

Republic of the Philippines
SUPREME COURT
Manila

SUPREME COURT
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EN BANC

**ATTY. DIMNATANG L. PANSAR,
ABDUL RASHID A. BALINDONG,
SHARIEFUDDIN T. LUCMAN,
ALEEM ALIBASHER I.
ABDULLATIF, JAMIL FAISAL S.
ADIONG, RAFSANJANI
PENDATUN ALI, MOHAJERAN
K. BALAYMAN, NAJIA J.
PESCADERA, SHARIF JUL
ASIRI J. ABIRIN, ABDUL
MUHAIMIN J. ABUBAKAR,
MOHAMMAD SALMANN M.
SAKILI, SARIB HATAMAN,
HARISUL T. SAMANUL,
SUKARNO U. ASRI, and
MOHAMMAD YUSOF A. TIDAL,**
Petitioners,

267368

G.R. No. _____
(Petition For Certiorari and
Prohibition under Rule 65
of the Rules of Court)

- versus -

**BANGSAMORO TRANSITION
AUTHORITY, and HON. AHOD
BALAWAG EBRAHIM, IN HIS
CAPACITY AS INTERIM CHIEF
MINISTER OF THE
BANGSAMORO GOVERNMENT,**
Respondents.

X-----X

PETITION

**(With Extremely Urgent Prayer for the Immediate
Issuance of a Status Quo Ante Order, Temporary
Restraining Order and/or Writ of Preliminary
Injunction; and Extremely Urgent Motion to
Conduct Special Raffle)**

Petitioners **ATTY. DIMNATANG L. PANSAR, ABDUL RASHID A. BALINDONG, SHARIEFUDDIN T. LUCMAN, ALEEM ALIBASHER I. ABDULLATIF, JAMIL FAISAL S. ADIONG, RAFSANJANI PENDATUN ALI, MOHAJERAN K. BALAYMAN, NAJIA J. PESCADERA, SHARIF JUL ASIRI J. ABIRIN, ABDUL MUHAJIMIN J. ABUBAKAR, MOHAMMAD SALMANN M. SAKILI, SARIB HATAMAN, HARISUL T. SAMANUL, SUKARNO U. ASRI, and MOHAMMAD YUSOF A. TIDAL** ("Petitioners"), by counsel, unto this Honorable Court, most respectfully state that:

PRELIMINARY STATEMENT

"xxx the Constitution and the supporting jurisprudence, as they now stand, reject the notion of *imperium et imperio* in the relationship between the national and the regional governments."¹

1. Subject of this Petition is the Bangsamoro Autonomy Act No. 35, otherwise known as the Bangsamoro Electoral Code of 2023, (**Bangsamoro Electoral Code**) which establishes an electoral system within the Bangsamoro Autonomous Region in Muslim Mindanao (**BARMM**).

2. As would be shown below, in enacting the Bangsamoro Electoral Code, the Bangsamoro Transition Authority unfortunately exceeded the bounds of the BARMM's political autonomy. In an apparent display of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Bangsamoro Transition Authority and Chief Minister Ahod B. Ebrahim, the Bangsamoro Electoral Code was enacted even though it contravened the provisions of Republic Act No. 11054, "*Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao*" (**Bangsamoro Organic Law**). It violated the constitutional guarantee on equal protection of the laws and equal access to opportunities for public service. It even infringed upon the powers and jurisdiction exclusively vested by the Constitution upon the Commission on Elections (**Comelec**) over the administration of election laws. Moreover, it tampered with the sole authority of this Honorable Court to promulgate rules on pleading, practice, and procedure before regular trial courts in BARMM.

¹ *Datu Michael Adas Kida v. Senate of the Philippines*, G.R. No. 196271, 18 October 2011.

3. Worse, by providing restrictive qualifications for political parties, the Bangsamoro Electoral Code curtailed what should be free and equal opportunity for political parties to seek and obtain parliamentary seats, thereby contradicting the mandate of the Constitution and the Bangsamoro Organic Law. It would also facilitate the use of public funds for political campaign or partisan political activities, in violation of the Omnibus Election Code. It further intruded into the power of Congress to define and penalize election offenses and prescribe procedures for their prosecution.

4. At stake in this Petition is the supremacy of the Constitution and the very ideals of democracy and republicanism as espoused by the Bangsamoro Organic Law for the BARMM.

5. It is thus most respectfully submitted that the transcendental issues and important questions of law raised in this Petition behooves this Honorable Court to exercise its expanded scope of judicial power. Otherwise stated, this Honorable Court is respectfully called upon to exercise its original jurisdiction to issue writs of certiorari and prohibition under Section 5(1), Article VIII of the Constitution and thereby pass upon the constitutionality and validity of the Bangsamoro Electoral Code.

6. Thus, this Petition.

I.

NATURE OF THE PETITION

7. Through these special civil actions for certiorari and prohibition under Rule 65 of the Rules of Court, Petitioners seek this Honorable Court to declare **the Bangsamoro Autonomy Act No. 35, the Bangsamoro Electoral Code**, in its entirety or to the extent of the assailed provisions thereof, as void and unconstitutional for being contrary to the Constitution, the Bangsamoro Organic Law, the Omnibus Election Code, and other national election laws.

8. It is settled that these special civil actions are proper remedies to raise constitutional issues and to review, prohibit,

or nullify acts of legislative and executive officials, as no other plain, speedy, or adequate remedy in the ordinary course of law applies. Thus,

“There is a grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that **‘the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.’** Thus, petitions for certiorari and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.”²

9. In relation to the foregoing, Section 5(1), Article VIII of the Constitution vests upon this Honorable Court original jurisdiction to issue writs of certiorari and prohibition. After all, it is not only a power, but also the duty, of this Honorable Court to determine the limits of power of government agencies and offices as well as those of its officers.³

10. This Petition presents an actual and substantial controversy admitting of specific relief. As will be discussed below, the Bangsamoro Electoral Code contravenes the Constitution by encroaching upon the duties and jurisdiction of Comelec and this Honorable Court. It also violates the constitutional guarantee on equal protection of the laws and equal access to opportunities for public service. It also contravenes the Bangsamoro Organic Law as it disregards the legal and governmental framework for BARMM. The issues to be discussed below thus do not raise mere theoretical questions since they infringe upon actual legal and material rights of Petitioners to vote and elect candidates for elective office in the Bangsamoro Parliament and the BARMM constituent local government units.

² *Department of Transportation v. Philippine Petroleum Sea Transport Association*, G.R. No. 230107, 24 July 2018; also, *In The Matter Of Declaratory Relief On The Validity Of BIR Revenue Memorandum Circular No. 65-2012 “Clarifying The Taxability Of Association Dues, Membership Fees And Other Assessments/Charges Collected By Condominium Corporations”*, G.R. No. 215801, 15 January 2020; emphasis supplied.

³ *See Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, 02 April 2019.

11. The questions raised in this Petition are ripe for adjudication. The Bangsamoro Electoral Code is a complete governmental act, having been signed into law on **08 March 2023**, and thus already causes direct, concrete, and adverse effects on the rights of Petitioners and the electorate in BARMM. It is also settled that it will be illogical to await the adverse consequences of a law. In declaring a law or act invalid, this Honorable Court is to be guided by “the Constitution and God as its conscience gives it the light to probe its meaning and discover its purpose”.⁴

12. Petitioners have legal standing as citizens, particularly as residents, registered voters, public officials, and representatives of political parties and organizations in the BARMM, whose legal right and material interest to vote for and elect leaders to the Bangsamoro Parliament and the constituent local government units are adversely affected by the Bangsamoro Electoral Code. The assailed provisions of the Bangsamoro Electoral Code also affect public rights (particularly involving the right to vote and the correlative opportunity to run for public office) that generally affect the electorate in BARMM.

13. Besides, Petitioners have an interest in this controversy as taxpayers. The Bangsamoro Electoral Code will facilitate the spending of public money not only for the operation of the offices contemplated therein, but also for an illegal purpose. As will be discussed below, it provides for the creation of a fund that may be used to support political parties, in violation of Section 261 (o) of the Omnibus Election Code.

14. In relation to the foregoing, it bears to point out that the issues raised in this Petition are of transcendental importance.

15. Unlike in the case of the organic laws of the former Autonomous Region in Muslim Mindanao, the Bangsamoro Government is vested with power over election matters. The Bangsamoro Organic Law thus mandates the Bangsamoro Government to adopt an electoral system⁵ and promulgate a

⁴ *Macalintal v. Comelec*, G.R. No. 157013, 10 July 2003.

⁵ Bangsamoro Organic Law, Article IV, Section 4.

Bangsamoro Electoral Code.⁶ There shall also be a Bangsamoro Electoral Office, as established by Comelec.⁷

16. However, as will be discussed further below, in enacting the Bangsamoro Electoral Code purportedly to carry out the provisions of the Bangsamoro Organic Law, the Bangsamoro Transition Authority manifestly exceeded its authority and gravely abused its discretion, amounting to the exercise of power without or in excess of its jurisdiction. Contrary to the provisions of the Bangsamoro Organic Law, the Bangsamoro Electoral Code seeks to regulate not only parliamentary elections, but also national and local elections in BARMM. It modifies the powers and functions of the Bangsamoro Electoral Office (**BEO**) and Bangsamoro Registration and Accreditation Committee (**BRAC**), amending Comelec's Resolution No. 10680 on the matter. It also imposes qualifications for political parties that set aside the constitutional guarantees of equal protection of the laws and equal access to opportunities for public service.⁸ Moreover, it intrudes upon this Honorable Court's power to promulgate and amend rules on pleading, practice, and procedure before trial courts in the BARMM. Worse, under the Bangsamoro Electoral Code, public funds may be used to support political parties, in violation of Section 261(o) of the Omnibus Election Code.

17. As such, the importance of the constitutional issues which are squarely raised in this Petition necessitates this Honorable Court to assert its jurisdiction to review and nullify the Bangsamoro Electoral Code or its assailed provisions.

18. The matters raised in this Petition must also be afforded urgent attention so as not to delay or derail the administrative preparations, registration of voters, and filing of certificates of candidacy necessary for the first regular election for the Bangsamoro Government, which is scheduled to be held in May 2025.⁹

19. There is no appeal, or any other plain, speedy, and adequate remedy in the ordinary course of law that Petitioners can avail of under the circumstances.

⁶ Bangsamoro Organic Law, Article XVI, Section 4.

⁷ Bangsamoro Organic Law, Article VII, Section 40.

⁸ Constitution, Article II, Section 26 and Article III, Section 1.

⁹ See Republic Act No. 11593, Section 1.

20. No certified true copy of any document or issuance is required to be attached to this Petition since there is no judgment, order or resolution being assailed. However, for the immediate reference of this Honorable Court, a copy of the Bangsamoro Electoral Code, available at the Bangsamoro Parliament's website¹⁰, is attached as **Annex "A"**, and made an integral part hereof.

II. STATEMENT OF THE PARTIES

21. Petitioners are of legal age, Filipinos, and residents of and registered voters in the BARMM. Particularly,

- a. Petitioner ATTY. DIMNATANG L. PANSAR is the President of the League of Municipalities of Philippines, Lanao del Sur Chapter. He is also the Mayor and a resident of the Municipality of Butig, Lanao del Sur;
- b. Petitioner ABDUL RASHID A. BALINDONG is the President of the Association of Barangay Chairpersons of Lanao del Sur, and a resident of the Brgy. Punong, Municipality of Malabang, Lanao del Sur;
- c. Petitioner SHARIEFUDDIN T. LUCMAN is the President of the Philippine Councilor's League of Lanao del Sur and a resident of the Brgy. Poblacion, Municipality of Pualas, Lanao del Sur;
- d. Petitioner ALEEM ALIBASHER I. ABDULLATIF is the President of Ompia Party and a resident of Brgy. Maindig, Municipality of Binidayan, Lanao del Sur;
- e. Petitioner JAMIL FAISAL S. ADIONG is the President of Sangguniang Kabataan Provincial Federation and a resident of Brgy. Polo, Municipality of Ragain-Ditsaan, Lanao del Sur;

¹⁰

See <https://parliament.bangsamoro.gov.ph/wp-content/uploads/2023/05/BAA-35-Bangsamoro-Electoral-Code.pdf>.

- f. Petitioner RAFSANJANI PENDATUN ALI is the President of the League of Municipalities of the Philippines, Maguindanao del Sur Chapter and the Municipal Mayor of General Salipada K. Pendatun, Maguindanao del Sur. He is a resident of Brgy. Badak (Poblacion), General Salipada K. Pendatun, Maguindanao del Sur;
- g. Petitioner MOHAJERAN K. BALAYMAN is the Secretary General of *Umpungan ng Mapagmalasakit Party* (UMP) and *Ungaya sa Kawagib na Bangsamoro* (IKB) and the Municipal Mayor, Pandag, Maguindanao del Sur. He is a resident of Brgy. Malangit, Pandag, Maguindanao del Sur;
- h. Petitioner NAJIA J. PESCADERA is the Provincial Assessor of the Sulu Provincial Government. She is also the Vice President Internal of the Sulu Provincial Women's Council (SPWC) and President of PARMANISAN, Sulu Provincial Women's Organization. She is a resident of Kasalamatan Village Jolo, Sulu;
- i. Petitioner SHARIF JUL ASIRI J. ABIRIN is the Mufti of the Province of Sulu, with address at the Office of the Darul Ifta', Sulu Islamic Library Building, Hji Butu Street, Jolo, Sulu;
- j. Petitioner ABDUL MUHAJIMIN J. ABUBAKAR is the Chairman of Sulu Ulama Council for Peace and Development, Inc (SUCPD) and a resident of Hji Buto Street , Jolo, Sulu;
- k. Petitioner MOHAMMAD SALMANN M. SAKILI is the Office Head of the Kusug Tausug Partylist (Zamboanga Satellite Office) and the Public Information Officer of Mahad Moro Al-Islamiy, Zamboanga City. He holds office at the Galvez Building 468, San Jose Road, Zamboanga City;
- l. Petitioner SARIB HATAMAN is the President of the Association of Barangay Chairpersons of Basilan and a Member of the Sangguniang Panlalawigan of

Basilan. He is a resident of Bgy. Buli-Buli, Sumisip, Basilan;

- m. Petitioner HARISUL T. SAMANUL is a member of the Concerned Alliance of Professionals and Students, Inc. (CAPSI). He is a resident of Bgy. Basak, Sumisip, Basilan;
- n. Petitioner SUKARNO U. ASRI is a Member of the Sangguniang Panlalawigan of Tawi-Tawi and a resident of Silantup, Tandubas, Tawi-Tawi; and
- o. Petitioner MOHAMMAD YUSOF A. TIDAL is a Member of the Sangguniang Panlalawigan of Tawi-Tawi and a resident of Laquerre Street, Badjao Village, Poblacion Bongao, Tawi-Tawi.

22. As residents, registered voters, public officials, and representatives of political parties and organizations in the BARMM, Petitioners are directly affected by the application of the Bangsamoro Electoral Code. They are among the electorate whose public rights are adversely prejudiced. As will be discussed below, the assailed provisions of the Bangsamoro Electoral Code infringe upon the public right to vote for officials of and be elected to the Bangsamoro Parliament and the constituent local government units. Petitioners are also interested in the avails of this suit as taxpayers since they have substantial and material interest on the spending of public funds.

23. Petitioners may be served with notices, orders, pleadings, and other legal processes through the undersigned counsel's office address.

24. Public Respondent **BANGSAMORO TRANSITION AUTHORITY** is impleaded for being the interim government in the BARMM which passed and enacted the Bangsamoro Electoral Code. It may be served with notices, orders, pleadings, and other legal processes through its office address at the Bangsamoro Government Center, Governor Gutierrez Avenue, Rosary Heights VII, Cotabato City.

25. Public Respondent **AHOD B. EBRAHIM** is impleaded in his official capacity as the BARMM Interim Chief Minister.

Vested with executive authority in the BARMM, he signed the Bangsamoro Electoral Code into law and is tasked to implement the provisions thereof. He may be served with notices, orders, pleadings, and other legal processes of this Honorable Court through his office address at the Bangsamoro Government Center, Governor Gutierrez Avenue, Rosary Heights VII, Cotabato City.

26. Considering the nature of the issues, involving the validity of the Bangsamoro Electoral Code, the Office of the Solicitor General is furnished a copy of this Petition.

III. TIMELINESS OF THE PETITION

27. On **08 March 2023**, Chief Minister Ahod B. Ebrahim signed the Bangsamoro Electoral Code into law.¹¹

28. Section 4, Article XI of the Bangsamoro Electoral Code provides that it shall take effect fifteen (15) days after its publication in a newspaper of general and regional circulation.

29. The Bangsamoro Electoral Code was published on 02 May 2023 at the Mindanao Expose'. As such, it took effect on 17 May 2023.

30. Accordingly, this Petition is timely filed within the sixty-day period prescribed under Section 4, Rule 65 of the Rules of Court.

IV. STATEMENT OF RELEVANT FACTS AND ANTECEDENT PROCEEDINGS

31. Republic Act No. 11054, the Bangsamoro Organic Law, was enacted in 2018, with the original intention of having the first regular election for members of the Bangsamoro Parliament to be held and synchronized with the 2022 national and local elections.¹²

¹¹ Philippine News Agency, "*BARMM electoral code signed into law*" (09 March 2023), available at <https://www.pna.gov.ph/articles/1197005>.

¹² Rep. Act No. 11054, Art. XVI, Sec. 13.

32. On 07 October 2020, Comelec issued its Resolution No. 10680, converting the Office of the Comelec Regional Election Director in the then Autonomous Region in Muslim Mindanao and establishing the BEO in BARMM. A copy of Comelec Resolution No. 10680 is attached as **Annex "B"** and made an integral part hereof.

33. Comelec Resolution No. 10680 granted the Bangsamoro Electoral Office the power to perform the functions of the Office of the Regional Director in the Autonomous Region in Muslim Mindanao; accredit regional political parties as approved by Comelec; and register political parties with the qualifications prescribed in the Bangsamoro Electoral Code.

34. Then, in 2021, the first regular election for the Bangsamoro Parliament was moved to May 2025 pursuant to Section 1 of Republic Act No. 11593, *An Act Resetting the First Regular Elections in the Bangsamoro Autonomous Region in Muslim Mindanao, Amending for the Purpose, Section 13, Article XVI of Republic Act No. 11054, otherwise known as the "Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao"*.

35. In line with efforts to ensure that the first regular election in the BARMM could be held in 2025, the Bangsamoro Transition Authority passed the Bangsamoro Electoral Code on 08 March 2023.

36. The Bangsamoro Electoral Code was signed into law on 08 March 2023 and became effective on 17 May 2023, fifteen days after it was published on the Mindanao Expose'.

37. However, it is most respectfully submitted that the Bangsamoro Electoral Code is fatally defective since its provisions are inconsistent with the Constitution and national laws, particularly the Bangsamoro Organic Law.

38. Hence, this Petition.

V.

ARGUMENTS IN SUPPORT OF THIS PETITION

The entirety of the Bangsamoro Electoral Code should be nullified for being unconstitutional, inasmuch as substantial portions affecting its essence are patently void, particularly:

- A. Sections 3 and 5, Article II and Section 1, Article XI of the Bangsamoro Electoral Code are void and unconstitutional as they encroach upon the constitutional duties and jurisdiction of Comelec as the sole and independent polling body;**
- B. Articles VI and VII of the Bangsamoro Electoral Code are void and unconstitutional as they seek to govern activities related to local and national elections, in violation of the Bangsamoro Organic Law and the Constitution;**
- C. Section 4, Article X of the Bangsamoro Electoral Code is void and unconstitutional as it facilitates the grant and use of public funds for election campaign and partisan political activities;**
- D. Sections 1, 9(d), 10, and 13, Article III and Sections 6, 7, 9 and 12, Article IV of the Bangsamoro Electoral Code are unconstitutional as they restrict access to opportunity for public service and fosters principles contrary to republicanism;**
- E. Section 8, Article IV and Section 3, Article X of the Bangsamoro Electoral Code are unconstitutional and void as they contravene national election laws;**
- F. Article VIII of the Bangsamoro Electoral Code is *ultra vires* and unconstitutional as it defines, penalizes, and provides for the prosecution of election offenses; and**
- G. Chapter 3, Article VII of the Bangsamoro Electoral Code is *ultra vires* and void as it encroaches upon**

the power and prerogative of the Supreme Court to promulgate rules on pleading, practice, and procedure involving election cases before trial courts.

VI. DISCUSSION OF ARGUMENTS

39. Under Section 15, Article X of the Constitution, an autonomous region in Muslim Mindanao shall be created **within the framework of the Constitution** and the **national sovereignty** as well as territorial integrity of the Republic of the Philippines.

40. Section 20, Article X thereof further expresses that the legislative power delegated to the autonomous region through its organic act shall be **subject to the provisions of this Constitution and national laws.**

41. As held by this Honorable Court, the foregoing framework establishes a hierarchy of laws, arising from the fact that an autonomous region remains as much a part of the Republic of the Philippines and not a separate sovereignty, to wit:

“xxx the creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only ‘within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.’”¹³

42. At the onset, it bears to point out that Section 1, Article XI of the Bangsamoro Electoral Code patently deviates from the foregoing framework. Instead of being subject to the provisions of the Constitution and national laws, the Bangsamoro Electoral Code asserts supremacy as follows:

“SECTION 1. Applicability Clause. - The COMELEC, consistent with its constitutional mandate to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall, shall

¹³

Disomangcop v. Secretary of the Department of Public Works and Highways, G.R. No. 149848, 25 November 2004.

perform the same in accordance with existing laws and regulations, **except as otherwise provided in this Code.**¹⁴

43. Accordingly, this Petition seeks this Honorable Court to examine the Bangsamoro Electoral Code based on the Constitution's framework; and, if found unfaithful to the provisions of the Constitution and national laws, the Bangsamoro Electoral Code or the assailed provisions thereof must be struck down as void and unconstitutional.

A. Sections 3 and 5, Article II and Section 1, Article XI of the Bangsamoro Electoral Code are void and unconstitutional as they encroach upon the constitutional duties and jurisdiction of Comelec as the sole and independent polling body.

44. Section 40, Article VII of the Bangsamoro Organic Law recognized and affirmed Comelec's authority over elections in the BARMM; such that, it provided that Comelec should establish the BEO, as follows:

"Section 40. Bangsamoro Electoral Office. - The Commission on Election shall establish a Bangsamoro Electoral Office under its supervision and control which shall implement and enforce its orders, rulings and decisions. The budget of the Bangsamoro Electoral Office shall be part of the yearly budget of Commission on Elections."

45. In line with the foregoing, Comelec Resolution No. 10680 converted Comelec's Office of the Regional Director in the Autonomous Region in Muslim Mindanao into the BEO. It defined the powers and functions of the BEO and BRAC, as follows:

"The BEO shall perform the functions of the Office of the Regional Election Director in the ARMM. Pursuant to Section 7 (a) and Section 9 of Article VII Republic Act No. 11054, the BEO shall accredit regional political parties, as approved by the Commission [Comelec] and register political

¹⁴

Emphasis supplied.

parties with qualifications to be prescribed by the Bangsamoro Electoral Code. For this purpose, the Bangsamoro Registration and Accreditation Committee (BRAC) of the BEO, composed of the Regional Election Director, Assistant Regional Election Director and Provincial Election Supervisor of the Province of Maguindanao is hereby created.

The BEO shall exercise administrative supervision and control over all offices of the Commission in the BARMM, including the Office of the Election Officer in Isabela City.”

46. Yet, the Bangsamoro Electoral Code provided additional functions that should be performed by the BEO and BRAC.

47. Even though it recognized that the BEO should be established by and under the direct control and supervision of Comelec,¹⁵ the Bangsamoro Electoral Code provided in its Article II, that:

“SECTION 3. Powers of the Bangsamoro Electoral Office. – In addition to powers and functions already exercised by the regional offices of the COMELEC, the BEO shall:

- a. Exercise administrative supervision over provincial, city, and municipal election offices under it;
- b. Administer all laws relative to and supervise the conduct of elections in the Bangsamoro for the purpose of ensuring free, orderly, honest, peaceful, and credible elections;
- c. Coordinate all activities of provincial, city, and municipal election offices including in the conduct of elections;
- d. Implement election laws and policies, resolutions, rules, regulations, decisions, and related guidelines of the COMELEC;
- e. Render legal opinion and advice on provisions of election laws and implement resolutions of the COMELEC for the guidance of its field personnel, other concerned government officials and employees, non-government organizations (NGOs), citizens’ arms, and other interested parties;

¹⁵ Bangsamoro Electoral Code, Article II, Section 1.

f. Monitor through the provincial election offices, the implementation of the system of continuing registration of voters by the city and municipal election offices pursuant to Republic Act 8189, otherwise known as the Voter's Registration Act of 1996;

g. Coordinate and monitor election information drives and voters education programs;

h. Supervise and monitor the implementation of various projects of the COMELEC and submit required reports thereon;

i. Develop and maintain an efficient communication and transportation network with field subordinates for the effective and faster transmission of information to the various offices/departments of the COMELEC;

j. Coordinate with other regional government agencies and local government units to ensure the holding of free, orderly, honest, peaceful, and credible elections;

k. Exercise general housekeeping functions; and

l. Perform such other powers and functions as the COMELEC may assign for the efficient and effective enforcement of this Code."

48. In addition, the Bangsamoro Electoral Code provided for the powers and functions of the BRAC, which should be an office within the BEO¹⁶, to wit:

"SECTION 5. Powers and Functions of the BRAC. – The BRAC shall:

a. In relation to applications for registration and/or accreditation of regional and local political parties: (1) receive all such applications and ensure their compliance with the requirements and qualifications prescribed in this Code; and, (2) acting collegially, recommend proper action and forward the same to the COMELEC *en banc*;

b. Upon complaint of any interested party, ascertain the compliance by any regional political party with the continuing requirements for its registration and, acting collegially, submit its recommendation to the COMELEC *en banc*;

¹⁶

Bangsamoro Organic Law, Article VII, Section 9 provides the basis for the creation of the BRAC under the BEO. It provides in part that: "only regional political parties duly accredited by the Bangsamoro Electoral Office, as approved by the Commission on Elections shall participate in the parliamentary elections in the Bangsamoro Autonomous Region."

c. Monitor the conduct of general assemblies, party conventions, and such other acts and activities as may be required by this Code and other enactments of the Bangsamoro Parliament in the selection of the nominees for elections of each of the regional political parties;

d. Monitor the regional political party's compliance with laws and issuances on the utilization of party subsidies and other assistance received from public funds;

e. Issue *subpoena duces tecum* and *ad testificandum* to parties in controversies; and

f. Perform such other powers and functions as the laws and the COMELEC *en banc* may provide.”

49. It may be noted that the foregoing additional functions granted unto the BEO and BRAC by the Bangsamoro Electoral Code are not merely ministerial in nature but will involve exercise of judgment and discretion.

50. In relation to the foregoing, it is respectfully submitted that, **in providing additional functions to the BEO and BRAC, the Bangsamoro Transition Authority arrogated upon itself the exercise of discretion that constitutionally and statutorily belongs only to Comelec. It also intruded upon Comelec's authority over the BEO.**

51. The Bangsamoro Transition Authority has no authority whatsoever to prescribe additional powers and functions to the BEO and BRAC. Neither should it be allowed – even by any excessive zeal – to take away the prerogatives that properly belong to Comelec.

52. It is well-settled that Comelec has broad powers to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall and has exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials.¹⁷

53. The foregoing means that, since the Constitution requires Comelec to administer **“all”** election laws and

¹⁷ Constitution, Article IX-C, Sec. 2 (a) & (b); see also *Bedol v. Comelec*, G.R. No. 179830, 03 December 2009 & *Debaratun v. Comelec*, G.R. No. 170365, 02 February 2010.

regulations, Comelec's constitutional duty to enforce and administer election laws extends even in the BARMM and includes the enforcement of the Bangsamoro Electoral Code. As settled jurisprudence provides, "*when the law does not qualify, we should not qualify.*"¹⁸

54. In addition to the foregoing, *Batas Pambansa Blg. 881*, the Omnibus Election Code, vested in Comelec the power to establish its field offices, as follows:

"Section 53. Field offices of the Commission. - The Commission shall have the following field offices:

(1) Regional Election Office, headed by the Regional Election Director and assisted by the Assistant Regional Director and such other subordinate officers or employees as the Commission may appoint.

(2) Provincial Election Office, headed by the Provincial Election Supervisor and assisted by such other subordinate officers or employees as the Commission may appoint.

(3) City/Municipal Election Office, headed by the City/Municipal Registrar who shall be assisted by an election clerk and such other employees as the Commission may appoint.

The Commission may delegate its powers and functions or order the implementation or enforcement of its orders, rulings, or decisions through the heads of its field offices."¹⁹

55. Clearly, in using the word "may"²⁰, the Omnibus Election Code affirms that Comelec exercises discretion and applies its expertise when delegating its powers and functions to its field offices. However, in this case, the Bangsamoro Transition Authority steps in despite its lack of authority over the BEO and takes away Comelec's discretion even in the absence of expertise on election matters.

¹⁸ *Corpus v. People*, G.R. No. 180016, 29 April 2014.

¹⁹ Emphasis supplied.

²⁰ It is settled that the word "may" is "an auxiliary verb indicating liberty, opportunity, permission and possibility". (See *UCPB General Insurance Company, Inc. v. Hughes Electronics Corporation*, G.R. No. 190385, 16 November 2016)

56. Worse, Comelec and the BEO would be tasked to administer and conduct elections in the BARMM, pursuant to the terms dictated by the Bangsamoro Electoral Code instead of national laws.²¹

57. As will be discussed further below, Article VI of the Bangsamoro Electoral Code prescribes the qualifications of voters in national, local, barangay, and *sangguniang kabataan* elections in the BARMM.²² Article VII thereof also provides for administration of elections in general, not limited to the conduct of parliamentary elections.²³ It even provides for the jurisdiction and procedure governing election contests involving municipal and barangay officials.²⁴

58. In other words, under the Bangsamoro Electoral Code, elections in the BARMM would not be “subject to national laws” but would effectively be an exemption from national laws.

59. Verily, national laws and Comelec’s power and authority extend to the conduct of regional elections. For instance, the Omnibus Election Code provides for the then election of members of the *Sangguniang Pampook* (Regional Assembly of the Autonomous Regions). Subsequently, after the establishment of the erstwhile Autonomous Region in Muslim Mindanao (ARMM), Comelec continued to administer regional elections pursuant to national laws, as shown by the various resolutions it has issued for the ARMM elections, to name a few:

- a. Resolution No. 7534, Rules and Regulations Governing Public Works Ban and Release, Disbursement and Expenditures of Public Funds in Connection with the August 8, 2005 Elections in the ARMM;
- b. Resolution No. 7538, General Instructions for the Boards of Election Inspectors on the Casting and Counting of Votes in Connection with the August 8, 2005 Elections in the ARMM;

²¹ Bangsamoro Electoral Code, Article XI, Section 1.

²² Bangsamoro Electoral Code, Article VI, Section 2.

²³ See Bangsamoro Electoral Code, Article VII, Chapter 1(C) and Chapter 2.

²⁴ See Bangsamoro Electoral Code, Article VII, Chapter 3.

- c. Resolution No. 7541, General Instructions governing the Canvassing of Votes in connection with the August 8, 2005 Elections in the ARMM;
- d. Resolution No. 7542, Rules and Regulations implementing Republic Act No. 9006, otherwise known as the "Fair Election Act", in relation to the August 8, 2005 ARMM Elections and subsequent elections;
- e. Resolution No. 8415, authorizing the full automation of the 2008 elections in the ARMM;
- f. Resolution No. 8427, as supplemented by Resolution No. 8438, Rules and Regulations for the resumption of the System of Continuing Registration of Voters in the ARMM;
- g. Resolution No. 8442, Guidelines on the Filing of Certificates of Candidacy and Certificate of Nomination of Official Candidates of Registered Political Parties in connection with the August 11, 2008 Election of Regional Officials in the ARMM;
- h. Resolution No. 8500, General Instructions governing the Consolidation, Transmission, and Canvassing of Votes in connection with the August 11, 2008 Elections in the ARMM;
- i. Resolution No. 9144, Rules and Regulations on the resumption of the System of Continuing Registration of Voters in the ARMM for the August 8, 2011 ARMM Elections; and
- j. Resolution No. 9232, extending the Deadline of the Filing of the Certificates of Candidacies for the August 8, 2011 ARMM Election to May 25, 2011, and granting authority to the Regional Election Director of the ARMM to accept Certificates of Candidacies in his Satellite Offices in the cities of Zamboanga and Marawi.

60. The foregoing would clearly show that the Bangsamoro Transition Authority gravely abused its discretion

and arbitrarily acted without or in excess of its jurisdiction in seeking to regulate the conduct of all elections in the BARMM.

61. Relevantly, this Honorable Court keenly guarded against intrusions on the prerogatives and discretion vested in Comelec, giving due regard for its expertise and experience, to properly facilitate the enforcement and administration of election laws.

62. Thus, in *Atty. Macalintal v. Comelec*,²⁵ this Honorable Court rejected what would be a legislative intrusion on constitutionally vested prerogatives of Comelec in the administration and enforcement of election laws, to wit:

“The ambit of legislative power under Article VI of the Constitution is circumscribed by other constitutional provisions. One such provision is Section 1 of Article IX-A of the 1987 Constitution ordaining that constitutional commissions such as the COMELEC shall be ‘independent.’

x x x

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. x x x Politics is a practical matter, and political questions must be dealt with realistically – not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.”²⁶

63. Also, the careful deference to the powers and functions of Comelec evolved in recognition of its experience and expertise on election matters. As held in *Dumarpa v. Comelec*,²⁷

“Thus, it brooks no argument that the COMELEC’s broad power to ‘enforce and administer all laws and

²⁵ G.R. No. 157013, 10 July 2003.

²⁶ Emphasis supplied.

²⁷ G.R. No. 192249, 02 April 2013.

regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall,' carries with it all necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful and credible elections.

As stated in *Sumulong v. COMELEC*:²⁸

Politics is a practical matter, and political questions must be dealt with realistically- not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.

x x x

There are no ready-made formulas for solving public problems. **Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections x x x, we must not by any excessive zeal take away from the Commission on Elections that initiative which by constitutional and legal mandates properly belongs to it.**"²⁹

64. Accordingly, the Bangsamoro Transition Authority may not by any excessive zeal take away the constitutional and legal mandates that properly belong to Comelec. Neither may it be allowed to pre-empt and coerce the exercise of prerogatives that are constitutionally and statutorily entrusted to Comelec. In other words, it is only Comelec that has legal authority to establish the BEO and BRAC, define said offices' the powers and functions, and administer regional elections pursuant to the Constitution and national laws.

65. Considering the foregoing, it is respectfully submitted that Sections 3 and 5, Articles II and Section 1, Article XI of the Bangsamoro Electoral Code are void and unconstitutional and must be declared as such. It is also clear that, in enacting the above-discussed assailed provisions, the Bangsamoro Transition Authority and Chief Minister Ebrahim committed

²⁸ G.R. No. L-48609, 10 October 1941.

²⁹ Emphasis and underscoring supplied.

grave abuse of discretion amounting to lack of excess of jurisdiction.

66. Hence, this Petition should be given due course.

**B. Articles VI and VII of the
Bangsamoro Electoral Code
are void and
unconstitutional as they
seek to govern activities
related to local and national
elections, in violation of the
Bangsamoro Organic Law
and the Constitution.**

67. **Bangsamoro Organic Law is more than an ordinary statute because it enjoys affirmation by a plebiscite. As such, not even an enactment of Congress may amend the organic act.**³⁰

68. Consequently, since it derives its authority from the Bangsamoro Organic Law – an act of Congress – the Bangsamoro Transition Authority is akin to a municipal government that enjoys delegated authority from Congress. With respect to the relationship between a delegate and the source of its authority, jurisprudence is settled that:

“xxx The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.”³¹

69. Clearly, therefore, the Bangsamoro Transition Authority may not amend, modify, or supersede the Bangsamoro Organic Law from which it derives its authority and effect. Accordingly, the Bangsamoro Electoral Code may not contain provisions inconsistent with or violative of the Bangsamoro Organic Law, other national laws, and the Constitution.

³⁰ *Disomangcop v. Secretary of the Department of Public Works and Highways*, G.R. No. 149848, 25 November 2004.

³¹ *Batangas CATV, Inc. v. Court of Appeals*, G.R. No. 138810, 29 September 2004 citing *Magtajas vs. Pryce Properties Corp., Inc.*, G.R. No. 111097, 20 July 1994.

70. Verily, Section 4, Article XVI of the Bangsamoro Organic Law provides for the enactment of a Bangsamoro Electoral Code. However, the Bangsamoro Electoral Code is not supposed to supersede or modify the Omnibus Election Code and other national laws.

71. In the context of the Bangsamoro Organic Law, the Bangsamoro Electoral Code is intended to facilitate only the election of members of the Bangsamoro Parliament.

72. It cannot be gainsaid that the Bangsamoro Organic Law mentions the Bangsamoro Electoral Code only in relation to the **election of members of the Bangsamoro Parliament.** As may be gathered from Article VII of the Bangsamoro Organic Law:

“Section 7. Classification and Allocation of Seats. -

The seats in the Parliament shall be classified and allocated as follows:

(a) Party Representatives. One-half of the members of the Parliament shall be representatives of political parties who are elected through a system of proportional representation based on the Bangsamoro territorial jurisdiction.

Any organized group in the Bangsamoro Autonomous Region may register as a political party with the Bangsamoro Electoral Office, with qualifications to be prescribed by the **Bangsamoro Electoral Code.**

xxx

Section 19. Forfeiture of Seat. - The seat of a member of the Parliament shall be forfeited under any of the following circumstances:

xxx

(f) Such other grounds as may be provided in the **Bangsamoro Electoral Code.**

Section 20. Filling of Vacancy. - In case of a vacancy of proportional representation seat, the party to which that seat belongs shall fill the vacancy.

In case of vacancy of a district seat by an affiliated member of the Parliament, the party to which the member belongs shall, within thirty (30) days from the occurrence of such vacancy nominate a new member who shall be appointed

by the Chief Minister subject to the **Bangsamoro Electoral Code**.³²

73. Furthermore, the Bangsamoro Transition Authority is intended to assist in the conduct of the first regular election of the Bangsamoro Government. Thus, Article XVI of the Bangsamoro Organic Law states that:

“Section 13. First Regular Election. - **The first regular election for the Bangsamoro Government under this Organic Law** shall be held and synchronized with the 2022 national elections. **The Commission on Elections, through the Bangsamoro Electoral Office, shall promulgate rules and regulations** for the conduct of the elections, enforce and administer them pursuant to national laws, this Organic Law and the **Bangsamoro Electoral Code**.”³³

74. In relation to the above, the “**first regular election**” refers to a **regional election or the election of the members of the Bangsamoro Parliament**. This is because “Bangsamoro Government” refers to the “Bangsamoro Parliament”, as can be gathered from the following provisions of the Bangsamoro Organic Law.

“ARTICLE VII BANGSAMORO GOVERNMENT

Section 1. Seat of Government. - **The Parliament** shall fix by law the permanent seat of the Bangsamoro Government anywhere within the territorial jurisdiction of the Bangsamoro Autonomous Region taking into consideration accessibility and efficiency in which its mandate may be carried out under this Organic Law.

Section 2. Powers of Government. **The powers of government be vested in the Parliament** which shall exercise those powers and functions expressly granted to it in this Organic Law, and those necessary for, or incidental to the proper governance and development of the Bangsamoro Autonomous Region. It shall set policies, legislate on matters within its authority, and elect a Chief Minister who shall exercise executive authority on its behalf.”³⁴

75. The foregoing provisions clearly show the intended limited scope of the Bangsamoro Electoral Code – in that, the

³² Emphasis supplied.

³³ Emphasis supplied.

³⁴ Emphasis supplied.

Bangsamoro Organic Law refers to the Bangsamoro Electoral Code only in relation to the election of members of the Bangsamoro Parliament,³⁵ as well as the forfeiture of seats³⁶ and filling-up of vacancies³⁷ therein.

76. Such limited scope may not be ignored for it is settled that a law must be read in the proper context, as a whole document, and every part thereof must be considered in determining its meaning, to wit:

“It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that **every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.** Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute’s clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.”³⁸

77. Clearly, **the Bangsamoro Electoral Code should only govern the election of members of the Bangsamoro Parliament. It could not modify or supersede existing laws on the election of local and national officials in the BARMM.**

78. Unfortunately, Bangsamoro Electoral Code departed from the intent of the Bangsamoro Organic Law for the former to govern only parliamentary elections.

79. Specifically, Articles VI and VII of the Bangsamoro Electoral Code cover all elections – even those for national and local positions – in the BARMM. Articles VI and VII of the Bangsamoro Electoral Code unnecessarily prescribe qualifications of voters,³⁹ administration of elections in general,⁴⁰ and even procedure governing election contests

³⁵ Bangsamoro Organic Law, Article VII, Section 7 and Article XVI, Section 13.

³⁶ Bangsamoro Organic Law, Article VII, Section 19.

³⁷ Bangsamoro Organic Law, Article VII, Section 20.

³⁸ *Philippine International Trading Corp. v. Commission on Audit*, G.R. No. 183517, 22 June 2010; emphasis supplied.

³⁹ Bangsamoro Electoral Code, Article VI, Section 2.

⁴⁰ See Bangsamoro Electoral Code, Article VII, Chapter 1(C) and Chapter 2.

involving municipal and barangay officials.⁴¹ It delved on matters governed by national laws and implemented by relevant resolutions of Comelec.

80. As discussed above, even without its own electoral code, the ARMM was able to hold elections, administered by Comelec pursuant to national laws. Significantly, the ARMM showcased the first automated elections in the Philippines in 2008.⁴²

81. The ARMM elections also show that Comelec is equipped to consider and adjust to the peculiarities of regional elections and apply its expertise to administer said elections. Thus, if fealty will be shown to Section 20, Article X of the Constitution,⁴³ then it is not for the Bangsamoro Transition Authority to legislate on matters already governed by national laws – such as the registration of voters, conduct of election campaigns, and administration of regional elections in general.

82. Accordingly, it is respectfully submitted that the Bangsamoro Transition Authority gravely abused its discretion, amounting to lack or excess of jurisdiction, as it exceeded the bounds of its political authority in seeking to regulate even the conduct of national and local elections in the BARMM through the Bangsamoro Electoral Code.

83. Hence, the entirety of Articles VI and VII of the Bangsamoro Electoral Code should be declared *ultra vires* and void. The enactment of the assailed provisions was thus tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. Consequently too, this Petition must be given due course.

**C. Section 4, Article X of the
Bangsamoro Electoral Code
is void and unconstitutional
as it facilitates the grant
and use of public funds for**

⁴¹ See Bangsamoro Electoral Code, Article VII, Chapter 3.

⁴² See Comelec Resolution No. 8415.

⁴³ Constitution, Article X, Section 20 provides that “legislative power delegated to the autonomous region through its organic act shall be subject to the provisions of this Constitution and national laws”.

***election campaign and
partisan political activities.***

84. In prescribing additional powers and functions to the BRAC, Section 5 (d), Article II of the Bangsamoro Electoral Code stated that the BRAC shall:

“d. monitor the regional political party’s compliance with laws and issuances on the **utilization of party subsidies and other assistance received from public funds.**”⁴⁴

85. Said seemingly innocuous function (though invalidly vested upon the BRAC, as discussed above) is related to Section 4, Article X of the Bangsamoro Electoral Code, which facilitates the establishment of a BARMM Political Party Subsidy Fund, to wit:

“SECTION 4. BARMM Political Party Subsidy Fund. - The Parliament may, by law, establish a BARMM Political Party Subsidy Fund, which may be used to support voter’s education program and augment the **operating funds of registered political parties.**”⁴⁵

86. Based on the foregoing, the Bangsamoro Transition Authority apparently sought to facilitate the establishment of a BARMM Political Party Subsidy Fund and have the BRAC monitor a political party’s use of said fund.

87. However, a BARMM Political Party Subsidy Fund will facilitate a misuse of public funds, constituting a violation of the Omnibus Election Code.

88. It must be pointed out that Section 261 of the Omnibus Election Code expressly prohibits the use of public funds for any election campaign or partisan political activity, to wit:

“Section 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x

(o) Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government

⁴⁴ Emphasis supplied.

⁴⁵ Emphasis supplied.

for an election campaign. – **Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies; (2) any printing press, radio, or television station or audio-visual equipment operated by the Government or by its divisions, sub-divisions, agencies or instrumentalities, including government-owned or controlled corporations, or by the Armed Forces of the Philippines; or (3) any equipment, vehicle, facility, apparatus, or paraphernalia owned by the government or by its political subdivisions, agencies including government-owned or controlled corporations, or by the Armed Forces of the Philippines for any election campaign or for any partisan political activity.**⁴⁶

89. In this case, it cannot be gainsaid that the monies that may be appropriated by the Bangsamoro Parliament for any particular purpose are public funds. Those public funds may not be used, under any guise, directly or indirectly, for the benefit of, much less released to, any political party in the BARMM, pursuant to the clear prohibition under Section 261(o) of the Omnibus Election Code.

90. Political parties in the BARMM are necessarily involved in election campaign and partisan political activities. Considering the parliamentary form of the Bangsamoro Government, political parties are organized to participate in the parliamentary elections. On this, Section 7, Article VII of the Bangsamoro Organic Law clearly provides that:

“Section 7. Classification and Allocation of Seats. - The seats in the Parliament shall be classified and allocated as follows:

(a) Party Representatives. **One-half of the members of the Parliament shall be representatives of political parties** who are elected through a system of proportional representation based on the Bangsamoro territorial jurisdiction.

Any organized group in the Bangsamoro Autonomous Region may register as a political party with the Bangsamoro Electoral Office, with qualifications to be prescribed by the Bangsamoro Electoral Code.

Each registered political party shall submit to the Bangsamoro Electoral Office before the election a

⁴⁶ Emphasis supplied.

manifestation of intent to participate in the parliamentary election of party representatives in the Bangsamoro Autonomous Region, incorporating therein a list of nominees, ranked from one (1) to forty (40), from which party representatives shall be chosen in case they obtain the required number of votes. No person shall be nominated in more than one (1) list.”⁴⁷

91. Accordingly, the use of public funds to support political parties, as will be facilitated by the BARMM Political Party Subsidy Fund, will give rise to a highly absurd and irregular situation, where the governmental agency in-charge of administering election laws – the BARC under the BEO – will itself facilitate the commission of an election offense.

92. Besides, **a BARMM Political Party Subsidy Fund finds no basis under the Bangsamoro Organic Law.**

93. Absent any clear provision in the Bangsamoro Organic Law on the grant of public funding to political parties, the Bangsamoro Transition Authority or the Bangsamoro Parliament will effectively have an unbridled discretion in the determination of the extent of public funding that a political party may receive. This includes full discretion to define the purposes for which funds will be defrayed and a free hand to allocate public funds.

94. In effect, there will be no judicially discernable standards that will regulate the grant of One Peso to one political party and One Million Pesos to another political party. The funds may be released based on a general purpose, such as to encourage foster political parties, with or without reference to specific platforms or services. On the other hand, the funds may also be allocated regardless of the extent of the constituencies served or size of the political parties involved or social programs supported. These are all possible in view of the absence of any statutory standard under the Bangsamoro Organic Law.

95. In relation to the foregoing, it is unconstitutional to consider a broad and general grant of power to determine the purpose for which public funds may be used. Thus, in *Belgica v. Executive Secretary*,⁴⁸ this Honorable Court invalidated the

⁴⁷ Emphasis supplied.

⁴⁸ G.R. No. 208566, 19 November 2013.

President's wide latitude of discretion on the use of Malampaya Funds, citing that:

"While the designation of a determinate or determinable amount for a particular public purpose is sufficient for a legal appropriation to exist, the appropriation law must contain adequate legislative guidelines if the same law delegates rule-making authority to the Executive either for the purpose of (a) filling up the details of the law for its enforcement, known as supplementary rule-making, or (b) ascertaining facts to bring the law into actual operation, referred to as contingent rule-making. There are two (2) fundamental tests to ensure that the legislative guidelines for delegated rule-making are indeed adequate. The first test is called the 'completeness test.' Case law states that a law is complete when it sets forth therein the policy to be executed, carried out, or implemented by the delegate. On the other hand, the second test is called the 'sufficient standard test.' Jurisprudence holds that a law lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy, and identify the conditions under which it is to be implemented."⁴⁹

96. Considering the foregoing, Section 4, Article X of the Bangsamoro Electoral Code is void and must be declared as such for being in violation of Section 261(o) of the Omnibus Elections Code and for lack of statutory basis under the Bangsamoro Organic Law.

97. Likewise, in enacting the assailed provision, the Bangsamoro Transition Authority and Chief Minister Ebrahim clearly acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, this Petition should be given due course.

D. Sections 1, 9(d), 10, and 13, Article III and Sections 6, 7, 9 and 12, Article IV of the Bangsamoro Electoral Code are unconstitutional as they restrict access to opportunity for public service and fosters

**principles contrary to
republicanism.**

98. The foremost principle in the Constitution establishes “a democratic and republican State”, such that “sovereignty resides in the people and all government authority emanates from them.”⁵⁰ Complementing this, the Constitution provides that **“the State shall guarantee equal access to opportunities for public service”**.⁵¹

99. With respect to autonomous regions, Section 18, Article X of the Constitution unequivocally provides that “the organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be **elective** and **representative** of the constituent political units.”⁵²

100. In turn, the Bangsamoro Organic Law provides for “an electoral system which shall be consistent with national election laws, allow democratic participation, encourage the formation of genuinely principled political parties, and ensure accountability.”⁵³ It also espouses that “a free and open regional party system shall be allowed to evolve according to the free choice of the people.”⁵⁴

101. The Bangsamoro Organic Law further mandates that one-half of the members of the Parliament shall be representatives of political parties who are elected through a system of proportional representation based on the territorial jurisdiction of the BARMM.⁵⁵

102. However, contrary to the foregoing constitutional and statutory directives, the Bangsamoro Electoral Code provides restrictive requirements for the registration of political parties, such as having a membership of at least 10,000 and chapters in all provinces and cities and in majority of municipalities in BARRM. Article III of the Bangsamoro Electoral Code states that:

⁵⁰ Constitution, Article II, Section 1.

⁵¹ Constitution, Article II, Section 26.

⁵² Underscoring supplied.

⁵³ Bangsamoro Organic Law, Article IV, Section 4.

⁵⁴ Bangsamoro Organic Law, Article VII, Section 9.

⁵⁵ Bangsamoro Organic Law, Article VII, Sections 7 (a).

“SECTION 1. Establishment of Regional Political Parties. – Regional political parties in the Bangsamoro, hereinafter “parties” or “party,” shall be established by **at least ten thousand (10,000) members** who are residents and registered voters therein. **The members shall be distributed throughout the different provinces and cities comprising the Bangsamoro territory;** *Provided*, that **all parties shall establish provincial and city chapters in all provinces and cities, and municipal chapters in the majority of the municipalities comprising each province**, in the Bangsamoro. *Provided further*, that a provincial chapter is required to have municipal chapters in majority of the municipalities in that province.

xxx”

103. Furthermore, Section 10, Article III of the Bangsamoro Electoral Code prescribes mandatory activities for political parties, such as conduct of general assemblies, party conventions, and voter education programs. Non-compliance with these activities will constitute a ground for disqualification to participate in the parliamentary elections, as stated under Section 13, Article III of the Bangsamoro Electoral Code, to wit:

“SECTION 13. Continuing requirements. - Compliance with the minimum number of members, mandatory bodies or mechanisms, and mandatory party activities as provided in the provisions of this Article shall be continuing requirements on all regional political parties. Failure to comply with the pertinent provisions is a ground for disqualification to participate in the parliamentary elections and/or the dissolution of the party as may be determined by the COMELEC through the BRAC.”

104. By imposing stringent requirements for the registration and maintenance of registration of political parties (which will also provide cause for disqualification), the Bangsamoro Electoral Code created a barrier for new or emerging political parties in the BARMM.

105. Based on the registration requirements under the Bangsamoro Electoral Code, an established political party with well-oiled machinery and ready financial resources, but perhaps enjoying only the support of 10,000 residents, would be able to register as a political party. However, a party with wider support, but with insufficient machinery and lacking in financial resources to establish chapters in each of the

BARMM's provinces and cities, would not be able to register as a political party. Effectively, voters would be unable to vote for the political party enjoying their wide support. Instead, the established political party might even grab seats in the Bangsamoro Parliament even though without the mandate of the greater number of people.

106. While their objectives may be laudable, the mandatory party activities (such as, the conduct of general assemblies, party conventions, and voter education programs) can prove costly and deter new political parties. It is also unclear if a **single failure** to hold a general assembly or pursue a voter's education program will be a sufficient ground for disqualification under the above-quoted Section 13, Article III of the Bangsamoro Electoral Code. If so, the requirements are really burdensome and can prevent the formation of political parties.

107. Relevantly, it should be noted that the Omnibus Election Code does not impose any restrictive criteria on the registration of political parties. Neither does it prescribe mandatory activities as a condition to maintain their registration or qualification. It only provides the following requirements for political parties, to wit:

"Section 60. Political party. – 'Political party' or 'party', when used in this Act, means an organized group of persons pursuing the same ideology, political ideas or platforms of government and includes its branches and divisions. To acquire juridical personality, qualify it for subsequent accreditation, and to entitle it to the rights and privileges herein granted to political parties, a political party shall first be duly registered with the Commission. Any registered political party that, singly or in coalition with others, fails to obtain at least ten percent of the votes cast in the constituency in which it nominated and supported a candidate or candidates in the election next following its registration shall, after notice and hearing be deemed to have forfeited such status as a registered political party in such constituency.

Section 61. Registration. - Any organized group of persons seeking registration as a national or regional political party may file with the Commission a verified petition attaching thereto its constitution and by-laws, platform or program of government and such other relevant information as may be required by the Commission. The Commission shall, after due notice and hearing, resolve the petition within ten days from the date it is submitted for decision.

No religious sect shall be registered as a political party and no political party which seeks to achieve its goal through violence shall be entitled to accreditation.”

108. Considering the foregoing, Sections 1, 10, and 13, Article III of the Bangsamoro Electoral Code will not only be patently inconsistent with national election laws, but will also unfairly and unlawfully discriminate against political parties intending to participate in the BARMM Parliament elections.

109. Worse, the Bangsamoro Electoral Code will unduly discriminate against nominees who may be related to each other by consanguinity or affinity. Section 9(d), Article III of the Bangsamoro Electoral Code will disqualify one of the nominees who may happen to be related to another nominee, to wit:

“Nomination of Candidates; Limitations and Sanctions.

– xxx

d. Nominees submitted by a political party shall not be related to each other within the second degree of consanguinity and affinity. Violation of this provision shall disqualify one of the nominees in a manner to be determined by the party;”

110. At first glance, the said limitation appears to address the issue of political dynasties. However, under Section 26, Article II of the Constitution, the prohibition on political dynasties requires a law to be passed by Congress, as it expressly provides that “the State shall ... prohibit political dynasties as may be defined by law.”

111. However, there is yet to be a law that will define what is a political dynasty and what will be the extent of any prohibition.

112. Existing laws do not provide for the disqualification of a candidate on the ground of being related by consanguinity or affinity with another candidate. To illustrate, no such ground

for disqualification may be found under Sections 12⁵⁶ and 68⁵⁷ of the Omnibus Election Code or under Section 40⁵⁸ of the Local Government Code of 1991.

113. For the Bangsamoro Transition Authority to prohibit those related within the second degree of consanguinity or affinity from being nominees of a political party will be to preempt and interfere with the exercise of plenary legislative power and discretion vested in Congress. To this, it suffices to state that jurisprudence is settled that acts that will interfere with the plenary power of Congress to make, alter, and repeal laws must be struck down.⁵⁹

114. Moreover, the limitation imposed upon nominees of a political party under Section 9(d) of the Bangsamoro Electoral Code singles out candidates in the BARMM when no substantial distinction truly differentiates candidates within and outside the BARMM.

115. It is settled that the constitutional guarantee of equal protection of the law clause is not only against the giving of

⁵⁶ Omnibus Election Code, Section 12 provides that “any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.
xxx”

⁵⁷ Omnibus Election Code, Section 68 provides that “any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.”

⁵⁸ Local Government Code of 1991, Section 40 provides that: The following persons are disqualified from running for any elective local position:

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;
- (e) Fugitives from justice in criminal or non-political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

⁵⁹ *Datu Michael Abas Kida v. Senate of the Philippines*, G.R. No. 196271, 28 February 2012, citing *Duarte v. Dade*, G.R. No. L-10858, 20 October 1915.

undue favor to an individual or class privilege, but also abhors hostile discrimination or the oppression of inequality.⁶⁰

116. In relation to the above, it is respectfully submitted that no substantial distinction germane to the purpose of the Bangsamoro Organic Law exists to warrant the discrimination against political parties or candidates within and outside the BARMM. In fact, the mandate under Section 9, Article VII of the Bangsamoro Organic Law – to allow **a free and open regional party system to evolve according to the free choice of the people** – is but a reiteration of the Constitution's Section 6, Article IX-C.⁶¹

117. Considering the foregoing, Sections 1, 9(d), 10, and 13, Article III of the Bangsamoro Electoral Code are patently void and unconstitutional.

**Sections 9 and 12, Article IV
of the Bangsamoro Electoral
Code contravene Section 7,
Article IX-C of the
Constitution.**

118. There is more reason to annul the Bangsamoro Electoral Code. It unconstitutionally requires to be cast in favor of political parties a threshold of four percent (4%) before a political party representative may be entitled to a seat in the BARMM Parliament.

119. Article IV of the Bangsamoro Electoral Code provides that:

"SECTION 9. Party Representatives. Party representatives are members of registered regional political parties that are able to receive at least four percent (4%) of the total valid votes cast for the party system election.

xxx

SECTION 12. Manner of Allocation of the Party Representation Seats. –

⁶⁰ See *Quinto v. Comelec*, G.R. No. 189698, 22 February 2010; *Garcia v. Drilon*, G.R. No. 179267, 25 June 2013.

⁶¹ Constitution, Article IX-C, Section 6 states that: "A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article."

a. **Only parties receiving at least four percent (4%) of the total valid votes cast for the party representation elections shall be qualified to participate in the allocation of party representation seats.”⁶²**

120. It appears from the foregoing provisions that votes are cast in favor of political parties, organizations, or coalitions. However, such contravenes the express prohibition under Section 7, Article IX-C of the Constitution, which provides that:

“Section 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.”⁶³

121. It cannot be gainsaid that political parties, organizations, or coalitions organized and registered under the Bangsamoro Electoral Code are not party-list organizations. In fact, party representatives are separate and distinct from sectoral representatives that will also be elected as members of the Bangsamoro Parliament.

122. As such, Sections 9 and 12, Article IV of the Bangsamoro Electoral Code are patently unconstitutional.

123. In addition, it is respectfully submitted that the aforesaid Sections 9 and 12, Article IV of the Bangsamoro Electoral Code are inconsistent with the principles of republicanism enshrined in the Constitution and implemented in the Bangsamoro Organic Law insofar as said provisions impose a four percent (4%) threshold before a political party representative may qualify for a seat in Parliament. Notably too, apart from said threshold, said sections provide no other criteria or limitation on the number of seat or additional seats that a political party may have.

124. To state the obvious, in case only one (1) political party meets the four percent (4%) threshold, then the BARMM Parliament will be dominated by one political party even if there are thirty (30) other political parties that each garnered only three percent (3%) of the total valid votes cast for the party system election. The combined votes for the thirty (30) political

⁶² Emphasis supplied.

⁶³ Emphasis supplied.

parties, each enjoying three percent (3%) of the total votes cast, will aggregate to ninety percent (90%) of the total votes cast. Yet, the BARMM Parliament will only consist of members of one (1) political party that meets the four percent (4%) threshold, leaving 90% of the voters without a voice therein.

125. Clearly, Sections 9 and 12, Article IV of the Bangsamoro Electoral Code run contrary to Section 7, Article IX-C of the Constitution. In establishing and imposing the said four percent (4%) threshold, they also create a barrier that will not only limit the choice of the people but also hamper the development of a free and open party system, thereby contradicting Section 6, Article IX-C of the Constitution and Section 9, Article VII of the Bangsamoro Organic Law.

Sections 6 and 7, Article IV of the Bangsamoro Electoral Code limit local political parties and sectoral organizations in the BARMM, thereby impeding the evolution of a free and open regional party system according to the free choice of the people.

126. As discussed above, Section 7(a), Article VII of the Bangsamoro Organic Law allocates half of parliamentary seats to representatives of political parties who are elected through a system of proportional representation in the BARMM.⁶⁴ Also, Section 9, Article VII of the Bangsamoro Organic Law envisions the evolution of regional political parties in the BARMM according the free choice of the people.⁶⁵

⁶⁴ Bangsamoro Organic Law, Article VII, Section 7 states that: "(a) Party Representatives. One-half of the members of the Parliament shall be representatives of political parties who are elected through a system of proportional representation based on the Bangsamoro territorial jurisdiction."

⁶⁵ Bangsamoro Organic Law, Article VII, Section 9 states that: "A free and open regional party system shall be allowed to evolve according to the free choice of the people. Towards this end, only regional political parties duly accredited by the Bangsamoro Electoral Office, as approved by the Commission on Elections shall participate in the parliamentary elections in the Bangsamoro Autonomous Region. The Bangsamoro Government shall ensure the inclusion of women's agenda and the involvement of women and the youth in the electoral nominating process of the political parties."

127. Yet, the Bangsamoro Electoral Code turned to interpret Section 7(a), in relation to Section 9, Article VII of the Bangsamoro Organic Law as mandating that only “regional political parties” could participate in the parliamentary elections. Instead of allowing them to evolve, local political parties and sectoral organizations would have to associate with regional political parties by forming coalitions to participate in the parliamentary elections.

128. Sections 6 and 7, Article IV of the Bangsamoro Electoral Code provided that:

“SECTION 6. Limitations on Political Parties - Only regional political parties duly registered and/or accredited by the BRAC, as approved by the COMELEC, shall participate in the parliamentary elections in the Bangsamoro Autonomous Region.

A regional political party applying for registration shall receive no financing from national parties nor have any alliance with a national party for the purpose of participating in parliamentary elections in the Bangsamoro. Such fact shall be declared under oath by an authorized representative of the applicant party.

SECTION 7. Coalitions; Limitations. - Coalition means an alliance based on the agreement of two or more registered and accredited regional political parties, local political parties and sectoral organization either for election or political purposes.

A coalition of two or more regional political parties can only field nominees and candidates for the parliamentary elections except for the sectoral representatives.

In case of a coalition between a regional political party and a local political party, the regional political party can field nominees in the party seats while such coalition can field candidates for the local elections.

In case of a coalition between a regional political party and a sectoral organization, the regional political party can field candidates for the party seats while such coalition can field candidates for the sectoral representatives.”

129. On the contrary, Section 7(a), Article VII of the Bangsamoro Organic Law clearly refers to party representatives of “political parties” in general. It does not limit party representatives to those belonging to “regional political parties”.

130. Verily, if Section 9, Article VII of the Bangsamoro Organic Law will be adhered to, regional political parties are not intended to diminish or limit local political parties, such that local political parties or sectoral organizations will not need to associate with regional political parties to participate in the parliamentary elections. Instead, local political parties or sectoral organizations must be allowed to evolve or develop according to the free choice of the people.

131. Thus, a local political party or sectoral organization with proven track record should not be beset with limitations – as provided by Sections 6 and 7, Article IV of the Bangsamoro Electoral Code – but should be allowed to evolve, as envisioned by Section 9, Article VII of the Bangsamoro Organic Law. For instance, a local political party in Lanao del Sur should be allowed to avail of an opportunity to have a representative in the BARMM Parliament and grant the electorate more choices on who they could elect as their leaders.

132. Sections 6 and 7, Article IV of the Bangsamoro Electoral Code appear to favor new regional political parties to organize and register for the first BARMM parliamentary elections. Yet, this will be inconsistent with the concept of evolution. If regional political parties will truly be allowed to evolve, local political parties and sectoral organizations with existing track record and platform for governance must not be beset with limitations, such as those provided under Sections 6 and 7, Article IV of the Bangsamoro Electoral Code.

133. Local political parties and sectoral organizations should instead be transformed and empowered. To be able to allow free choice to the people, they should be allowed to register with and be accredited by the BEO and field nominees for the parliamentary elections. This would be the only means to achieve a free and open regional party system that would evolve according to the free choice of the people.

134. Besides, to require local political parties and sectoral organizations to form coalitions with regional political parties would violate the constitutional right of association of their members.

135. It is settled that “***the freedom of association also implies the liberty not to associate or join with others or join any existing organization.***”⁶⁶

136. Clearly, Sections 6 and 7, Article IV of the Bangsamoro Electoral Code could inhibit the evolution of local political parties and sectoral organizations in the BARMM and would violate the people’s right of association. As such, the assailed provisions should be declared null and void as they contravene the Bangsamoro Organic Law and do not promote the free choice of the people.

Sections 1, 9(d), 10, and 13, Article III and Sections 6, 7, 9 and 12, Article IV of the Bangsamoro Electoral Code contravene the constitutional guarantee of equal access to opportunities for public service.

137. It is also important to stress that Sections 1, 9(d), 10, and 13, Article III and Sections 6, 7, 9 and 12, Article IV of the Bangsamoro Electoral Code contravene the State Policy to guarantee equal access to opportunities for public service.⁶⁷

138. While the state policies set forth under Article II of the Constitution are generally not self-executing,⁶⁸ the guarantee for equal access to opportunities for public service is not only a mere policy or guide. The guarantee is implemented as the Constitution sets forth qualifications for public office.

139. For instance, Section 2(5), Article IX-C of the Constitution does not provide any restrictive condition in the registration of political parties and organizations and only requires that the registrant must present their platform of government.⁶⁹ Besides, as discussed above, neither does the Omnibus Election Code prescribe a minimum number of

⁶⁶ *Oceña v. Comelec*, G.R. No. L-60258, 31 January 1984.

⁶⁷ Constitution, Article II, Section 26.

⁶⁸ *Tondo Medical Center Employees Association v. Court of Appeals*, G.R. No. 167324, 17 July 2007 citing *Tañada v. Angara*, G.R. No. 118295, 02 May 1997

⁶⁹ Section 2 (5), Article IX-C of the Constitution provides that the Comelec shall “register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government”.

membership or chapters as criteria for the registration of political parties or organizations, much less any mandatory activity to maintain such registration and eligibility of political parties. The prohibition on political dynasties is also left to be defined by law. Local political parties and sectoral organizations are not to be beset with limitations but are supposed to have room to evolve according to the free choice of the people.

140. In *Naval v. Commission on Elections*,⁷⁰ this Honorable Court held that **“more choices for the voters would give fuller meaning to our democratic institutions”**. It recognized the need to balance the evil sought to be avoided (**particularly, the consolidation of political power in the hands of the few**) and the interest of ensuring access to elective positions. Thus, commenting on the three-term limit rule, this Honorable Court observed that:

“The rule answers the need to prevent the consolidation of political power in the hands of the few, while at the same time giving to the people the freedom to call back to public service those who are worthy to be called statesmen.”⁷¹

141. Clearly, the restrictive criteria for registration and maintenance of political parties, baseless limitations on political parties and sectoral organizations, unwarranted discrimination of political party nominees based on family relationship, and the unnecessary four percent (4%) threshold as qualification for a parliamentary seat would ultimately foster principles contrary to republicanism as they unduly limit the choice of the people for their elective representatives.

142. Considering the foregoing, it is respectfully submitted that in enacting Sections 1, 9(d), 10, and 13, Article III and Sections 6, 7, 9 and 12, Article IV of the Bangsamoro Electoral Code, the Bangsamoro Transition Authority and Chief Minister Ebrahim committed grave abuse of discretion amounting to lack or excess of jurisdiction.

143. Perforce, the assailed provisions should be declared void and unconstitutional and this Petition should be given due course.

⁷⁰ G.R. No. 207851, 08 July 2014.

⁷¹ Emphasis supplied.

**E. Section 8, Article IV and
Section 3, Article X of the
Bangsamoro Electoral Code
are unconstitutional and
void as they contravene
national election laws.**

144. As discussed above, Section 20, Article X of the Constitution clearly provides that the legislative power delegated to an autonomous region through its organic act shall be **subject to the provisions of this Constitution and national laws.**

145. In this case, the Bangsamoro Electoral Code provides that holders of appointive positions that become nominees of political parties for party representative are not deemed resigned upon acceptance of their nomination. Section 8, Article IV thereof provides that:

“SECTION 8. Effect of Acceptance of Nomination. - **Nominees of political parties for party representative seats who are holding appointive or elective offices may continue to hold office even after acceptance of their nomination and shall not be considered resigned.** The one-year prohibition from being hired or rehired in a public office after their political party fails to secure the needed votes to qualify them for a seat in the Bangsamoro Parliament shall not apply to them.”⁷²

146. Furthermore, Section 3, Article X thereof allows appointive members of the Bangsamoro Transition Authority to seek an elective public office during the first regular election for the Bangsamoro Government in 2025, to wit:

“SECTION 3. Effect of Filing of COC; Incumbent Members of the Bangsamoro Transition Authority. - The incumbent appointed members of the BTA, whose positions are elective by nature, are **not deemed ipso facto resigned upon the filing of their certificates of candidacy for the 2025 elections.** Those Members of the Parliament who are designated to positions in the Cabinet and other executive offices are likewise not deemed resigned for the same reason.”⁷³

⁷² Emphasis supplied.

⁷³ Emphasis supplied.

147. However, the foregoing provisions are contrary to prevailing national election laws. To illustrate:

a. Section 13 of Republic Act No. 9369⁷⁴ states that:

“xxx That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy.

b. The foregoing reiterates Section 66 of the Omnibus Election Code, which states that:

“Section 66. Candidates holding appointive office or positions. - Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.”

c. As such, Comelec Resolution No. 10717 clarifies the effects of the filing Certificate of Candidacy and the acceptance of party-list nomination, as follows:

“SECTION 8. Effects of Acceptance of Nomination. – Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines (AFP), and other officers and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from the office and must vacate the same at the start of the regular office hours of the day of the filing of the Certificates of Nomination and Acceptance of Nomination.

For purposes of this Section, a public officer holding a public appointive office or position shall be deemed to include private citizens appointed to public offices representing the private sector.

⁷⁴

An Act Amending Republic Act No. 8436, Entitled “An Act Authorizing The Commission On Elections To Use An Automated Election System In The May 11, 1998 National Or Local Elections And In Subsequent National And Local Electoral Exercises, To Encourage Transparency, Credibility, Fairness And Accuracy Of Elections, Amending For The Purpose Batas Pambansa Blg. 881, As Amended, Republic Act No. 7166 And Other Related Elections Laws, Providing Funds Therefor And For Other Purposes”

xxx

SECTION 30. Effects of Filing of Certificate of Candidacy. –

a. **Any person holding a public appointive office or position**, including active members of the AFP, and other officers and employees in government-owned or- controlled corporations, **shall be considered ipso facto resigned from the office** and must vacate the same at the start of the regular office hours of the day when the aspirant filed the COC.

xxx”⁷⁵

148. In *Quinto v. Comelec*,⁷⁶ this Honorable Court had already upheld the constitutionality of Section 13 of Republic Act No. 9369, reiterating Section 66 of the Omnibus Election Code. It held that:

“xxx

These laws and regulations implement Section 2(4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign.

The intention to impose a strict limitation on the participation of civil service officers and employees in partisan political campaigns is unmistakable. xxx

xxx

In the case at bar, the probable harm to society in permitting incumbent appointive officials to remain in office, even as they actively pursue elective posts, far outweighs the less likely evil of having arguably protected candidacies blocked by the possible inhibitory effect of a potentially overly broad statute.

In this light, the conceivably impermissible applications of the challenged statutes – which are, at best, bold predictions – cannot justify invalidating these statutes in toto and prohibiting the State from enforcing them against conduct that is, and has for more than 100 years been, unquestionably within its power and interest to proscribe. Instead, the more prudent approach would be to deal with these conceivably impermissible applications through case-by-case adjudication rather than through a total invalidation of the statute itself.

⁷⁵ Emphasis supplied.

⁷⁶ G.R. No. 189698, 22 February 2010.

Indeed, the anomalies spawned by our assailed Decision have taken place. In his Motion for Reconsideration, intervenor Drilon stated that a number of high-ranking Cabinet members had already filed their Certificates of Candidacy without relinquishing their posts. Several COMELEC election officers had likewise filed their Certificates of Candidacy in their respective provinces. Even the Secretary of Justice had filed her certificate of substitution for representative of the first district of Quezon province last December 14, 2009 – even as her position as Justice Secretary includes supervision over the City and Provincial Prosecutors, who, in turn, act as Vice-Chairmen of the respective Boards of Canvassers. The Judiciary has not been spared, for a Regional Trial Court Judge in the South has thrown his hat into the political arena. We cannot allow the tilting of our electoral playing field in their favor.

For the foregoing reasons, we now rule that Section 4(a) of Resolution 8678 and Section 13 of RA 9369, which merely reiterate Section 66 of the Omnibus Election Code, are not unconstitutionally overbroad.”

149. This Honorable Court’s ruling in *Quinto* (which prohibits appointed officials from engaging in partisan political activities while they hold their appointive posts) formed part of the legal system⁷⁷ and should accordingly be observed in the BARMM.

150. Unfortunately, the danger anticipated by this Honorable Court in *Quinto* would become apparent and real in the BARMM as Section 3, Article X of the Bangsamoro Electoral Code allowed incumbent appointive members of the Bangsamoro Transition Authority to run for an elective post in 2025, without vacating their respective offices. This could “allow the tilting of our electoral playing field in their favor” – leading to the situation which this Honorable Court already found with disfavor in *Quinto*.

151. It is clear from the Bangsamoro Organic Law that the incumbent members of the Bangsamoro Transition Authority hold appointive positions. Section 2, Article XVI of the Bangsamoro Organic Law states, “the Bangsamoro Transition Authority shall be composed of eighty (80) members, **who shall be appointed by the President.**” This is reiterated in Section 2 of Republic Act No. 11593, which provides that:

⁷⁷

Co v. Court of Appeals, G.R. No. 100776, 28 October 1993.

“During the extension of the transition period, the Bangsamoro Transition Authority (BTA) shall continue as the interim government in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM): provided, however, that **the President may appoint the eighty (80) new interim members of the BTA who shall serve up to June 30, 2025 or until their successors shall have been elected and qualified.**”⁷⁸

152. Thus, applying the prevailing national election laws prescribing the effects on appointive officials of their filing of a certificate of candidacy and acceptance of nomination, the incumbent appointive officials in the Bangsamoro Transition Authority should be considered *ipso facto* resigned, should they file their certificates of candidacy for the 2025 elections, or any election for that matter.

153. Considering the foregoing, it is respectfully submitted that Section 8, Article IV and Section 3, Article X of the Bangsamoro Electoral Code are unconstitutional and void and are enacted with grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the Bangsamoro Transition Authority and Chief Minister Ebrahim.

154. Hence, this Honorable Court should give due course to this Petition and thereby correct the grave abuse of discretion discussed above.

**F. Article VIII of the
Bangsamoro Electoral Code
is ultra vires and
unconstitutional as it
defines, penalizes, and
provides for the prosecution
of election offenses.**

155. Article VIII of the Bangsamoro Electoral Code enumerates additional election offenses, prescribes their penalties, provides for their prosecution, and defines the jurisdiction of courts over said offenses.⁷⁹ Particularly, Section 1, Article VIII thereof states that:

⁷⁸ Emphasis and underscoring supplied.

⁷⁹ See Bangsamoro Electoral Code, Article VIII, Sections 1 to 9.

“SECTION 1. Additional Election Offenses Punishable Under this Code. – In addition to the election offenses already provided for under the Omnibus Election Code and other national laws, the following shall be guilty of election offenses committed within the autonomous region:

a. Any person, candidate, officer or supporter of a political party who nails or hangs any election paraphernalia or campaign material on trees and plants shall be guilty of an election offense;

b. Any person, candidate, officer, or supporter of a political party who prints and reproduces campaign paraphernalia using plastics and other non-biodegradable materials;

c. Any candidate, officer, member, or supporter of a political party who uses scandalous, inflammatory, foul, abusive and derogatory language in speeches, interviews and on social media in the course of the campaign or during political rallies and meetings;

d. On Registration of Political Parties and Sectoral Organizations for Reserved Seats:

(1) Any officer of a political party who falsely certifies fictitious or inexistent names in the list of its party members.

(2) Any officer of a political party and sectoral organizations who knowingly makes any false or untruthful statement relative to any data or information required in the registration and accreditation of political parties and sectoral organizations.”

156. However, the power and discretion to define crimes and provide for their penalties are inherently legislative in nature.⁸⁰

157. While tradition accepts the delegation of legislative power (in this case, to the BARMM as an autonomous regional government), the delegate may not be vested with an unbridled discretion.⁸¹ In fine, Congress has to expressly grant the power to prescribe penalties for certain acts or omissions and to define the range of imposable penalties.

⁸⁰ *People v. Santiago*, G.R. No. 17584, 08 March 1922.

⁸¹ *See Santiago v. Comelec*, G.R. No. 127325, 19 March 1997.

158. For instance, when Republic Act No. 9006⁸² categorized the implementing rules to be issued by Comelec as an election offense, Congress clearly defined the parameters of Comelec's power, as follows:

"Sec. 13. Authority of the COMELEC to promulgate rules; Election Offenses. - The COMELEC shall promulgate and furnish all political parties and candidates and the mass media entities the rules and regulations for the implementation of this Act, **consistent with the criteria established in Article IX-C, Section 4 of the Constitution and Section 86 of the Omnibus Election Code (Batas Pambansa Blg. 881)**. Rules and regulations promulgated by the COMELEC under and by authority of this Section shall take effect on the seventh day after their publication in at least two (2) daily newspapers of general circulation. Prior to the effectivity of said rules and regulations, no political advertisement or propaganda for or against any candidate or political party shall be published or broadcast through mass media. **Violation of this Act and the rules and regulations of the COMELEC issued to implement this Act shall be an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code (Batas Pambansa Blg. 881).**"⁸³

159. In relation to the foregoing, it may be observed that the Local Government Code of 1991 expressly grants municipalities,⁸⁴ cities,⁸⁵ and provinces⁸⁶ the power to impose fines and imprisonment as penalties for violation of ordinances.

160. In this case, **the Bangsamoro Organic Law does not expressly confer upon the Bangsamoro Parliament the power to impose penalties for, prescribe jurisdiction over, and provide the manner of prosecution of, violations of the Bangsamoro Electoral Code.** The powers of the Bangsamoro Parliament are as follows:

"Section 5. Powers. - The Parliament shall have the following powers:

(a) Enact laws to promote, protect, and ensure the general welfare of the Bangsamoro people and other inhabitants in the Bangsamoro Autonomous Region

⁸² The Fair Election Act.

⁸³ Emphasis supplied.

⁸⁴ Local Government Code, Section 447 (1) (iii).

⁸⁵ Local Government Code, Section 458 (1) (iii).

⁸⁶ Local Government Code, Section 468 (1) (iii).

(b) Call for a referendum on important issues affecting the Bangsamoro Autonomous Region;

(c) Enact a law on initiatives;

(d) Conduct inquiries in aid of legislation in accordance with its rules. The rights of persons appearing in or affected by such inquiry shall be respected;

(e) Enact a law that allows the Chief Minister, Speaker of the Parliament, and the Presiding Justice of the Shari'ah High Court to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations;

(f) Enact a law within the competencies of the Bangsamoro Government to regulate the grant of regional franchises and concessions, and empower the Chief Minister to grant leases, permits, and licenses over agricultural lands and for forest management;

(g) Discipline its members as provided in Section 26, Article VII of this Organic Law;

(h) Enact laws declaring Bangsamoro holidays; and

(i) Be consulted on matters affecting the environment."

161. Clearly, the Bangsamoro Transition Authority may not define crimes and prescribe penalties for election offenses, much less provide for the prosecution of and define the jurisdiction of courts over said offenses.

162. Election offenses and their penalties have already been prescribed by Congress through the Omnibus Election Code. In various election laws, Congress has also authorized Comelec to issue rules and regulations and prescribed penalties for violations thereof. These election laws, as well as Comelec's rules and regulations, apply to the entire Philippines territory, including the BARMM.

163. If the Bangsamoro Transition Authority will be authorized to define election offenses and provide for their penalties, it may happen that an act that is lawful outside of the BARMM may be made criminally punishable in the BARMM. Conversely, an unlawful act in Cebu or Manila may be considered innocent in the BARMM. **This absurd situation**

must be avoided. Thus, the enactments of the Bangsamoro Transition Authority must be kept faithful to the Constitution, the Bangsamoro Organic Law, and relevant national laws.

164. In fact, a conflict in the application of laws is not merely foreseen but is already real.

165. Section 4, Article VIII of the Bangsamoro Electoral Code reiterates Section 265 of the Omnibus Election Code, as follows:

“SECTION 4. Prosecution. - The COMELEC shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The COMELEC may avail of the assistance of other prosecuting arms of the government: Provided, however, that in the event that the COMELEC fails to act on any complaint within four months from filing, the complainant may file the complaint with the prosecutor's office or with the Department of Justice for proper investigation and prosecution, if warranted.”

166. However, Section 265 of the Omnibus Election Code had been amended by Republic Act No. 9369, such that Comelec no longer enjoyed exclusive authority to conduct preliminary investigation of election offenses. The Bangsamoro Transition Authority apparently missed that said Section 265 now reads, as follows:

“SEC. 265. Prosecution. - The Commission shall, through its duly authorized legal officers, have the power, concurrent with the other prosecuting arms of the government, to conduct preliminary investigation of all election offenses punishable under this Code, and prosecute the same.”⁸⁷

167. Thus, to allow Article VIII of the Bangsamoro Electoral Code to stand would not only facilitate conflicts with prevailing national laws. It would also amount to a limitation on the power of Congress to amend or repeal national election laws.

168. It is respectfully submitted that the Bangsamoro Transition Authority may not tie the hands of Congress, as to

⁸⁷

See Republic Act No. 9369, Section 43.

make permanent in the BARMM certain provisions of the Omnibus Election Code. It is settled that any limitation to Congress' power to amend or repeal laws must be struck down as invalid, to wit:

"The power of the legislature to make laws includes the power to amend and repeal these laws. Where the legislature, by its own act, attempts to limit its power to amend or repeal laws, the Court has the duty to strike down such act for interfering with the plenary powers of Congress. xxx"⁸⁸

169. Moreover, while enjoying the status of an autonomous region, the BARMM remains a municipal government or more precisely a regional local government unit.

170. In this respect, while the Bangsamoro Government has the power to promote, protect, and ensure the general welfare of the Bangsamoro people and other inhabitants within the BARMM,⁸⁹ this general grant of power under the general welfare clause is not a blanket authority and is not sufficient to authorize it to define election offenses and provide for their penalties and prosecution.

171. In *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*,⁹⁰ this Honorable Court ruled that a municipal issuance should be consistent with existing national laws, to wit:

"The power to legislate under the General Welfare Clause is not meant to be an invincible authority. In fact, *Salaveria* and *Abendan* emphasized the reasonableness and consistency of the exercise by the local government units with the laws or policies of the State. More importantly, because the police power of the local government units flows from the express delegation of the power by Congress, its exercise is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the terms used in granting the power should be construed against the local legislative units. Judicial scrutiny comes into play whenever the exercise of police power affects life, liberty or property. The presumption of validity and the policy of liberality are not restraints on the power of judicial review in the face of questions about whether an ordinance conforms with the Constitution, the laws or public policy, or if it is unreasonable, oppressive, partial, discriminating or in

⁸⁸ *Datu Michael Adas Kida v. Senate of the Philippines*, G.R. No. 196271, 28 February 2012, citing *Duarte v. Dade*, G.R. No. L-10858, 20 October 1915.

⁸⁹ Bangsamoro Organic Law, Article III, Section 2.

⁹⁰ G.R. No. 189185, 16 August 2016.

derogation of a common right. The ordinance must pass the test of constitutionality and the test of consistency with the prevailing laws.

x x x

For sure, every local government unit only derives its legislative authority from Congress. In no instance can the local government unit rise above its source of authority. As such, its ordinance cannot run against or contravene existing laws, precisely because its authority is only by virtue of the valid delegation from Congress. x x x⁹¹

172. After all, as discussed above, autonomous regions must operate within the framework of the Constitution and is subject to the provisions of national laws.⁹²

173. Based on the foregoing, it is respectfully submitted that the Bangsamoro Transition Authority may not define what may be punishable as election offenses and prescribe their penalties and prosecution.

174. Accordingly, the entire Article VIII of the Bangsamoro Electoral Code is *ultra vires* and void. Such assailed provisions were undeniably enacted with grave abuse of discretion, amounting to lack or excess of jurisdiction.

175. Hence, this Petition must be given due course and the assailed provisions must be declared void and unconstitutional.

G. Chapter 3, Article VII of the Bangsamoro Electoral Code is *ultra vires* and void as it encroaches upon the power and prerogative of the Supreme Court to promulgate rules on pleading, practice, and procedure involving election cases before trial courts.

⁹¹ Emphasis supplied.

⁹² *Disomangcop v. Secretary of the Department of Public Works and Highways*, G.R. No. 149848, 25 November 2004.

176. Chapter 3, Article VII of the Bangsamoro Electoral Code provides the procedure for the filing and disposition of election disputes. Particularly, the Bangsamoro Electoral Code provides the following:

- a. Section 2 prescribes the jurisdiction of Comelec, regional trial courts, and municipal trial courts;
- b. Section 3 provides the procedure for filing election protests or *quo warranto* petitions before trial courts;
- c. Sections 4 and 5 describes where to file and who may be parties to election protests or *quo warranto* petitions before trial courts;
- d. Section 6 deals with modes of service and filing pleadings;
- e. Section 7 requires a verification and certification on non-forum shopping;
- f. Section 8 proscribes the extension of periods to file election protests or *quo warranto* petitions;
- g. Section 9 refers to non-suspension of the period to file election protests or *quo warranto* petitions;
- h. Section 10 allows the filing of election protests or *quo warranto* petitions despite Comelec decisions in disqualification cases;
- i. Section 11 imposes the period for courts to render decisions in election contests;
- j. Section 12 refers to the period and manner of making an appeal from the trial courts to Comelec;
- k. Section 13 reiterates Comelec's authority to issue extraordinary writs over decisions of trial courts; and
- l. Section 14 mandates trial courts to give preference to election contests.

177. However, the foregoing already intrudes upon the exclusive jurisdiction of this Honorable Court to promulgate rules on pleading, practice, and procedure before trial courts.

178. As provided in Section 5, Article VIII of the Constitution, this Honorable Court has jurisdiction over the following:

“5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

179. Relevantly, it is already settled that this Honorable Court’s power to promulgate rules regarding pleading, practice, and procedure before courts cannot be interfered with by a legislative body. As held in *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortez*,⁹³

“xxx

Until the 1987 Constitution took effect, our two previous constitutions textualized a power sharing scheme between the legislature and this Court in the enactment of judicial rules. Thus, both the 1935 and the 1973 Constitutions vested on the Supreme Court the ‘power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law.’ However, these constitutions also granted to the legislature the concurrent power to ‘repeal, alter or supplement’ such rules.

The 1987 Constitution textually altered the power-sharing scheme under the previous charters by deleting in Section 5(5) of Article VIII Congress’ subsidiary and corrective power. This glaring and fundamental omission led the Court to observe in *Echegaray v. Secretary of Justice* that this Court’s power to promulgate judicial rules ‘is no longer shared by this Court with Congress’:

⁹³ GR No. 165922, 26 February 2010.

'The 1987 Constitution molded an even stronger and more independent judiciary. Among others, it enhanced the rule making power of this Court [under] Section 5(5), Article VIII xxx.

The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, **the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. xxx'**

Any lingering doubt on the import of the textual evolution of Section 5(5) should be put to rest with our recent *En Banc* ruling denying a request by the Government Service Insurance System (GSIS) for exemption from payment of legal fees based on Section 39 of its Charter, Republic Act No. 8291, exempting GSIS from 'all taxes, assessments, fees, charges or dues of all kinds.' Reaffirming Echegaray's construction of Section 5(5), **the Court described its exclusive power to promulgate rules on pleading, practice and procedure as 'one of the safeguards of this Court's institutional independence' xxx.**⁹⁴

180. Consequently, this Honorable Court now has the exclusive authority to promulgate rules on pleading, practice, and procedure before trial court. Such authority is no longer shared with any other branch or agency of the Government. As such, neither may such power be exercised by the Bangsamoro Transition Authority.

181. Verily, this Honorable Court has issued AM. No. 10-4-1-SC, the 2010 Rules of Procedure for Municipal Election Contests. Said Rules of Procedure was recently amended by A.M. No. 10-4-1-SC, the 2022 Interim Amendments to the 2010 Rules of Procedure for Municipal Election Contests.

182. A comparison of the provisions of Chapter 3, Article VII of the Bangsamoro Electoral Code and A.M. No. 10-4-1-SC would readily show that the Bangsamoro Transition Authority failed to be faithful to the innovations which this Honorable Court introduced in A.M. No. 10-4-1-SC. As a result, certain

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Emphasis supplied.

provisions under Chapter 3, Article VII of the Bangsamoro Electoral Code differed with A.M. No. 10-4-1-SC. To demonstrate:

- a. Section 3 of the Bangsamoro Electoral Code on the mode of service and filing of pleadings, where A.M. No. 10-4-1-SC has allowed the use of a private courier or electronic mail;
- b. Section 7 on the requirement of verification and certification on non-forum shipping, where A.M. No. 10-4-1-SC specified the matters to be stated in a verification and the effect of the affiant's signature;
- c. Section 8 on the period to file an election protest or *quo warranto* petition, where A.M. No. 10-4-1-SC clarified that the period should refer to calendar days;
- d. Section 9 on the effect of a pending pre-proclamation controversy, where A.M. No. 10-4-1-SC clarified that the pre-proclamation controversy should be before Comelec; and
- e. Section 11 on rendition of decisions, where A.M. No. 10-4-1-SC specified that the period to decide referred to calendar days and, during which, the resolution of election cases should be prioritized.

183. The foregoing only clearly shows that, unless the entire Chapter 3, Article VII of the Bangsamoro Electoral Code is nullified and declared without any force and effect, the Bangsamoro Transition Authority may render nugatory this Honorable Court's power to promulgate, amend, or modify procedural rules in the BARMM. An anomalous situation is then created, where the applicable procedural rules on election cases within the BARMM will be different from that prevailing outside the BARMM.

184. As such, the Bangsamoro Transition Authority could and should not be considered to possess any power to prescribe rules on pleading, practice, and procedure for election cases before trial courts.

185. Consequently too, the entire Chapter 3, Article VII of the Bangsamoro Electoral Code should be declared void and unconstitutional as it violates Section 5(5), Article VIII of the Constitution.

186. Lastly, it should also be pointed out that the assailed provisions affect substantial portions of the Bangsamoro Electoral Code, rendering inoperative and futile the intent of the Bangsamoro Organic Law in mandating the enactment of said electoral code.

187. Hence, as substantial portions affecting the essence of the Bangsamoro Electoral Code should be nullified for being unconstitutional, the entire code should necessarily be declared void to avoid absurd results.

188. It is settled that an enactment's separability clause may not save an unconstitutional statute and may be disregarded to avoid absurd results, to wit:

“x x x Nonetheless, the separability clause only creates a presumption that the act is severable. It is merely an aid in statutory construction. It is not an inexorable command. **A separability clause does not clothe the valid parts with immunity from the invalidating effect the law gives to the inseparable blending of the bad with the good. The separability clause cannot also be applied if it will produce an absurd result.** In sum, if the separation of the statute will defeat the intent of the legislature, separation will not take place despite the inclusion of a separability clause in the law.”⁹⁵

189. All told, Petitioners most respectfully seek this Honorable Court to give due course to this Petition and exercise its constitutional duty and original jurisdiction to issue writs of certiorari and prohibition so that the bounds of the powers of the Bangsamoro Transition Authority and the Chief Minister, in relation to Comelec and this Honorable Court, may be determined and defined in accordance with the provisions of the Constitution, Bangsamoro Organic Law, Omnibus Election Code, and other national laws.

⁹⁵

Tatad v. Secretary of the Department of Energy, G.R. No. 124360, 03 December 1997.

190. With due respect, the Bangsamoro Electoral Code must be struck down, in its entirety or to the extent of the assailed provisions thereof, for being void and unconstitutional.

VII.

GROUND IN SUPPORT OF THE PRAYER FOR THE IMMEDIATE ISSUANCE OF A STATUS QUO ANTE ORDER, TEMPORARY RESTRAINING ORDER, AND/OR WRIT OF PRELIMINARY INJUNCTION

Petitioners replead the foregoing and additionally state that:

191. As of this writing, the Bangsamoro Electoral Code has the force and effect of law in the BARMM.

192. Unless its implementation would be restrained, further developments would effectively curtail the right of suffrage of Petitioners and other resident voters in the BARMM considering that only established political parties could immediately organize, qualify for registration, and might then be voted for. Worse, incumbent appointive officials could run for public office in the first regular election for the BARMM Government, while keeping their appointive posts, bringing to reality the possibility of tilting the elections in their favor.

193. Otherwise stated, the Bangsamoro Electoral Code would create instability to republican institutions as it would restrict opportunities to obtain parliamentary seats during the first and subsequent elections for the BARMM Government, and thereby hamper the development of a free and open regional party system according to the free choice of the people. Worse, it would facilitate a violation of the Omnibus Election Code which prohibited the use of public funds for election campaign or partisan political activities.

194. Equally prejudiced is the traditionally guarded independence of Comelec. The Bangsamoro Electoral Code superseded Comelec's sound exercise of discretion and application of expertise in the assignment or delegation of powers and functions to the BEO and BRAC. As discussed above, the Bangsamoro Transition Authority effectively

transformed the BEO and BRAC into offices fashioned by it, rendering null Comelec's Resolution No. 10680.

195. Also, an *imperium et imperio* would effectively be created in the BARMM as the BARMM would have its own set of election offenses and manner of prosecution thereof. Even the rules of procedure for election controversies cognizable by trial courts were not spared as there would be a separate set of rules applicable within the BARMM.

196. There is thus extreme urgency for this Honorable Court to act and step in. Unless this Honorable Court will urgently take cognizance of this case and grant a prohibitory relief, substantial rights of Petitioners, as well as public rights, will be gravely prejudiced. As shown above, the assailed provisions of the Bangsamoro Electoral Code are patently unconstitutional and, as such, will adversely affect the proper application of laws and sound administration of justice. Considering the circumstances of this case, **it becomes the duty of this Honorable Court to preserve the supremacy of the Constitution and ensure that governmental acts are exercised within constitutionally defined boundaries.**

197. Also as discussed above, Petitioners are entitled to the reliefs demanded, and whole or part of such reliefs consists in the issuance of a Status Quo Ante Order, Temporary Restraining Order, and/or Writ of Preliminary Injunction, directing Public Respondents, as well as all persons acting in their behalf and all concerned, to CEASE AND DESIST from complying with or implementing the Bangsamoro Autonomy Act No. 35 or the Bangsamoro Electoral Code.

198. This Honorable Court is respectfully sought to prohibit the implementation of the unconstitutional law and usher back the Bangsamoro Transition Authority within the framework of the Constitution and the Bangsamoro Organic Law. Otherwise, a graver constitutional impasse may not be far from the horizon.

199. Relevantly, it is settled that, vested with judicial power, this Honorable Court has the inherent authority to issue a preservative relief – such as a status *quo ante* order, temporary restraining order, and/or writ of preliminary injunction – to protect the exercise of its jurisdiction and ensure that its

judgment will not be rendered nugatory by supervening events.⁹⁶

200. Thus, considering the urgency dictated by the foregoing circumstances, a special raffle should be conducted so that this Petition could be acted upon with dispatch.

PRAYER

WHEREFORE, it is most respectfully prayed that:

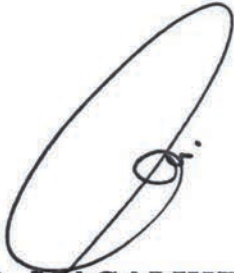
1. Upon the filing of this Petition, this Honorable Court conduct a special raffle so that this Petition may be immediately acted upon;
2. Also, upon the filing of this Petition, a Status Quo Ante Order, Temporary Restraining Order, and/or Writ of Preliminary Injunction, be IMMEDIATELY ISSUED, directing Public Respondents, as well as all persons acting in their behalf and all concerned, to CEASE AND DESIST from complying with or implementing the Bangsamoro Autonomy Act No. 35 or the Bangsamoro Electoral Code, until further orders from this Honorable Court; and
3. After due proceedings, judgement be rendered in favor of Petitioners, DECLARING the Bangsamoro Electoral Code, in its entirety or *pro tanto* to the extent of the assailed provisions thereof, as UNCONSTITUTIONAL and VOID.

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See *Morales v. Court of Appeals*, G.R. Nos. 217126-27, 10 November 2015.

Other just and equitable reliefs and likewise prayed for.

Las Pinas City, May 31, 2023.



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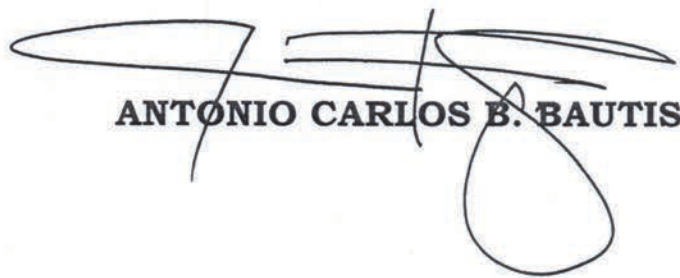
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EXPLANATION

In compliance with the Rules, the undersigned counsel states that due to distance, time, manpower constraints, and the health risks brought about by the pandemic, a hard copy of this **Petition** will be served to the above-stated copy furnished parties via private courier and, thereafter, an electronic copy thereof will be sent to them (if their email address is already on record).



ANTONIO CARLOS B. BAUTISTA