requisites for the creation of a province, as provided by R.A. No. 7160, is an annual income of not less than P20 million and either a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau, or a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office. As the wordings of the law are plain and clear, compliance with the territorial requirement or population requirement cannot be made light of or disregarded.

In this case, R.A. 9355 creating the Province of Dinagat Islands failed to comply with either the territorial or the population requirement of the Local Government Code. The Court stated in its Resolution dated May 12, 2010, thus:

As the law-making branch of the government, indeed, it was the Legislature that imposed the criteria for the creation of a province as contained in Sec. 461 of the Local Government Code. No law has yet been passed amending Sec. 461 of the Local Government Code, so only the criteria stated therein are the bases for the creation of a province. The Constitution clearly mandates that the criteria in the Local Government Code must be followed in the creation of a province; hence, any derogation of or deviation from the criteria prescribed in the Local Government Code violates Section 10, Art. X of the Constitution.

Further, the ponente states that the provisions of both R.A. No 7160 and the Rules and Regulations Implementing the Local Government Code of 1991 (LGC-IRR) show that with respect to the creation of municipalities, component cities, and provinces, the three indicators of viability and projected capacity to provide services, i.e., income, population, and land area, are provided for. He points out that the exemption from the land area requirement when the local government unit to be created consists of one (1) or more islands is expressly provided in Section 442 and Section 450 of R.A. No. 7160 and the LGC-IRR with respect to the creation of municipalities and component cities, respectively, but the exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of R.A. No. 7160, but is expressly stated under Article 9 (2) of the LGC-IRR.

The ponente opines that there does not appear any rhyme or reason why this exemption should apply to cities and municipalities, but not to provinces. He stated that considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or groups of islands would form part of the land area of a newly-created province than in most cities or municipalities. According to the ponente, it is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for cities) of R.A. No. 7160, but was inadvertently omitted in Section 461 (for provinces).

The ponente submits that when the exemption was expressly provided in Article 9(2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of R.A. No. 7160 -- and reflect the true legislative intent; thus, it would be in order for the Court to uphold the validity of Article 9(2), LGC-IRR.

The ponente also submits that Article 9(2) of the LGC-IRR amounts to an executive construction of the

provisions, policies, and principles of R.A. No. 7160, entitled to great weight and respect. He contends that it is actually a detail expressly provided by the Oversight Committee to fill in the void, honest mistake and oversight committed by Congress in Section 461 of R.A. No. 7160, taking into account the spirit and intent of the law.

The ponente's argument does not persuade. The Local Government Code took effect on January 1, 1992, so 19 years have lapsed since its enactment. If the Legislature committed the "congressional oversight in Section 461 of R.A. No. 7160" as alleged by Justice Nachura, it would have amended Section 461, which is a function of Congress. Substantial "oversights" in the basic law, particularly as alleged with respect to Section 461 of R.A. No. 7160, cannot be corrected in the implementing rules thereof, as it is settled rule that the implementing rules of the basic law cannot go beyond the scope of the basic law.

Moreover, it should be pointed out that a province is "composed of a cluster of municipalities, or municipalities and component cities,"[21] and, therefore, has a bigger land area than that of a municipality and a city, as provided by law. It is noted that the former Local Government Code (Batas Pambansa Blg. 337) did not provide for a required land area in the creation of a municipality and a city, but provided for a required land area in the creation of a province, which is 3,500 square kilometers, now lessened to 2,000 square kilometers in the present Local Government Code. If only the income matters in the creation of a province, then there would be no need for the distinctions in the population and land area requirements provided for a municipality, city and province in the present Local Government Code. It may be stated that unlike a municipality and a city, the territorial requirement of a province contained in Section 461[22] of the Local Government Code follows the general rule in Section 7, Chapter 2 (entitled General Powers and Attributes of Local Government Units) of the same Code, thus:

SEC. 7. Creation and Conversion.--As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income.--It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population.--It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land area.--It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[23]

Moreover, the argument that Article 9(2) of the LGC-IRR amounts to an executive construction of the provisions, policies, and principles of R.A. No. 7160, entitled to great weight and respect, citing the case of *Galarosa v. Valencia*,[24] has already been ruled upon in the Decision dated February 10, 2010, thus:

Further, citing *Galarosa v. Valencia*, the Office of the Solicitor General contends that the IRRs issued by the Oversight Committee composed of members of the legislative and executive branches of the government are entitled to great weight and respect, as they are in the nature of executive construction.

The case is not in point. In *Galarosa*, the issue was whether or not *Galarosa* could continue to serve as a member of the Sangguniang Bayan beyond June 30, 1992, the date when the term of office of the elective

members of the Sangguniang Bayan of Sorsogon expired. Galarosa was the incumbent president of the Katipunang Bayan or Association of Barangay Councils (ABC) of the Municipality of Sorsogon, Province of Sorsogon; and was appointed as a member of the Sangguniang Bayan (SB) of Sorsogon pursuant to Executive Order No. 342 in relation to Section 146 of Batas Pambansa Blg. 337, the former Local Government Code.

Section 494 of the Local Government Code of 1991 states that the duly elected presidents of the liga [ng mga barangay] at the municipal, city and provincial levels, including the component cities and municipalities of Metropolitan Manila, shall serve as ex officio members of the sangguniang bayan, sangguniang panglungsod, and sangguniang panlalawigan, respectively. They shall serve as such only during their term of office as presidents of the liga chapters which, in no case, shall be beyond the term of office of the sanggunian concerned. The section, however, does not fix the specific duration of their term as liga president. The Court held that this was left to the by-laws of the liga pursuant to Article 211(g) of the Rules and Regulations Implementing the Local Government Code of 1991. Moreover, there was no indication that Sections 491 and 494 should be given retroactive effect to adversely affect the presidents of the ABC; hence, the said provisions were to be applied prospectively.

The Court stated that there is no law that prohibits ABC presidents from holding over as members of the Sangguniang Bayan. On the contrary, the IRR, prepared and issued by the Oversight Committee upon specific mandate of Section 533 of the Local Government Code, expressly recognizes and grants the hold-over authority to the ABC presidents under Article 210, Rule XXIX. The Court upheld the application of the hold-over doctrine in the provisions of the IRR and the issuances of the DILG, whose purpose was to prevent a hiatus in the government pending the time when the successor may be chosen and inducted into office.

The Court held that Section 494 of the Local Government Code could not have been intended to allow a gap in the representation of the barangays, through the presidents of the ABC, in the sanggunian. Since the term of office of the punong barangays elected in the March 28, 1989 election and the term of office of the presidents of the ABC had not yet expired, and taking into account the special role conferred upon, and the broader powers and functions vested in the barangays by the Code, it was inferred that the Code never intended to deprive the barangays of their representation in the sangguniang bayan during the interregnum when the liga had yet to be formally organized with the election of its officers.

Under the circumstances prevailing in Galarosa, the Court considered the relevant provisions in the IRR formulated by the Oversight Committee and the pertinent issuances of the DILG in the nature of executive construction, which were entitled to great weight and respect.

Courts determine the intent of the law from the literal language of the law within the law's four corners. If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms. If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law, or may consider the implementing rules and regulations and pertinent executive issuances in the nature of executive construction.

In this case, the requirements for the creation of a province contained in Section 461 of the Local Government Code are clear, plain and unambiguous, and its literal application does not result in absurdity or injustice. Hence, the provision in Article 9(2) of the IRR exempting a proposed province composed of one or more islands from the land-area requirement cannot be considered an executive construction of the criteria prescribed by the Local Government Code. It is an extraneous provision not intended by the Local Government Code, and is, therefore, null and void.

The ponente also stated that it may be well to remember basic policy considerations underpinning the principle of local autonomy, and cited Section 2, R.A. No 7160, which provides:

Sec. 2. Declaration of Policy. - (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their

fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

Indeed, the policy of the State is that "the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals."

However, it must stressed that in the creation of the territorial and political subdivisions of the State, the requirements provided by the Local Government Code must also be complied with, which R.A. No. 9355 failed to do.

Further, the ponente states that consistent with the declared policy to provide local government units local autonomy, he submits that the territory, contiguity and minimum land area requirements for prospective local government units should be construed liberally in order to achieve the desired results. He adds that this liberal interpretation is more appropriate, taking into account the rules on construction of the LGC, viz:

SEC. 5. Rules of Interpretation. - In the interpretation of the provisions of this Code, the following rules shall apply:

x x x x

(c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community;

The ponente seeks for a liberal interpretation as regards the territorial requirement in the creation of a province based on the rules of interpretation of the general welfare provisions of the Local Government Code. General welfare is clarified in Section 16 of the Local Government Code, thus:

Sec. 16. General Welfare.--Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

The Local Government Code provides that it is "[t]he general welfare provisions in this Code which shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community." Nowhere is it stated therein that the provisions for the creation of a local government unit, the province in particular, should be liberally interpreted. Moreover, since the criteria for the creation of a province under the Local Government Code are clear, there is no room for interpretation, but only application.

To reiterate, the constitutional basis for the creation of a province is laid down in Section 10, Article X of the Constitution, which provides that no province 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. The criteria for the creation of a province are found in Section 461 of the Local Government Code. Moreover, Section 6 of the Local Government Code provides that "[a] local government unit may be created xxx by law enacted by congress in the case of a province xxx subject to such limitations and requirements prescribed in this Code."

Based on the criteria for the creation of a province provided for in Section 461 of the Local Government, the Court found that R.A. No. 9355 creating the Province of Dinagat Islands failed to comply with the population or territorial requirement; hence, R.A. No. 9355 was declared unconstitutional.

The Decision in this case was promulgated on February 10, 2010. The motions for reconsideration of the Decision was denied on May 12, 2010. The Decision of February 10, 2010 became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[25] issued by the Clerk of Court. Movants-intervenors filed their Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 201 only on June 18, 2010, or after the resolution of the case and one month after the Decision in this case already became final and executory. Hence, the Court properly denied the said motion.

The ponente contends that there is an imperative to grant the Urgent Motion to Recall Entry of Judgment filed on October 29, 2010 by movants-intervenors for the simple reason that the Entry of Judgment was prematurely issued on October 5, 2010 in view of the pendency of the movants-intervenor's motion for reconsideration of the July 20, 2010 Resolution, which was filed on September 7, 2010.

I cannot agree with such contention. Although Entry of Judgment was made on October 5, 2010, it must be borne in mind that the Decision in this case became final and executory on May 18, 2010, as evidenced by the Entry of Judgment[26] issued by the Clerk of Court. If the Court follows Section 2, Rule 36 of the Rules of Court, the date of finality of the judgment is deemed to be the date of its entry, thus:

Sec. 2. Entry of judgments and final orders.--If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment of final order has become final and executory.

The amendment in Section 2 above makes finality and entry simultaneous by operation of law, and eliminates the confusion and guesswork whenever the parties could not have access, for one reason or another, to the Book of Entries of Judgments.[27] It also avoids the usual problem where the physical act of writing out the entry is delayed by neglect or sloth.[28]

In addition, the Court properly denied on July 20, 2010 the movants-intervenors' Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010, since it was filed after the resolution of the case and after the Decision in this case had become final and executory on May 18, 2010. With the denial of the Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010, the movants-intervenors' did not have legal standing to intervene; hence, their motion for reconsideration of the July 20, 2010 Resolution has no bearing on the validity of the Entry of Judgment that was recorded in the Book of Entries of Judgments on October 5, 2010. Therefore, the Entry of Judgment cannot be recalled on the ground of pendency of the movants-intervenor's motion for reconsideration of the July 20, 2010 Resolution.

Since movants-intervenors' Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010 was denied in the Resolution dated July 20, 2010, the motion for reconsideration of the July 20, 2010 Resolution filed on September 7, 2010 by movants-intervenors

was recommended to also be denied, but has yet to be acted on by the Court.

Further, on October 22, 2010, respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman, filed an Urgent Omnibus Motion (To resolve Motion for Leave of Court to Admit Second Motion for Reconsideration and, to set aside Entry of Judgment). Respondent admitted that it filed the Motion for Leave of Court to Admit Second Motion for Reconsideration on May 26, 2010, twelve (12) days after receipt of the Resolution dated May 12, 2010 denying respondents' motion for reconsideration.

It should be pointed out that the Court has acted on respondent New Province of Dinagat Islands' Motion for Leave of Court to Admit Second Motion for Reconsideration and the aforesaid Motion for Reconsideration, which were filed on May 26, 2010 (after the Decision had become final and executory on May 18, 2010), in the Court's Resolution dated June 26, 2010. Treated as a second motion for reconsideration of the Decision, which is disallowed, the Court resolved to note without action the said motions in view of the Resolution dated May 12, 2010 denying the motions for reconsideration of the February 10, 2010 Decision. Section 2, Rule 52 of the Rules of Court states:

SEC. 2. Second motion for reconsideration.--No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

As the decision in this case became final and executory on May 18, 2010, the decision is unalterable. In *Gomez v. Correa*,^[29] the Court held:

It is settled that when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries in which case there is no prejudice to any party, and where the judgment is void.

To stress, the motion for reconsideration filed by movants-intervenors on the denial of the motion for intervention should have been denied since to grant the same would be tantamount to reopening a case which is already final. Worse, movants-intervenors are not even original parties to the present case and therefore are not in a position to file a motion to recall a judgment which is already final and executory.

In view of the foregoing, I maintain that the movants-intervenors' Motion for Leave to Intervene and to File and to Admit Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010, which was filed only on June 18, 2010 or after resolution of the case and after the Decision of February 10, 2010 had become final and executory on May 18, 2010, was properly denied in the Resolution dated July 20, 2010. Consequently, I maintain my stand that movants-intervenor's Motion for Reconsideration of the Resolution dated July 20, 2010, which motion was filed on September 7, 2010, be denied for lack of merit. Further, it is recommended that movants-intervenors' Urgent Motion to Recall Entry of Judgment filed on October 29, 2010, and the Omnibus Motion (To resolve Motion for Leave of Court to Admit Second Motion for Reconsideration and to set aside Entry of Judgment) filed on October 22, 2010 by respondent New Province of Dinagat Islands, represented by Governor Geraldine Ecleo-Villaroman, be likewise denied for lack of merit.

[1] Rollo, p. 1202.

[2] Based on the results of the May 10, 2010 elections, movant Congressman Francisco T. Matugas is the Congressman-Elect of the First Legislative District of Surigao del Norte; movants Hon. Sol T. Matugas and Hon. Arturo Carlos A. Egay, Jr. are the Governor-Elect and Vice-Governor-Elect, respectively, of the Province of Surigao del Norte; while movants Hon. Simeon Vicente G. Castrence, Hon. Mamerto D. Galanida, Hon. Margarito M. Longos, and Hon. Cesar M. Bagundol are the Board Members-Elect of the First Provincial District of Surigao del Norte.

[3] Entitled IN THE MATTER OF THE EFFECT OF THE DECISION OF THE SUPREME COURT IN THE CASE OF "RODOLFO G. NAVARRO, ET. AL, vs. EXECUTIVE SECRETARY EDUARDO ERMITA representing the President of the Philippines, ET. AL" (G.R. No. 180050), DECLARING THE CREATION OF THE PROVINCE OF DINAGAT ISLANDS AS UNCONSTITUTIONAL THEREBY REVERTING SAID PROVINCE TO ITS PREVIOUS STATUS AS PART OF THE PROVINCE OF SURIGAO DEL NORTE.

[4] Citing Heirs of Geronimo Restrivera v. De Guzman, G.R. No. 146540, July 14, 2004, 434 SCRA 456.

[5] G.R. No. 166429, February 1, 2006, 481 SCRA 457.

[6] G.R. Nos. 176951, 177499, 178056, December 21, 2009, 608 SCRA 636.

[7] G.R. No. 130584, June 27, 2006, 493 SCRA 86, 97.

[8] Emphasis supplied.

[9] SEC. 461. 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 comprises 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. (Emphasis supplied.)

[10] For comparison, Section 461 of the Local Government Code of 1991 and Article 9 of the Rules and Regulations Implementing the Local Government Code of 1991 are reproduced:

The Local Government Code

SEC. 461. 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 comprises 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.

Rules and Regulations Implementing the Local Government Code of 1991

ART. 9. Provinces.--(a) Requisites for creation--A province shall not be created unless the following requisites on income and either population or land area are present:

(1) Income -- An average annual income of not less than Twenty Million Pesos (P20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2) Population or land area - Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by National Statistics Office; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied.)

[11] Hijo Plantation, Inc. v. Central Bank, G.R. No. L-34526, August 9, 1988, 164 SCRA 192.

[12] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

[13] Emphasis supplied.

[14] Tan v. Barrios, G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686.

[15] No. L-28113, March 28, 1969.

[16] 308 U.S. 371, 374 (1940).

[17] Municipality of Malabang v. Benito, supra note 15, p. 540.

[18] Emphasis supplied.

[19] No. L-73155, July 11, 1986, 142 SCRA 727, 741-742.

[20] G.R. No. 166429, February 1, 2006, 481 SCRA 457.

[21] Section 459, The Local Government Code of 1991.

[22] SEC. 461. 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 comprises 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.

[23] Emphasis supplied.

[24] G.R. No. 109455, November 11, 1993, 227 SCRA 728.

[25] Rollo, p. 1202.

[26] Id. at 1202.

[27] Florenz D. Regalado, Remedial Law Compendium, Vol. I, Eight Revised Edition, © 2002, p. 381.

[28] Id.

[29] G.R. No. 153923, October 2, 2009, 602 SCRA 40, 46-47.

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