

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

G.R No. 188078. January 25, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an original action for Prohibition to declare unconstitutional Republic Act No. 9591 (RA 9591), creating a legislative district for the city of Malolos, Bulacan, for violating the minimum population requirement for the creation of a legislative district in a city.

Antecedents

Before 1 May 2009, the province of Bulacan was represented in Congress through four legislative districts. The First Legislative District comprised of the city of Malolos[1] and the municipalities of Hagonoy, Calumpit, Pulilan, Bulacan, and Paombong. On 1 May 2009, RA 9591 lapsed into law, amending Malolos' City Charter,[2] by creating a separate legislative district for the city. At the time the legislative bills for RA 9591 were filed in Congress in 2007, namely, House Bill No. 3162 (later converted to House Bill No. 3693) and Senate Bill No. 1986, the population of Malolos City was 223,069. The population of Malolos City on 1 May 2009 is a contested fact but there is no dispute that House Bill No. 3693 relied on an undated certification issued by a Regional Director of the National Statistics Office (NSO) that "the projected population of the Municipality of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78 between 1995 to 2000." [3]

Petitioners, taxpayers, registered voters and residents of Malolos City, filed this petition contending that RA 9591 is unconstitutional for failing to meet the minimum population threshold of 250,000 for a city to merit representation in Congress as provided under Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the 1987 Constitution.

In its Comment to the petition, the Office of the Solicitor General (OSG) contended that Congress' use of projected population is non-justiciable as it involves a determination on the "wisdom of the standard adopted by the legislature to determine compliance with [a constitutional requirement]." [4]

The Ruling of the Court

We grant the petition and declare RA 9591 unconstitutional for being violative of Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the 1987 Constitution

The 1987 Constitution requires that for a city to have a legislative district, the city must have "a population of at least two hundred fifty thousand." [5] The only issue here is whether the City of Malolos has a population of at

least 250,000, whether actual or projected, for the purpose of creating a legislative district for the City of Malolos in time for the 10 May 2010 elections. If not, then RA 9591 creating a legislative district in the City of Malolos is unconstitutional.

House Bill No. 3693 cites the undated Certification of Regional Director Alberto N. Miranda of Region III of the National Statistics Office (NSO) as authority that the population of the City of Malolos "will be 254,030 by the year 2010." The Certification states that the population of "Malolos, Bulacan as of May 1, 2000 is 175,291." The Certification further states that it was "issued upon the request of Mayor Danilo A. Domingo of the City of Malolos in connection with the proposed creation of Malolos City as a lone congressional district of the Province of Bulacan." [6]

The Certification of Regional Director Miranda, which is based on demographic projections, is without legal effect because Regional Director Miranda has no basis and no authority to issue the Certification. The Certification is also void on its face because based on its own growth rate assumption, the population of Malolos will be less than 250,000 in the year 2010. In addition, intercensal demographic projections cannot be made for the entire year. In any event, a city whose population has increased to 250,000 is entitled to have a legislative district only in the "immediately following election" [7] after the attainment of the 250,000 population.

First, certifications on demographic projections can be issued only if such projections are declared official by the National Statistics Coordination Board (NSCB). Second, certifications based on demographic projections can be issued only by the NSO Administrator or his designated certifying officer. Third, intercensal population projections must be as of the middle of every year.

Section 6 of Executive Order No. 135 [8] dated 6 November 1993 issued by President Fidel V. Ramos provides:

SECTION 6. Guidelines on the Issuance of Certification of Population sizes Pursuant to Section 7, 386, 442, 450, 452, and 461 of the New Local Government Code.

(a) The National Statistics Office shall issue certification on data that it has collected and processed as well as on statistics that it has estimated.

(b) For census years, certification on population size will be based on actual population census counts; while for the intercensal years, the certification will be made on the basis of a set of demographic projections or estimates declared official by the National Statistical Coordination Board (NSCB).

(c) Certification of population census counts will be made as of the census reference date, such as May 1, 1990, while those of intercensal population estimates will be as of middle of every year.

(d) Certification of population size based on projections may specify the range within which the true count is deemed likely to fall. The range will correspond to the official low and high population projections.

(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.

(f) Certifications of population size based on published census results shall be issued by the Provincial Census Officers or by the Regional Census Officers. Certifications based on projections or estimates, however, will be issued by the NSO Administrator or his designated certifying officer. (Emphasis supplied)

The Certification of Regional Director Miranda does not state that the demographic projections he certified have been declared official by the NSCB. The records of this case do not also show that the Certification of Regional Director Miranda is based on demographic projections declared official by the NSCB. The Certification, which

states that the population of Malolos "will be 254,030 by the year 2010," violates the requirement that intercensal demographic projections shall be "as of the middle of every year." In addition, there is no showing that Regional Director Miranda has been designated by the NSO Administrator as a certifying officer for demographic projections in Region III. In the absence of such official designation, only the certification of the NSO Administrator can be given credence by this Court.

Moreover, the Certification states that "the total population of Malolos, Bulacan as of May 1, 2000 is 175,291." The Certification also states that the population growth rate of Malolos is 3.78% per year between 1995 and 2000. Based on a growth rate of 3.78% per year, the population of Malolos of 175,291 in 2000 will grow to only 241,550 in 2010.

Also, the 2007 Census places the population of Malolos at 223,069 as of 1 August 2007.[9] Based on a growth rate of 3.78%, the population of Malolos will grow to only 248,365 as of 1 August 2010. Even if the growth rate is compounded yearly, the population of Malolos of 223,069 as of 1 August 2007 will grow to only 249,333 as of 1 August 2010.[10]

All these conflict with what the Certification states that the population of Malolos "will be 254,030 by the year 2010." Based on the Certification's own growth rate assumption, the population of Malolos will be less than 250,000 before the 10 May 2010 elections. Incidentally, the NSO has no published population projections for individual municipalities or cities but only for entire regions and provinces.[11]

Executive Order No. 135 cannot simply be brushed aside. The OSG, representing respondent Commission on Elections, invoked Executive Order No. 135 in its Comment, thus:

Here, based on the NSO projection, "the population of the Municipality of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78 between 1995-2000." This projection issued by the authority of the NSO Administrator is recognized under Executive Order No. 135 (The Guidelines on the Issuance of Certification of Population Sizes), which states:

x x x

(d) Certification of population size based on projections may specify the range within which the true count is deemed likely to fall. The range will correspond to the official low and high population projections.

x x x

(f) Certifications of population size based on published census results shall be issued by the Provincial Census Officers or by the Regional Census Officers. Certifications based on projections or estimates, however, will be issued by the NSO Administrator or his designated certifying officer.[12] (Emphasis supplied)

Any population projection forming the basis for the creation of a legislative district must be based on an official and credible source. That is why the OSG cited Executive Order No. 135, otherwise the population projection would be unreliable or speculative.

Section 3 of the Ordinance appended to the 1987 Constitution provides:

Any province that may be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member or such number of members as it may be entitled to on the basis of the number of its inhabitants and according to the standards set forth in paragraph (3), Section 5 of Article VI of the Constitution. xxx. (Emphasis supplied)

A city that has attained a population of 250,000 is entitled to a legislative district only in the "immediately following election." In short, a city must first attain the 250,000 population, and thereafter, in the immediately

following election, such city shall have a district representative. There is no showing in the present case that the City of Malolos has attained or will attain a population of 250,000, whether actual or projected, before the 10 May 2010 elections.

Clearly, there is no official record that the population of the City of Malolos will be at least 250,000, actual or projected, prior to the 10 May 2010 elections, the immediately following election after the supposed attainment of such population. Thus, the City of Malolos is not qualified to have a legislative district of its own under Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the 1987 Constitution.

On the OSG's contention that Congress' choice of means to comply with the population requirement in the creation of a legislative district is non-justiciable, suffice it to say that questions calling for judicial determination of compliance with constitutional standards by other branches of the government are fundamentally justiciable. The resolution of such questions falls within the checking function of this Court under the 1987 Constitution to determine whether 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.[13]

Even under the 1935 Constitution, this Court had already ruled, "The overwhelming weight of authority is that district apportionment laws are subject to review by the courts." [14] Compliance with constitutional standards on the creation of legislative districts is important because the "aim of legislative apportionment is `to equalize population and voting power among districts.'" [15]

WHEREFORE, we GRANT the petition. We DECLARE Republic Act No. 9591 UNCONSTITUTIONAL for being violative of Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the 1987 Constitution.

SO ORDERED.

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

Corona, Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., joins the dissent of Justice

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

Abad, J., see dissenting opinion.

Mendoza, J., on leave.

[1] Under Section 57 of Republic Act No. 8754, the Charter of the City of Malolos.

[2] Id.

[3] Senate Journal, Session No. 49, 9 February 2009, Fourteenth Congress, p. 1557.

[4] Rollo, p. 64.

[5] 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)

Moreover, Section 3 of the Ordinance appended to the 1987 Constitution provides: "Any province that may be created, or any city whose population may hereafter increase to more than two hundred fifty thousand shall be entitled in the immediately following election to at least one Member or such number of members as it may be entitled to on the basis of the number of its inhabitants and according to the standards set forth in paragraph (3), Section 5 of Article VI of the Constitution. xxx." (Emphasis supplied)

[6]The Certification reads in full:

National Statistics Office
Region III

CERTIFICATION

To whom it may concern:

This is to certify that based on the 2000 census of population in housing census 2000 conducted by the National Statistics Office, the total population of Malolos, Bulacan as of May 1, 2000 is 175,291.

This is to certify that the results of the census 2000 were proclaimed and declared official by the President of the Philippines under Proclamation No. 28, dated April 18, 2001.

It is further certified that the projected population of the Municipality of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78 between 1995 to 2000. Please note that the computation was just based on the conventional method and not taking into account other factors that may affect the base population. Hence, the projected population may reach more than 250,000 in consideration of the other factors like future or past fertility, mortality, and migration within the locality for the year 2010.

This certification is issued upon the request of Mayor Danilo A. Domingo of the City of Malolos in connection with the proposed creation of Malolos City as a lone congressional district of the Province of Bulacan.

By authority of the Administrator

(Sgd) ALBERTO N. MIRANDA
Regional Director

[7] Section 3, Ordinance appended to the 1987 Constitution.

[8] Providing for the Establishment of a Well-Coordinated Local Level Statistical System.

[9] Annex "F" of Petition, which is a copy of the 2007 Census from the National Statistics Office.

[10] There is no basis to compound the growth rate of a population over a three-year period because the children born during the three-year period could not possibly give birth to their own children.

[11] http://www.census.gov.ph/data/sectordata/popproj_tab3r.html, accessed 22 December 2009.

[12] Rollo, p. 62.

[13] Section 1, Article VIII, Constitution.

[14] *Macias v. Commission on Elections*, G.R. No. L-18684, 14 September 1961, 3 SCRA 1.

[15] *Bagabuyo v. Commission on Elections*, G.R. No. 176970, 8 December 2008, 573 SCRA 290.

DISSENTING OPINION

ABAD, J.:

This case is about a law that establishes a new legislative district based on a projected population of the National Statistics Office (NSO) to meet the population requirement of the Constitution in the reapportionment of legislative districts.

The Facts and the Case

The City of Malolos and the Municipalities of Hagonoy, Calumpit, Pulilan, Bulacan, and Paombong comprise the current first district of the province of Bulacan. In 2007 the population of Malolos City was 223,069. The NSO projected that, using the established population growth rate of 3.78 percent between 1995 and 2000, its population in 2010 will be 254,030.

On May 1, 2009 Congress enacted Republic Act (R.A.) 9591, to amend Section 57 of R.A. 8754, the charter of the City of Malolos, making the city a separate district from the existing first legislative district of Bulacan.

The Challenge

On June 16, 2009 petitioners Victorino Aldaba, Carlo Jolette S. Fajardo, Julio G. Morada, and Minerva Aldaba Morada, all claiming to be taxpayers from Malolos City, filed the present action, assailing the constitutionality of R.A. 9591. They point out a) that the law failed to comply with the requirement of Section 5(4), Article VI of the 1987 Constitution that a city must have a population of at least 250,000; (2) that the creation of a separate district amounts to a conversion and requires the conduct of a plebiscite; and (3) that the law violates Section 5(3), Article VI which provides that each district shall comprise as far as practicable, contiguous, compact and adjacent territory.

The Dissenting View

First. Section 5, paragraphs (3) and (4), Article VI of the 1987 Constitution reads:

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

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

For a city to merit one representative it should have a population of at least 250,000. A province, however, is entitled to one representative no matter what its population size. In this case, the basis of House Bill 3696 is the certification of the NSO that the projected population of the City of Malolos by 2010, the coming election year, will be 254,030. Thus, said the NSO:

National Statistics Office
Region III
CERTIFICATION

To whom it may concern:

This is to certify that based on the 2000 census of population in housing census 2000 conducted by the National Statistics Office, the total population of Malolos, Bulacan as of May 1, 2000 is 175,291.

This is to certify that the results of the census 2000 were proclaimed and declared official by the President of the Philippines under Proclamation No. 28, dated April 18, 2001.

It is further certified that the projected population of the Municipality of Malolos will be 254,030 by the year 2010 using the population growth rate of 3.78 between 1995 to 2000. Please note that the computation was just based on the conventional method and not taking into account other factors that may affect the base population. Hence, the projected population may reach more than 250,000 in consideration of the other factors like future or past fertility, mortality, and migration within the locality for the year 2010.

This certification is issued upon the request of Mayor Danilo A. Domingo of the City of Malolos in connection with the proposed creation of Malolos City as a lone congressional district of the Province of Bulacan.

By authority of the Administrator

(Sgd.) ALBERTO N. MIRANDA

Regional Director[1]

I cannot agree with petitioners' claim that the Congress gravely abused its discretion in relying on the 2010 projected population of Malolos City as basis for its reapportionment law. The Court has always been reluctant to act like a third chamber of Congress and second guess its work. Only when the lawmakers commit grave abuse of discretion in their passage of the law can the Court step in. But the lawmakers must not only abuse this discretion, they must do so with grave consequences.[2]

Here, nothing in Section 5, Article VI of the Constitution prohibits the use of estimates or population projections in the creation of legislative districts. As argued by the Solicitor General, the standard to be adopted in determining compliance with the population requirement involves a political question. In the absence of grave abuse of discretion or patent violation of established legal parameters, the Court cannot intrude into the wisdom of the standard adopted by the legislature.

In fact, in *Macias v. Commission on Elections*,[3] the Court upheld the validity of a reapportionment law based on the NSO's "preliminary count of population" which may be subject to revision. The Court held there that "although not final, and still subject to correction, a census enumeration may be considered official, in the sense that Governmental action may be based thereon even in matters of apportionment of legislative districts."

Majority opinion ably written by Justice Antonio T. Carpio points out, however, that "no legal effect" can be accorded to the certification of demographic projection for Malolos City issued by the NSO Region III Director because it violates the provisions of Executive Order 135 dated November 6, 1993 of President Fidel V. Ramos, which requires that such demographic projection be declared official by the National Statistics Coordination Board and that the certification be issued by the NSO administrator or a designated officer. In addition, the intercensal population estimates must, according to the Executive Order, "be as of middle of every year."

But Executive Order 135 cannot apply to this case for the following reasons:

a. The President issued Executive Order 135 specifically to provide guidelines on the issuance of Certification of Population sizes pursuant to the following provisions of the Local Government Code: Section 7 (the creation and conversion of local government units); Section 386 (the creation of a barangay), Section 442 (the creation of a municipality); Section 450 (the conversion of a municipality or a cluster of barangay into a component city); Section 452 (the creation of highly urbanized cities); and Section 461 (the creation of urbanized cities).

Since R.A. 9591 is not concerned with the creation or conversion of a local government unit but with the establishment of a new legislative district, which is by no means a local government unit, the same is not governed by the requirements of Executive Order 135.

b. R.A. 9591 is based on a "legislative" finding of fact that Malolos will have a population of over 250,000 by the year 2010. The rules of legislative inquiry or investigation are unique to each house of Congress. Neither the Supreme Court nor the Executive Department can dictate on Congress the kind of evidence that will satisfy its law-making requirement. It would be foolhardy for the Court to suggest that the legislature consider only evidence admissible in a court of law or under the rules passed by the Office of the President. Obviously, the Judicial Department will resist a mandate from Congress on what evidence its courts may receive to support its

decisions.

c. At any rate, the certification issued by the NSO Region III Director, whose office has jurisdiction over Malolos City, partakes of official information based on official data. That Malolos had a population of 175,291 as of May 1, 2000 is, as the certification states, based on the 2000 census of population conducted by the NSO. The President of the Philippines proclaimed and declared that census official under Proclamation 28 dated April 18, 2001. On the other hand, the population growth rate of 3.78% used in the 2010 population projection for Malolos derived from the difference between the results of the official population census taken in 1995 and that taken in 2000. The Regional Director did not make the projection by counting the trees from the mountaintops. The data are based on evidence that is admissible even in a court of law.

The majority opinion claims that the NSO Regional Director's projection of the population of Malolos by 2010 is erroneous. Given that the total population of Malolos as of May 1, 2000 was 175,291 and its growth rate was 3.78% per year, its population will grow, according to the dissenting opinion, to only 241,550 in 2010.

But the majority opinion uses the following formula: $175,291 \times 37.80\%$ (arrived at by multiplying the 3.78 annual growth rate by 10 for the 10 years between 2000 and 2010) = 241,550. It uses a growth rate of 37.80% per 10 years to substitute for the stated official growth rate of 3.78% per year. It ignores logic and the natural cumulative growth of population.

In contrast, the NSO Regional Director's computation applies the growth rate of 3.78% per year, which is more logical in that the base is adjusted annually to reflect the year to year growth. Thus:

Base Rate Growth Year

$175,291 \times 3.78\% = 181,917$ 2001

$181,917 \times 3.78\% = 188,793$ 2002

$188,793 \times 3.78\% = 195,929$ 2003

$195,929 \times 3.78\% = 203,335$ 2004

$203,335 \times 3.78\% = 211,021$ 2005

$211,021 \times 3.78\% = 218,998$ 2006

$218,998 \times 3.78\% = 227,276$ 2007

$227,276 \times 3.78\% = 235,867$ 2008

$235,867 \times 3.78\% = 244,783$ 2009

$244,783 \times 3.78\% = 254,036$ 2010

Second. The constitutional check against "gerrymandering," which means the creation of representative districts out of separate points of territory in order to favor a candidate,[4] is found in Section 5(3), Article VI of the Constitution. It states that "each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory."

It should be noted, however, that this rule is qualified by the phrase "as far as practicable." Hence, the fact that the creation of a legislative district for Malolos would separate the town of Bulacan from the rest of the towns comprising the first district, would not militate against the constitutionality of R.A. 9716. This is so because there is no showing that Congress enacted R.A. 9591 to favor the interest of any candidate. A city can aspire to have one representative who will represent its interest in Congress.

Third. Contrary to petitioners' claim, R.A. 9591 is a reapportionment bill. It does not require the conduct of a plebiscite for its validity. As the Court held in *Bagabuyo v. Commission on Elections*,[5] the holding of a plebiscite is not a requirement in legislative apportionment or reapportionment. A plebiscite is necessary only in the creation, division, merger, abolition or alteration of boundaries of local government units, which is not the

case here.

I vote to dismiss the petition.

[1] Senate Journal, Session No. 49, February 9, 2009, Fourteenth Congress, p. 1557.

[2] Dueñas, Jr. v. Commission on Elections, G.R. No. 185401, July 21, 2009.

[3] 113 Phil. 1, 5-6 (1961).

[4] Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 625 (1996).

[5] G.R. No. 176970, December 8, 2008, 573 SCRA 290, 306-307.

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