

VICTORINO B. ALDABA, CARLO JOLETTE S. FAJARDO, JULIO G. MORADA, AND MINERVA ALDABA MORADA, PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 188078. March 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

This resolves the motion for reconsideration of respondent Commission on Elections (COMELEC) of the Decision dated 25 January 2010.[1]

The COMELEC grounds its motion on the singular reason, already considered and rejected in the Decision, that Congress' reliance on the Certification of Alberto N. Miranda (Miranda), Region III Director, National Statistics Office (NSO), projecting Malolos City's population in 2010, is non-justiciable. The COMELEC also calls attention to the other sources of Malolos City's population indicators as of 2007 (2007 Census of Population - PMS 3 - Progress Enumeration Report[2]) and as of 2008 (Certification of the City of Malolos' Water District, dated 31 July 2008,[3] and Certification of the Liga ng Barangay, dated 22 August 2008[4]) which Congress allegedly used in enacting Republic Act No. 9591 (RA 9591). The COMELEC extends its non-justiciability argument to these materials.

We find no reason to grant the motion.

First. It will not do for the COMELEC to insist that the reliability and authoritativeness of the population indicators Congress used in enacting RA 9591 are non-justiciable. If laws creating legislative districts are unquestionably within the ambit of this Court's judicial review power,[5] then there is more reason to hold justiciable subsidiary questions impacting on their constitutionality, such as their compliance with a specific constitutional limitation under Section 5(3), Article VI of the 1987 Constitution that only cities with at least 250,000 constituents are entitled to representation in Congress. To fulfill this obligation, the Court, of necessity, must inquire into the authoritativeness and reliability of the population indicators Congress used to comply with the constitutional limitation. Thus, nearly five decades ago, we already rejected claims of non-justiciability of an apportionment law alleged to violate the constitutional requirement of proportional representation:

It is argued in the motion to reconsider, that since Republic Act 3040 improves existing conditions, this Court could perhaps, in the exercise of judicial statesmanship, consider the question involved as purely political and therefore non-justiciable. The overwhelming weight of authority is that district apportionment laws are subject to review by the courts[:]

The constitutionality of a legislative apportionment act is a judicial question, and not one which the court cannot consider on the ground that it is a political question.

It is well settled that the passage of apportionment acts is not so exclusively within the political power of the legislature as to preclude a court from inquiring into their constitutionality when the question is properly brought

before it.

It may be added in this connection, that the mere impact of the suit upon the political situation does not render it political instead of judicial.

The alleged circumstance that this statute improves the present set-up constitutes no excuse for approving a transgression of constitutional limitations, because the end does not justify the means. Furthermore, there is no reason to doubt that, aware of the existing inequality of representation, and impelled by its sense of duty, Congress will opportunely approve remedial legislation in accord with the precepts of the Constitution.[6] (Emphasis supplied; internal citations omitted)

To deny the Court the exercise of its judicial review power over RA 9591 is to contend that this Court has no power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," a duty mandated under Section 1, Article VIII of the Constitution. Indeed, if we subscribe to the COMELEC's theory, this Court would be reduced to rubberstamping laws creating legislative districts no matter how unreliable and non-authoritative the population indicators Congress used to justify their creation. There can be no surer way to render meaningless the limitation in Section 5(3), Article VI of the 1987 Constitution.[7]

Second. Under Executive Order No. 135 (EO 135), the population indicators Congress used to measure Malolos City's compliance with the constitutional limitation are unreliable and non-authoritative. On Miranda's Certification, (that the "projected population of the [City] of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78[%] between 1995 and 2000"), this fell short of EO 135's requirements that (a) for intercensal years, the certification should be based on a set of demographic projections and estimates declared official by the National Statistical and Coordination Board (NSCB); (b) certifications on intercensal population estimates will be as of the middle of every year; and (c) certifications based on projections or estimates must be issued by the NSO Administrator or his designated certifying officer. Further, using Miranda's own growth rate assumption of 3.78%, Malolos City's population as of 1 August 2010 will only be 249,333, below the constitutional threshold of 250,000 (using as base Malolos City's population as of 1 August 2007 which is 223,069). That Miranda issued his Certification "by authority of the NSO administrator" does not make the document reliable as it neither makes Miranda the NSO Administrator's designated certifying officer nor cures the Certification of its fatal defects for failing to use demographic projections and estimates declared official by the NSCB or make the projection as of the middle of 2010.

Nor are the 2007 Census of Population - PMS 3 - Progress Enumeration Report, the Certification of the City of Malolos' Water District, dated 31 July 2008 and the Certification of the Liga ng Barangay, dated 22 August 2008, reliable because none of them qualifies as authoritative population indicator under EO 135. The 2007 Census of Population - PMS 3 - Progress Enumeration Report merely contains preliminary data on the population census of Bulacan which were subsequently adjusted to reflect actual population as indicated in the 2007 Census results (showing Malolos City's population at 223,069). The COMELEC, through the Office of the Solicitor General (OSG), adopts Malolos City's claim that the 2007 census for Malolos City was "sloped to make it appear that come Year 2010, the population count for Malolos would still fall short of the constitutional requirement." [8] This unbecoming attack by the government's chief counsel on the integrity of the processes of the government's census authority has no place in our judicial system. The OSG ought to know that absent convincing proof of so-called data "sloping," the NSO enjoys the presumption of the regularity in the performance of its functions.

The Certification of the City of Malolos' Water District fares no better. EO 135 excludes from its ambit certifications from a public utility gathered incidentally in the course of pursuing its business. To elevate the water

district's so-called population census to the level of credibility NSO certifications enjoy is to render useless the existence of NSO. This will allow population data incidentally gathered by electric, telephone, sewage, and other utilities to enter into legislative processes even though these private entities are not in the business of generating statistical data and thus lack the scientific training, experience and competence to handle, collate and process them.

Similarly, the Certification of the Liga ng Barangay is not authoritative because much like the Malolos City Water District, the Liga ng Barangay is not authorized to conduct population census, much less during off-census years. The non-NSO entities EO 135 authorizes to conduct population census are local government units (that is, province, city, municipality or barangay) subject to the prior approval of the NSCB and under the technical supervision of the NSO from planning to data processing.[9]

By presenting these alternative population indicators with their widely divergent population figures,[10] the COMELEC unwittingly highlighted the danger of relying on non-NSO authorized certifications. EO 135's stringent standards ensuring reliability of population census cannot be diluted as these data lie at the core of crucial government decisions and, in this case, the legislative function of enforcing the constitutional mandate of creating congressional districts in cities with at least 250,000 constituents.

There can be no doubt on the applicability of EO 135 to test the constitutionality of RA 9591. The COMELEC invoked EO 135 to convince the Court of the credibility and authoritativeness of Miranda's certificate.[11] It is hardly alien for the Court to adopt standards contained in a parallel statute to fill gaps in the law in the absence of an express prohibition.[12] Indeed, one is hard-pressed to find any distinction, statistically speaking, on the reliability of an NSO certification of a city's population for purposes of creating its legislative district and for purposes of converting it to a highly-urbanized or an independent component city.[13] Congress itself confirms the wisdom and relevance of EO 135's paradigm of privileging NSO certifications by mandating that compliance with the population requirement in the creation and conversion of local government units shall be proved exclusively by an NSO certification.[14] Unquestionably, representation in Congress is no less important than the creation of local government units in enhancing our democratic institutions, thus both processes should be subject to the same stringent standards.

Third. Malolos City is entitled to representation in Congress only if, before the 10 May 2010 elections, it breaches the 250,000 population mark following the mandate in Section 3 of the Ordinance appended to the 1987 Constitution that "any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member." COMELEC neither alleged nor proved that Malolos City is in compliance with Section 3 of the Ordinance.

Fourth. Aside from failing to comply with Section 5(3), Article VI of the Constitution on the population requirement, the creation by RA 9591 of a legislative district for Malolos City, carving the city from the former First Legislative District, leaves the town of Bulacan isolated from the rest of the geographic mass of that district.[15] This contravenes the requirement in Section 5(3), Article VI that each legislative district shall "comprise, as far as practicable, contiguous, compact, and adjacent territory." It is no argument to say, as the OSG does, that it was impracticable for Congress to create a district with contiguous, compact, and adjacent territory because Malolos city lies at the center of the First Legislative District. The geographic lay-out of the First Legislative District is not an insuperable condition making compliance with Section 5(3) impracticable. To adhere to the constitutional mandate, and thus maintain fidelity to its purpose of ensuring efficient representation, the practicable alternative for Congress was to include the municipality of Bulacan in Malolos City's legislative district. Although unorthodox, the resulting contiguous and compact district fulfills the constitutional requirements of geographic unity and population floor, ensuring efficient representation of the minimum mass of

constituents.

WHEREFORE, the Supplemental Motion for Reconsideration of respondent Commission on Elections dated 22 February 2010 is DENIED WITH FINALITY. Let no further pleadings be allowed.

SO ORDERED.

Puno, C.J., Carpio Morales, Brion, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.

Corona, Nachura, Peralta, and Bersamin, JJ., joins the dissent of J. Abad.

Velasco, Jr., J., no part due to relationship to a party.

Abad., J., adopted dissent on the main opinion.

[1] Malolos City's motion for leave to intervene and file a motion for reconsideration was denied in the Resolution of 16 February 2010. The COMELEC, in its Supplemental Motion for Reconsideration, adopted as its own the arguments raised in Malolos City's rejected motion for reconsideration.

[2] Showing that as of 5 November 2007, Malolos City's population was 255,543.

[3] Stating that as of 31 July 2008, Malolos City's population was 281,413.

[4] Stating that as of 22 August 2008, Malolos City's population was 258,229.

[5] *Macias v. COMELEC*, No. L-18684, 14 September 1961, 3 SCRA 1.

[6] *Id.* at 7.

[7] Just recently, the Court, in the exercise of its judicial review power, struck down a law creating a province for non-compliance with population and land mass requirements under relevant legislation (*Navarro v. Ermita*, G.R. No. 180050, 10 February 2010, declaring unconstitutional Republic Act No. 9355 creating the province of Dinagat Islands for non-compliance with Republic Act No. 7610).

[8] Supplemental Motion for Reconsideration, p. 3.

[9] Section 6(e) of EO 135 provides:

(e) The smallest geographic area for which a certification on population size may be issued will be the barangay for census population counts, and the city or municipality for intercensal estimates. If an LGU wants to conduct its own population census, during off-census years, approval must be sought from the NSCB and the conduct must be under the technical supervision of NSO from planning to data processing. (Emphasis supplied)

[10] See notes 2-4.

[11] Malolos City invoked EO 135 for the same purpose in its Comment-in-Intervention (pp. 11-12) which the Court did not admit.

[12] Thus, in *Menzon v. Petilla*, 274 Phil. 523 (1991), we applied by analogy two statutory provisions to resolve the question of the validity of a succession via a Presidential appointment, to fill a temporary vacancy in a provincial legislative council: (1) Commonwealth Act No. 588 and the Revised Administrative Code authorizing the President to make temporary appointments in appointive positions; and (2) Section 49 of Republic Act No. 7160 (RA 7160) governing succession to permanent vacancies in the office of the vice-governor.

[13] Section 7, RA 7160.

[14] Section 7 of RA No. 7160 provides that in the creation or conversion of a local government unit, compliance with the income, population and land mass 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)," respectively.

[15] The municipality of Bulacan, one of the five municipalities comprising the First Legislative District, is bounded on the northwest by Malolos City, on the northeast by the Second Legislative District, on the southeast by the fourth Legislative District, and on the northwest by the Manila Bay. (Per the administrative map of the Province of Bulacan furnished the Court by the National Mapping and Resource Information Authority).

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