

Supreme Court
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Republic of the Philippines
SUPREME COURT
Padre Faura, Manila

En Banc

ATTY. DIMNATANG L. PANSAR,
et al.,

Petitioners,

v.

G.R. No. 267368
Petition for Certiorari
and Prohibition

BANGSAMORO TRANSITION
AUTHORITY, *et al.*,

Respondents.

x-----x
ALGAMAR A. LATIPH,
AMENODIN CALI, and ARLENE
NAPOLES-SEVILLA,

Petitioners-In-Intervention,

v.

Petition-In-Intervention for
Certiorari, Prohibition,
Mandamus with Urgent
Relief for the Issuance of
Status Quo Ante Order.

BANGSAMORO TRANSITION
AUTHORITY and COMMISSION
ON ELECTIONS,

Respondents.

x-----x

**MOTION FOR LEAVE TO ADMIT
PETITION-IN-INTERVENTION**

Petitioners, unto this Honorable Court, respectfully state:

MOTION FOR LEAVE TO ADMIT this Petition-In-Intervention

We respectfully move, with leave, of this Honorable Court, to admit the Petition-in-Intervention consolidated with this motion. Intervention is permitted under Section 1, Rule 19 of the Rules of Court, thus: “person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected.” We have *locus standi* to intervene as averred in paragraphs 48 to 52 in this Petition-in-Intervention.

WHEREFORE, with leave of this Honorable Court, we pray for the admission of the Petition-in-Intervention consolidated with this motion herein below.

PETITION-IN-INTERVENTION

I PRELIMINARY

A

1. The Honorable Court was *swift* and *decisive* in determining, in 85 days, people’s right to information on an unsigned and unenforceable Memorandum of Agreement on Ancestral Domain (MOA-AD) in *North Cotabato v. Republic*.¹ When it was filed on 23 July 2008, an injunction, *status quo ante* order, was issued on 4 August 2008 and, thereafter, oral arguments ensued on 15, 22, and 29 August 2008. The Puno Court eventually granted the petition on 14 October 2008 declaring MOA-AD unconstitutional.²

2. The MOA-AD was followed, eight years later, by the Comprehensive Agreement on Bangsamoro (CAB) signed on 27 March 2016 by the representatives of the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF). It faced the same fate when it was questioned here, impleaded the same

¹ G.R. No. 183591, 14 Oct. 2008.

² As a result of the filing of the petition there was “renewal of violence between the government and the Moro Islamic Liberation Front... National Disaster Coordinating Council (NDCC) reported that over 610,000 people have fled their villages to escape the violence.” *Amnesty International*, (2008). *Shattered Peace in Mindanao: The human cost of conflict in the Philippines* (p.1). Amnesty International Publications 2008 accessed at <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa350082008eng.pdf> on 27 Aug. 2023.

respondents,³ in *PHILCONSA v. Republic*.⁴ This Court denied the petition ruling that it is “[n]ot ripe for adjudication due to non-enactment of the Bangsamoro Basic Law [BBL].”⁵

3. The BBL, referred to in *Philconsa*, passed the scrutiny of the Congress. It was enacted as Republic Act No. 11054 (“RA 11054”) otherwise known as Bangsamoro Organic Law, signed into law on 22 July 2018, and ratified in a plebiscite on 21 January 2019. Before its ratification, however, it was assailed for its unconstitutionality on October 2018 in *The Province of Sulu v. Medialdea* docketed as G.R. No. 242255. To date, it awaits judgment of this Honorable Court.

4. Five years after the *Sulu Petition*, the instant case, *Pansar Petition*, in which we now intervened as party-petitioners, was filed on 14 June 2023 seeking to declare unconstitutional the Bangsamoro Autonomous Act No. 35 (BAA 35) otherwise known as Bangsamoro Electoral Code.

5. With the pendency of the *Sulu Petition* and these petitions, the Bangsamoro has an unfinished business with the Honorable Court. They continue to affect the political stability in the region due to these unresolved constitutional issues, as they bring uncertainties to the people.”

B

6. By virtue of the right self-determination, the people “freely determine their political status and freely pursue their economic, social, and cultural development.”⁶ When the Bangsamoro ratified RA 11054 in the plebiscite, they exercised their right to self-determination because they determined “their political status” contained in the text of RA 11054. The right to self-determination does not belong to any group—it inherently belongs to the people.

7. But the Bangsamoro's assertion of the right to self-determination did not end with the ratification of RA 11054. It is not static right but a continuing collective right. In determining the *political status*, it does not solely pertain to creating and defining the structure of government during the ratification of RA 11054 in a plebiscite. It equally applies to the establishment of the government.

³ Government of the Republic of the Philippines and the Moro Islamic Liberation Front were respondents in *North Cotabato*.

⁴ G.R. No. 218406, 29 Oct. 2016.

⁵ The Bangsamoro Basic Law was then endorsed to the Congress. And after due deliberation it was enacted, but not *in toto*, as RA 11054 otherwise known as Bangsamoro Organic Law.

⁶ *The Province Of North Cotabato v. Republic*, G.R. No. 183591, 14 Oct. 2008 *citing* International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

8. The Bangsamoro Parliament (Parliament) under RA 11054 is an elective office, and it is established by the people periodically every three years through an election. This electoral process is a mechanism by which the authority of the sovereign people is entrusted to their representatives so that they can act on their behalf. But such exercised must ensure that “the authority of the government continues to be based on the free expression of the will of the electors.”⁷

9. *Free expression* of the people can only be realized when purity of people’s will and free choice are upheld and protected. Consequently, election in the Parliament must be based on universal suffrage,⁸ non-discrimination and equal participation,⁹ open and free political party system,¹⁰ synchronized, genuine, and periodic election,¹¹ right to effective and reasonable political participation,¹² and so forth. Short of these, renders inutile people’s right to self-determination. Regrettably, the text of BAA 35, its numerous provisions transgressed many provisions of the Constitution, it restricted access to Parliament, and right to political participation.

10. Thus, we are here before this Honorable Court, to assert our right to self-determination.

C

11. It is for these reasons, among others, that we question the constitutionality of acts of the Congress, the Commission on Elections (COMELEC), and the Bangsamoro Transition Authority (BTA) of the Bangsamoro Autonomous Region in Muslim Mindanao (“BARMM”) that have violated provisions of the Constitution. In the case of the Congress, we are challenging RA 11593 and a couple of provisions in

⁷ *Macalintal v. COMELEC*, G.R. No. 263590, 27 June 2023.

⁸ See Sec. 1, Art. V, Constitution which provides that all eligible citizens have the right to vote and equal opportunity to participate in the electoral process.

⁹ See Sec. 26, Art. II, Constitution which provides that “State shall guarantee equal access to opportunities for public service”; Sec. 1, Art. III, Constitution it provides equal protection clause; Sec. 10, Art. IX-C, Constitution which provides that “*bona fide* candidates for any public office shall be free from any form of harassment and discrimination”; and Sec. 1, Art. XIII, Constitution “highest priority to the enactment of measures that protect and enhance the right of all the people to ... reduce ... political inequalities, and ... equitably diffusing wealth and political power for the common good.

¹⁰ Sec. 6, Art. IX-C, Constitution, “free and open party system shall be allowed to evolve according to the free choice of the people.”

¹¹ See *Macalintal v. COMELEC*, G.R. No. 263590, 27 June 2023; *Kida vs. Senate*, G.R. No. 196271, 18 October 2011; and *Osmeña v. COMELEC*, G.R. No. 100318, 30 July 1991.

¹² See Sec. 15 and Sec. 16, Art. XIII, Constitution they respectively provide: “The State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework...”, and the “right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged.”

RA 11054. Regarding BAA 35, it contains numerous provisions that are in conflict with the Constitution. We have also raised invalidity of BAA 35 because it is contrary to specific provisions of Batas Pambansa Blg. No. 881 (BP 881), also known as the Omnibus Election Code, and other electoral laws.

12. With the foregoing, we have asked writs of mandamus *ex abundanti ad cautelam* to direct and command the COMELEC to perform both its express and residual powers and functions to ensure the election for the 80 elective seats of the Parliament on 12 May 2025. Currently, there remains a great indication that said election may not occur. Thus, there is an actual and imminent danger of massive disenfranchisement that will potentially affect nearly 2 million¹³ registered voters in the BARMM. With a population of 4.9 million Bangsamoro, settlers, and indigenous people,¹⁴ the Constitution requires that the Parliament is *elective* and that people are governed by individuals they have elected through a fair and just electoral process.

13. Our cautionary writs are based on actual antecedents that coexisted with the birth of Autonomous Region in Muslim Mindanao (ARMM), and BARMM: postponement of elections, and holdover capacity of regional elective offices. We recall that nine laws¹⁵ have been enacted that postponed the ARMM and BARMM for an extent of 11 years and 3 months. During that period, elective offices in the autonomous region were occupied and exercised by individuals without being elected by the people to serve them during that period and while, at the same time, the people were denied to express their sovereign power in elections.

D

14. The last election in the autonomous region was on 9 May 2016. And no election held for autonomous government elective officials for two succeeding terms on 12 May 2019 and 9 May 2022. The last election was postponed by RA 11593, that reset it to 12 May 2025. The BAA 35, on its part, also postponed the sectoral and reserved seats in the Parliament from 12 May 2025 to 8 May 2028.¹⁶

¹³ Bompat, Lerio. (31 Aug. 2023). *97 Localities In BARMM Deemed As 'Areas Of Concerns' Ahead Of Brgy Polls*. ABS-CBN News. Accessed on 10 Sept 2023 at <https://news.abs-cbn.com/news/08/31/23/97-localities-in-barmm-deemed-as-areas-of-concerns-ahead-of-brgy-polls>

¹⁴ Philippine Statistics Authority. BARMM Population as of 1 May 2020. Accessed on 3 Sep. 2023 at <https://rssoarimm.psa.gov.ph/statistics/population>

¹⁵ RA 8176; RA 8753; RA 8953; RA 9012; RA 9054; RA 9333; RA 10153; RA 11054; and RA 11593.

¹⁶ Section 17 (3rd par.), Article IV of BAA 35/

15. Now, there is a bill to postpone the Parliament's election for six years or from 12 May 2025 to 11 May 2031 under House Bill No. 4220¹⁷ (HB 4220) pending in the House of Representatives. Early this year on 13 February 2023, Senate Bill No. 1874¹⁸ (SB 1874) was filed to postpone the 12 May 2025 to 8 May 2028 synchronized national and local elections.

16. Under RA 11054, the Parliament has 80 members classified into various seats, as follows: party representatives, forty (40); parliamentary district seats, thirty-two (32); sectoral representatives, four (4); and reserved seats, four (4).

17. Currently, with regard to the election of 32 seats for district representatives in the Parliament, no legislation has been enacted to date that outlines the apportionment of legislative districts for electoral purposes. According to the information available on its website,¹⁹ the leadership of the BTA has not yet introduced any bill on apportionment of district representatives. There is less than one year remaining, starting in August 2024, before the filing of certifications of candidacy for the synchronized elections on 12 May 2025. Not surprisingly, there appears to be a lack of urgency and attention given to this high-priority legislative matter.

18. The only definitive election is the 40 seats for party representatives in the Parliament as what BAA 35 provides. At present, sectoral and reserved were postponed by BAA 35, while the apportionment of district seats is yet to be enacted as law.

19. But BAA 35's party representative in the Parliament is not open and fair because it requires 10,000 members in order to be registered and accredited as party to participate in the 40 seats of the party representatives in the Parliament. This tyrannical 10,000 membership threshold is contrary to the Constitution's equal access to opportunities to public service,²⁰ equal protection clause,²¹ reduction

¹⁷ Filed on 30 August 2022 entitled An Act Amending Section 13 Article XVI of Republic Act No. 11054, The Organic Law For The Bangsamoro Autonomous Region In Muslim Mindanao, As Amended By Republic Act No. 11593, For The Purpose Of Extending The Transition Period To Ensure The Successful Implementation Of The Annex On Normalization Under The Framework Agreement On The Bangsamoro (FAB), Allowing The First Regular Election For The Bangsamoro Parliament To Be Synchronized With The 2031 National Elections. Accessed on 23 August 2023 at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_19/HB04220.pdf

¹⁸ Entitled: An Act Amending Section 13, Article XVI Of Republic Act No. 11054, Otherwise Known As The Organic Law For The Bangsamoro Autonomous Region In Muslim Mindanao, As Amended By Republic Act No. 11593, For The Purpose Of Extending The Transition Period To Ensure The Successful Implementation Of The Annex On Normalization Under The Framework Agreement On The Bangsamoro (FAB), And Allowing The First Regular Election For The Bangsamoro Parliament To Be Synchronized With The 2028 National Elections.

¹⁹ The BTA since its Inaugural Session on 30 March 2019 has failed to legislate it. To date the Government of the Day is yet to file a bill for this purpose.

²⁰ Sec. 26. Art. II, Constitution.

²¹ Sec. 1, Art. III, Constitution.

of political inequalities,²² equitably diffusing political power for the common good,”²³ “free and open party system,”²⁴ and so forth. This arbitrary threshold will perpetrate *endless tyranny of the majority over the minority*. The threshold is a suppression of political participation, structurally marginalizing vulnerable groups and being wantonly discriminative.

20. Come 12 May 2025, in the upcoming election, we may have only a handful and very few political parties to participate because there are very few parties that can meet the 10,000 members threshold. With postponed election for the 8 seats allocated for sectoral and reserved representatives, and the remaining 32 district representative seats are yet to be legislated by the BTA, we may find that only very few political parties will contest the 40 party seats in the Parliament. In such eventuality, it would not be a genuine exercise of right to self-determination where the Bangsamoro can express their sovereign will on an election that is free, fair, credible, and honest, rather it is an election characterize by elitism where only few candidates are allowed based on an arbitrary threshold of 10,000 membership.

E

21. The 10,000 threshold being an instrument of political exclusion, brings us to the eloquent *ponencia* of Senior Justice Marvic M.V.F. Leonen in *Diocese of Bacolod v COMELEC*²⁵ that forewarned us that “repressing nonviolent outlets” such as “political participation... may spill over to violent means just to drive a point.”

22. *The Diocese of Bacolod* is precaution against BAA 35 held:

Lastly, free speech must be protected under the safety valve theory.²⁶ This provides that “nonviolent manifestations of dissent reduce the likelihood of violence[.]”²⁷ “[A] dam about to burst... resulting in the ‘banking up of a menacing flood of sullen anger behind the walls of restriction’”²⁸ has been used to describe the effect of repressing nonviolent outlets.²⁹ In order to avoid this situation and prevent people from resorting to violence, there is a need for peaceful methods in making passionate dissent. This

²² Sec. 1, Article XIII, Constitution

²³ Sec. 1, Article XIII, Constitution

²⁴ Sec. Art. IX-C., Constitution.

²⁵ G.R. No. 205728, 21 Jan. 2015.

²⁶ See *Reyes v. Bagatsing*, 210 Phil. 457, 468 (1983).

²⁷ See *Safety Valve Closed: The Removal of Nonviolent Outlets for Dissent and the Onset of Anti-Abortion Violence*, 113 HARV. L. REV. 1210, 1222 (2000).

²⁸ *Id.*, citing Bradley C. Bobertz, *The Brandeis Gambit: The Making of America's "First Freedom," 1909–1931*, 40 WM. & MARY L. REV. 557, 611 (1999), quoting Glenn Frank, *Is Free Speech Dangerous?* 355, 359 (July 1920).

²⁹ *Id.*

includes "free expression and *political participation*"³⁰ in that they can "vote for candidates who share their views, petition their legislatures to [make or] change laws, ...distribute literature alerting other citizens of their concerns[.]"³¹ and conduct peaceful rallies and other similar acts.³² Free speech must, thus, be protected as a peaceful means of achieving one's goal, considering the possibility that repression of nonviolent dissent may spill over to violent means just to drive a point. (*italic added*)

23. The Anti-Terrorism Council recognized in its IRR that "political exclusion" is one of the "conditions conducive to the spread of terrorism."³³ And given the fragility of the region and vulnerabilities of the youth, this peaceful outlet of participating in election, is now reserved to a few elite groups with so much resources in taking one-sided advantage of this elitist and monopolistic electoral system.

24. Outcast groups excluded in this *electoral caste system* in the BAA 35, it is hoped, that they express their political belief in other forms of peaceful outlets, and not through violent means.

25. In research conducted by International Republican Institute in 2018, it found that the: "potential sources of vulnerability to violent extremism based on qualitative research reflects key factors which drive citizen dissatisfaction and disillusionment, including political and economic exclusion."³⁴

26. The research further explained:

Political alienation and disenfranchisement may increase the appeal of violent extremism to vulnerable individuals. Discussants across the focus groups expressed resentment over political exclusion and a perceived lack of representation in the policy and direction of their country. A discussant from Cotabato City noted that a "lack of attention from the government" can lead to grievances. Similarly, another FGD participant from Cotabato City described the government's lack of consultation when making decisions: "[Only] those who are in high positions participate in the decision, they don't inform those who are [affected by] the decision." These sentiments may be exploited by violent extremist organizations or other nefarious actors that offer a sense of inclusion and self-worth.³⁵ (*emphasis supplied*)

³⁰ *Id.* at 1223.

³¹ *Id.* at 1210.

³² *Id.*

³³ Rule 3.9. (a) (iii), 2020 Implementing Rules and Regulations of Republic Act No. 11479, otherwise known as the Anti-Terrorism Act of 2020.

³⁴ International Republican Institute. (2019). Violent Extremism in the Philippines: Endemic Conflict, Volatile Politics and the Struggle for Identity at p. 17. Accessed on 23 August 2023 at https://www.iri.org/wp-content/uploads/2019/03/philippines_ve_report_-_winter_2018.pdf

³⁵ *Id.*

27. Ten months after the survey, violent extremists seized Marawi. Martial law was declared thrice, and this Honorable Court was thrice petitioned against their unconstitutionality. They were all denied. The *Martial Law Cases* recognized that extremists' political violence "is one contemplated under the crime of rebellion,"³⁶ thereby justifying the factual ground for the proclamations of martial law.

F

28. Finally we come to this Honorable Court with a legal outcome that it may render:

- (a) matters pertaining to substantive law on suffrage rights and election laws shall fall under the State's regulation exercised by the legislative power of the Congress, not the Parliament. *Macalintal v. COMELEC*³⁷ held that "the right of suffrage plays in our democracy ineluctably necessitates some form of *State regulation*."
- (b) matters pertaining to rules and procedures in the enforcement and administration of election laws enacted by the State belongs to the exclusive domain of the COMELEC. The Parliament has no power to promulgate electoral rules and procedures directed to the COMELEC to enforce and administer.
- (c) matters related to the determination of proportional representation for party representatives and the apportionment of legislative district seats shall fall within the legislative authority of the Parliament.

29. On why the State, and not Parliament, must regulated the right to suffrage and other electoral allied laws is premised on solid constitutional grounds. The "franchised nature of the right of suffrage. The State may therefore regulate said right by imposing statutory disqualifications."³⁸ In *Akbayan-Youth v. COMELEC*,³⁹ it held that the "State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful election."

³⁶ *Lagman v. Pimentel III*, G.R. No. 235935, February 6, 2018; *Lagman v. Medialdea*, G.R. No. 243522, and February 19, 2019, and *Lagman v. Medialdea*, G.R. No. 23165, 4 July 2017.

³⁷ G.R. No. 263590, 27 June 2023.

³⁸ *Kabataan Party-List v. COMELEC*, G.R. No. 221318, 16 Oct. 2016.

³⁹ G.R. No. 147066 26 March 2001.

30. With the Constitution on the side of the petitioners, we may add that a State exercising the power to regulate the right to suffrage is more accountable and less prone to abuse. The Congress, composed of the Senate and the House of Representatives, where these houses can check each other's legislative initiatives, adds to the system of checks and balances, reducing its susceptibility to abuse. The President's exercise of veto power over Congress is another safeguard of accountability that prevents abuse of legislative power.

31. This stands in contrast to a Parliament, where the ruling majority can wield legislative power at will. This is what happened with BAA 35, which diminishes our right to self-determination. To mention a few issues, it postponed the election for the eight sectoral and reserved seats in the Parliament, and the people is not permitted to directly elect them, instead, assemblies will select them. Parties cannot be registered and accredited without a certification. The 10,000 members-threshold for the party for 40 seats for party representatives is prohibitive. The Bangsamoro Electoral Office (BEO) and Bangsamoro Registration and Accreditation Committee (BRAC), offices under the COMELEC, are created and controlled by the BTA by virtue of BAA 35. And so forth.

32. Secondly, we consider it inconceivable within our democratic and republican system that a highly partisan Parliament, currently the BTA, unchecked with any accountability mechanism, is conferred with powers to craft the *playbook of the election*, including its processes and procedures, constitutive of commanding the COMELEC on what laws and rules that it shall enforce and administer, of which they, the crafters, are themselves or their parties shall participate as candidates. It is not definitely a fair and honest system, and a glaring conflict of interest exists.

33. Hence, this intervention.

II NATURE OF THE PETITION

34. This petition for certiorari under Section 1 of Rule 65 of the Rules of Court seeks to declare unconstitutional RA 11593, parts of RA 11054, numerous provisions of BAA 35, and COMELEC Resolution 10680. In the event that this petition is granted, a corollary relief of prohibition under Section 2 of Rule 65 is sought in order to enjoin *in perpetuum* respondents from enforcing and administering the unconstitutional laws and resolution. The assailed acts were enacted and issued with grave abuse of discretion amounting to lack and excess of jurisdiction.

35. *Imbong v Ochoa*,⁴⁰ ruled: “the Court has unequivocally declared that certiorari, prohibition and mandamus are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify.”

36. Pending resolution of this petition, we seek the issuance of *Status Quo Ante Order* to enjoin public respondents from enforcing the assailed unconstitutional acts.

37. We seek petition for mandamus *ex abundanti ad cautelam* under Section 3, Rules 65 of the Rules of Court to enjoin COMELEC to perform its constitutional and ministerial duties to enforce and administer election laws by holding the first regular election of the 80 seats of Parliament on 12 May 2025 and other election-related activities in relation thereto.

38. This petition is directly filed with this Honorable Court, dispensing the doctrine of hierarchy of courts, because no court can conclusively resolve the issues presented.

39. Likewise, petitioners have no plain, speedy, and adequate remedy in the ordinary course of law available as the unconstitutionality of the acts petitioned are legislative in nature where no relief is provided by law except the instant petition.

V PARTIES

40. Petitioners Algamar A. Latiph, Amenodin Cali, and Arlene Napoles-Sevilla are Filipinos, Bangsamoro,⁴¹ of legal age, and registered voters in the BARMM. For purposes of serving notices and other process of this Honorable Court it can be sent [REDACTED]

41. Bangsamoro Transition Authority (BTA)⁴² is a juridical entity created by the Section 2, Article XVI of RA 11054. It is an *ad interim* government which existence is limited to the duration of the transition

⁴⁰ G.R. No. 204819, 8 April 2014.

⁴¹ Sec. 1, Article II, RA 11054 provides:

Section 1. *Bangsamoro People*. – Those who, at the advent of the Spanish colonization, were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands, whether of mixed or of full blood, shall have the right to identify themselves, their spouses and descendants, as Bangsamoro.

⁴² Under Section 2, Art. XVI, it provides:

Section 2. *Bangsamoro Transition Authority*. - There is hereby created a Bangsamoro Transition Authority which shall be the interim government in the Bangsamoro Autonomous Region during the transition period. xxx.

period⁴³ of BARMM⁴⁴ vested with right to self-governance.⁴⁵ It may be served with the issuances and processes of the Honorable Court at the Office of the Secretariat, Parliament Building, Bangsamoro Government Center, Gutierrez Avenue, Cotabato City, BARMM.

42. Respondent COMELEC is a constitutional independent body created by the Constitution⁴⁶ that exercises administrative, quasi-judicial, and quasi-legislative powers in the conduct of election, plebiscite, recall, and referendum. It may be served with issuances of this Court at Palacio del Gobernador, General Luna St., Intramuros, Manila 1002. Its statutory counsel, Office of the Solicitor General is also furnished with the copy of this petition at 134 Amorsolo Street, Legaspi Village Makati.

III JUDICIAL REVIEW

43. Judicial review requires: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.⁴⁷

44. This petition complied with the requirements of judicial review.

45. An actual controversy “involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.”⁴⁸ The requirement of an actual case or controversy is the requirement of “ripeness,” meaning that the questions raised for constitutional scrutiny are already ripe for adjudication.”⁴⁹

46. *Philconsa* ruled that “[u]ntil a Bangsamoro Basic Law [BBL] is passed by Congress, it is clear that there is no actual case or controversy that requires the Court to exercise its power of judicial

⁴³ As will be discussed later from the original transition period to expire on 30 June 2022 under Sec. 13, Art. XVI of RA 11054, it was extended to 30 June 2025 by RA 11593.

⁴⁴ Under Section 2, Article I of RA 11054, it provides:

Section 2. *Name.* - The political entity under this Organic Law shall be known as the Bangsamoro Autonomous Region in Muslim Mindanao, hereinafter referred to as the “*Bangsamoro Autonomous Region*”.

⁴⁵ Under Sec. 2, Art. IV of 11054, it provides:

Section 2. *Self-Governance.* In the exercise of its right to self-governance, the Bangsamoro Autonomous Region is free to pursue its political, economic, social, and cultural development as provided for in this Organic Law.

⁴⁶ See Sec. 1 to 8, Art. IX-A and Sec. 1 to 11, Art. X-C, Constitution.

⁴⁷ *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, 15 Aug 2000.

⁴⁸ *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, 568 SCRA 402.

⁴⁹ *Belgica v. Executive Secretary*, G.R. No. 208566, 19 Nov. 2013.

review over a co-equal branch of government.” The BBL was passed as RA 11054, thus, it is now ripe for judicial determination. The assailed enactments, as discussed below, clashed with many specific provisions of the Constitution.

48. Petitioners are registered voters in the BARMM where the unconstitutional laws will be enforced and administered. Petitioners stands to be harmed by the enforcement and implementation of the assailed laws particularly as registered voters and as “particles of popular sovereignty.”⁵⁰

49. As to petitioner Algamar A. Latiph in support legal standing, there were three occasions where his *locus standi* was recognized by the Honorable Court. In *The Province of North Cotabato vs. Republic*,⁵¹ petitioner, as one of the lawyers of the intervenor Muslim Legal Assistance Foundation Inc., in defense of the constitutionality of MOA-AD. In *Kida v. Senate*,⁵² a petition on the constitutionality of RA 10153,⁵³ in defense of synchronized election law in the ARMM, petitioner was also permitted to intervene with legal standing and orally argued the case. And in *Calleja v. Executive Secretary*,⁵⁴ where petitioner was among the 37 petitioners, petitioner’s *locus standi* was permitted, and also to argue orally the case in the name of liberty and love. The Honorable Supreme Court also granted herein petitioner to intervene, as respondent-intervenor, in the *Sulu Petition*, in defense of the constitutionality of RA 11054.

50. As for petitioner Amenodin Cali. He is a founder and convenor *Alyansa ng Progrisibong Partido ng Mamamayan* (APPaM) which is a regional party based in BARMM devoted for the institutionalization of the regional electoral system in the region through the promotion of genuinely principled political party system, free and fair conduct of elections and civic education to elect God-fearing, patriotic and democratic leaders standing for the common good and pursuing for good governance. It is dedicated for peace as the only way towards

⁵⁰ See *Pimentel v. Comelec*, No. L-68113, 31 Oct. 1984.

⁵¹ G.R. No. 183591, 14 October 2008. And we quote the recognition of standing by the Honorable: “Muslim Legal Assistance Foundation Inc., a non-government organization of Muslim lawyers, allege that they stand to be benefited or prejudiced, as the case may be, in the resolution of the petitions concerning the MOA-AD, and prays for the denial of the petitions on the grounds therein stated. Such legal interest suffices to clothe them with standing.”

⁵² GR No. 196271, 18 Oct. 2011.

⁵³ Entitled “An Act Providing For The Synchronization Of The Elections In The Autonomous Region In Muslim Mindanao (ARMM) With The National And Local Elections, And For Other Purposes. Approved on 30 June 2011.

⁵⁴ G.R. No. 252578, 07 Dec. 2021. This Honorable Court declared:

“Regardless of the type of non-traditional suitor that they allege to be - legislators, concerned citizens, or taxpayers - all petitioners cry foul over the law’s grave and imminent threat to their constitutional rights. They are asking this Court to recognize that the ATA infringes on their rights to due process, free speech, expression, association, and academic freedom, to name a few. These petitions involve matters of transcendental importance and constitutional questions which must be addressed by this Court immediately.”

national unity and in securing the people in building inclusive communities where everyone is in solidarity with one another in uplifting their life through socially responsible market economy, highly innovative technological advancements, and equitable opportunities for all in the development and conservation of the region's natural resources.

51. Petitioner Arlene Napoles-Sevilla is an Executive Director Assembly of Masses and Basic Sectors for Unity and Harmony Initiatives for Normalization and Advancement for Human Security (AMBUH-INAH). It is a civil society organization with a primary objective of fostering the growth of strong, empowered, and safe communities, as well as ensuring that future generations can reap the benefits of peace. AMBUH-INAH's work encompasses several key activities, included: facilitating the provision of essential government services, such as education, healthcare, and livelihood opportunities; Establishing connections and facilitating the delivery of services and initiatives from Local Government Units (LGUs), Non-Governmental Organizations (NGOs), and other relevant organizations to the intended and deserving beneficiaries; and actively promoting and sustaining the achievements made in the realm of peace through collaborative efforts and cooperation among multiple stakeholders, among other important initiatives.

52. Here, the injury suffered is "legally and judicially cognizable" that consists of "invasion of a legally protected interest"⁵⁵ conferred directly by the Constitution. It is petitioners' right to suffrage and other related rights related to elections which are legally demandable enforceable right for the RA 11593, RA 11054, BAA 35, and COMELEC Resolution 10680 must be compliant with the Constitution. There is, therefore, direct and actual causal connection between the assailed laws and petitioners' constitutional rights.

53. This petition was filed at the earliest possible time because it was raised at the first instance directly before this Honorable Court.

54. *Calleja* pronounced:

Since the present constitutional challenge against the statute was *directly filed with this Court*, the third requisite of judicial review of "earliest opportunity" is complied with because the issue of constitutionality is raised at the first instance. (*italic added*)

55. *Lis mota* means that this Honorable Court will not pass upon a question of unconstitutionality of law unless it can be shown that the case cannot be legally resolved unless the constitutional question

⁵⁵ See *Raines v. Byrd*, 521 U.S. 811, 819 (1997).

raised is determined.⁵⁶ The constitutional questions cannot be avoided in any other manner in resolving the issues herein presented because the assailed laws cannot co-exist with the Constitution.

IV STRICT SCRUTINY

56. In *Samahan ng mga Progresibong Kabataan v. Quezon City*,⁵⁷ the Honorable Court declared that strict scrutiny test applies when a classification “interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution.”

57. In *Kramer v. Union Free Sch. Dist. No. 15*,⁵⁸ the US Supreme Court ruled:

“[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote *must be carefully and meticulously scrutinized*.” This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. (*italic added*)

58. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.⁵⁹ The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of government to prove that their actions do not infringe upon petitioners' constitutional rights.⁶⁰

59. The assailed RA 11593, RA 11054, BAA 35, and COMELEC Resolution No. 10680 do not enjoy constitutionality presumption under the strict scrutiny test inasmuch as the petition present questions of unconstitutionality that particularly pertain to petitioners' fundamental right to suffrage, right to vote, and related constitutional issues on elections.

60. Hence, the application of strict scrutiny.

⁵⁶ *People v. Vera*, 65 Phil. 56 (1938).

⁵⁷ 815 Phil. 1067(2017).

⁵⁸ 395 U.S. 621 (1969) citations omitted.

⁵⁹ *Supra* at note 38 citations omitted.

⁶⁰ *Newsounds Broadcasting Network Inc v. Dy*, G.R. Nos. 170270 and 179411, 2 April 2009.

V FACTS

1

61. RA 11054 was ratified by an overwhelming 1,540,017 “Yes” votes over 98,750 “No” votes declared by the COMELEC on 25 January 2010.⁶¹ As mandated by RA 11054, the BTA during the transition period is required to: (1) legislate the seven priority legislations,⁶² (2) determine by law parliamentary districts,⁶³ (3) organize the bureaucracy of the Bangsamoro Government,⁶⁴ (4) administer the full transfer of powers and properties of the ARMM to the BARMM,⁶⁵ (5) wind-up the personnel of the ARMM,⁶⁶ (6) transition from the ARMM to the Bangsamoro Government,⁶⁷ and (7) such other matters that may be necessary for the protection and promotion of the general welfare of the constituents of the BARMM.⁶⁸

62. On 22 February 2019, the 80 Members of the BTA including its Chief Minister were sworn into office. It later proceeded with its Inaugural Session on 29 March 2019.

63. RA 11054 scheduled the first regular election of the Parliament on 9 May 2022⁶⁹ while the transition period of the BTA shall end on 30 June 2025 it is also the date of its dissolution. Unfortunately, RA 11593 was signed into law on 28 October 2021. It *unilaterally*,⁷⁰ without being ratified in a plebiscite as required by Section 18, Article 20 of the Constitution, postponed the election of Parliament to 12 May 2025 and extended the life of the BTA to 30 June 2025.

64. This year, the BTA enacted BAA 35, it was signed into law on 8 March 2023 by the Chief Minister. With the unconstitutionality of most of its provisions *Pansar Petition* was filed, we intervened, with leave, as petitioners-intervenor.

⁶¹ Ranada, Pia, Comelec: *Bangsamoro Organic Law ‘deemed ratified,’* Rappler (online website) posted 25 Jan. 2019 at <https://www.rappler.com/nation/221899-plebiscite-results-armm-votes-ratify-bangsamoro-organic-law/> (accessed on 20 July 2023).

⁶² Under Sec. 4(a), Art. XVI, RA 11054 the seven priority legislations are: Bangsamoro Administrative Code, Bangsamoro Revenue Code, Bangsamoro Electoral Code, Bangsamoro Local Government Code, Bangsamoro Educational Code, Bangsamoro Civil Service Code, and Legislation that recognizes, protects, promotes, and preserves the rights of indigenous peoples.

⁶³ Under Sec. 4(b), Art. XVI, RA 11054.

⁶⁴ Under Sec. 4(c), *id.*

⁶⁵ Under Sec. 4(d), *id.*

⁶⁶ Under Sec. 4(e), *id.*

⁶⁷ Under Sec. 4(f), *id.*

⁶⁸ Under Sec. 4(g),

⁶⁹ Sec. 13, Art. XVI, RA 11054.

⁷⁰ We used the term unilateral because RA 11054 was ratified by the Bangsamoro in a plebiscite, and, therefore, the Congress prevented people from exercising their sovereign power to elect the Parliament on 9 May 2022, RA 11054 requires the consent to make the law effective in a plebiscite.

65. Hence, this Petition.

VI OMNIBUS ISSUES

A

66. We shall not re-argue the *Pansar Petition*. And while it prays that “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,” we do not seek to nullify the entirety of BAA 35.

67. We have raised these omnibus issues against BAA 35 because many of its provisions violated the Constitution. The purpose of these omnibus issues is to avoid lengthy and detailed arguments for each provision, clause, and phrase in BAA 35. We have already presented specific issues fundamental to this petition below. Therefore, we will focus our discussion on provisions in BAA 35 that are patently unconstitutional on their face which do not need so much discussion.

68. Article VI of BAA 35, consists of Sections 1 to 10, regulates the right to suffrage, qualification, disqualifications, registration, and their procedures while Article VII of BAA 35 under the caption “ELECTION ADMINISTRATION” governs, among others, eligibility of candidate, filing of certificate of candidacy and other pre-election activities, election day, casting of votes counting of votes, canvass and proclamation, and after election.

69. These articles including its sections are contrary to Section 1 and 2, Article V of the Constitution because it is the Congress not the BTA which has the power to regulate the right to suffrage under Section 1, Article V of the Constitution. Thus, *Macalintal v. COMELEC*⁷¹ held that “the right of suffrage plays in our democracy ineluctably necessitates some form of *State regulation* to ensure the free, fair, credible, and honest exercise of this right and the safeguarding of the will of the people.”

70. Furthermore, the articles in question have amended numerous provisions of BP 881 and other election laws. If these amendments are not nullified, it will result in legal pluralism within the BARMM. There would be a duality of norms governing substantive and procedural election laws: on one hand, BP 881 and other election laws, on the other hand, BAA 35. This situation raises the issue of which

⁷¹ G.R. No. 263590, 27 June 2023.

law the electorate in BARMM should adhere to. On the actual election day, when possessing a ballot to cast, two laws apply to it.

71. Article VIII of BAA 35 defined and penalized election offenses despite the BTA has no power to legislate them under Section 4, Article X of RA 11054 which provides: “The Parliament has the power to enact laws governing... criminal jurisdiction on minor offenses punishable by *arresto menor* or *ta'zir* which must be equivalent to *arresto menor* or fines commensurate to the offense.”

72. Thus, it is clear from the foregoing that the BTA or the Parliament has no power to define and penalize crime except offenses punishable by *arresto menor* related to Shari’ah law. Thus, election offenses defined and penalized under Article VIII of BAA 35 has no legal basis under RA 11054.

VII SPECIFIC ISSUES

A

Sovereign Power, Postponement of Elections, and Holdover Capacity

1. Whether or not RA 11593 is unconstitutional for violation of: (1) Section 1, Article II; (2) Section 2 and Section 18, 1st par., Article X; (3) Section 18, 2nd par., Article X; and (4) Section 8, Article X of Constitution in relation to synchronized election.
2. Whether or not Section 17 (3rd par.), Article IV of BAA 35 is unconstitutional for violation of: (1) Section 1, Article II; (2) Section 18, 1st par., Article X; (3) Section 8, Article X in relation to synchronized election; and (4) Section 20, Article X of the Constitution.
3. Whether or not Section 17 (1st and 2nd par.), Article IV in relation to Section 1, Article X of BAA 35 are unconstitutional for violation of: Section 1, Article II; (2) Section 18, Article X; (3) Section 20, Article X of the Constitution.
4. Whether or not Section 2 of RA 11593 and Section 12, Article VII of RA 11054 are unconstitutional for violation of Section 8, Article X of the Constitution.

B
Registration and Accreditation of Parties

5. Whether or not the Section 7(a), 2nd par., Article VII of RA 11054 and Section 9 Article VII of RA 11054's clause which reads "only regional political parties duly accredited by the Bangsamoro Electoral Office" and their implementing resolution issued by the COMELEC in Resolution No. 10680 promulgated on 7 October 2020 and by the BTA under Article II, Article III, and Sections 6, 7, and 8, Article IV of BAA 35 are unconstitutional for violation of: (1) Section 2(5), Article IX-C; (2) Section 1, Article XI-A; and (3) Section 1, Article VI of the Constitution.
6. Whether or not "through the Bangsamoro Electoral Office" a phrase in Section 13, Art. XVI of RA 11054 is unconstitutional for violation of Sections 1 and 6 Article X-A of the Constitution.
7. Whether or not Section 1 in relation to Section 13, Article III of BAA 35 are unconstitutional for violation of: (1) Section 23, Article II; (2) Section 26, Article II; (3) Section 1, Article III; (4) Section 2(5), Article IX-C; (5) Section 6, Article IX-C; (6) Section 8, Article III; (7) Section 1, Article XIII; (8) Section 15, Article XIII; and, (9) Section 16, Article XIII of the Constitution.
8. Whether or not Section 18, Article IV of BAA 35 is unconstitutional for violation of: (1) Section 6, Article IX-A; (2) Section 6, Article IX-A; (3) Section 2(5), Article IX-C of the Constitution.

D
Writ Mandamus

9. Whether or not the COMELEC can be compelled by writs of mandamus: (1) to prepare for the registration and accreditation of regional political parties, organizations, or coalitions in the BARMM; (2) to hold and conduct the election for the 80 elective representative seats in the Parliament on 12 May 2025 synchronized national, regional, and local elections; and, (3) in the absence of a law enacted by the BTA apportioning the 32 districting representatives in the Parliament, to issue resolution apportioning the 32 districting representatives *pro hac vice* only for purposes of 12 May 2025 synchronized national, regional, and local elections.

VIII ARGUMENTS

A

1. Whether or not RA 11593 is unconstitutional for violation of: (1) Section 1, Article II; (2) Section 2 and Section 18, 1st par., Article X; (3) Section 18, 2nd par., Article X; and (4) Section 8, Article X of Constitution in relation to synchronized election.

1

73. Before we argue this issue, we shall discuss the compelling reason in questioning RA 11593.

74. *First*, HB 4220 and SB 1874 were filed in both houses of the Congress. If HB 4220 is enacted, the first regular election of the Parliament election will be postponed to 12 May 2031 and in the case of SB 1874, it will be on 8 May 2028.

75. There has been no election in the BARMM for so long already. Since 2016, it was successively postponed twice on 13 May 2019 and 9 May 2022 or for a total of two-term of the three-year constitutional term of office. The BARMM and ARMM, combined, its elections were postponed nine times that resulted to 11 years and 3 months, a very long period, where the elective positions were occupied by individuals who were not elected by the people to serve them.

76. *Second*, this petition to nullify RA 11593, may appear to be an afterthought, but it is a pre-emptive relief to enjoin the Congress to put HB 4220 and SB 1874 to an end by virtue of a writ, as herein prayed, by this Honorable Court to once-and-for-all prevent it to permanently refrain from habitually defeating the people's sovereign power.

77. *Third*, the current BTA, we do not seek to nullify its extended transition period of until 30 June 2025, or to vacate their appointive positions in the BTA, or to call for a special election. None of these relief sought from this Court. The BTA can continue despite the unconstitutionality of the extended transition period under RA 11593. *Macalintal v. COMELEC*⁷² applied the doctrine of operative fact, holding that regard to Barangay and Sangguniang Kabataan elections which "recognizes the possibility that not all the effects and

⁷² G.R. No. 263590, 27 June 2023.

consequences of a void act prior to judicial declaration of invalidity may be obliterated or completely ignored.” It is applicable here.

78. But even if we ask these reliefs, it is not constitutionally justified. Because regional election has a fixed term of three-years, and to dissolve the BTA and then to call for an immediate special election, the Parliament’s term shall end on the noon of 30 June 2025 thus making the term of office short of three years mandated by Section 8, Article X of the Constitution. It is not constitutionally permitted. This Court’s pronouncement in *Kida v. Senate*⁷³ that “Congress cannot call for special elections and shorten the terms of elective local officials for less than three years.” Further, election in the Parliament can only be scheduled synchronized with local and national elections which is on 12 May 2025 as held in *Kida and Osmeña v. COMELEC*.⁷⁴

2

79. Now, we turn to the curious stories of the autonomous region and the addiction to electoral postponements that afflicts our democracy in this part of the country.

ARMM (RA 6734)

80. On 1 August 1989, Congress enacted RA 6734,⁷⁵ the first Organic Act that implemented Sections 15 to 21, Article X of the Constitution. It established ARMM’s basic structure of government structure but failed to fix the date of election. Because of these omissions, RA 7647⁷⁶ was legislated and signed into law on 5 March 1993 providing, among others, that date of election.⁷⁷ Thus, the first election of the ARMM was held on 12 February 1990, Zacaria Candao was Regional Governor (RG). On the next election on 25 March 1993, Lininding Pangandaman was elected as RG.

⁷³ G.R. No. 196271, 28 Feb. 28, 2012

⁷⁴ 199 SCRA 750.

⁷⁵ Section 7, Article XIX of RA No. 6734 states:

"The first regular elections of the Regional Governor, Vice-Governor and Members of the Regional Assembly under this Organic Act shall be held not earlier than sixty (60) days or later than ninety (90) days after the ratification of this Act. The Commission on Elections shall promulgate such rules and regulations as may be necessary for the conduct of said election."

⁷⁶ Entitled "An Act Providing for the Date of Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao and for other purposes," which fixed the date of the ARMM elections on the second Monday after the Muslim month of Ramadhan.

⁷⁷ Sec. 1, RA 7647. It provides that: "regular elections for regional governor, regional vice-governor and members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao, shall be held on the second Monday after the Muslim month of Ramadhan."

81. On 29 December 1995, RA 8176⁷⁸ postponed the scheduled election on 25 March 1996, reset it to 9 September 1996, and provided holdover capacity for the incumbents⁷⁹ thereby adding 6 months extension from their original term of office.⁸⁰ On the election on 9 September 1996, Nur Misuari was elected as RG.

82. Five days before the scheduled election on 13 September 1999, RA 8753⁸¹ postponed it for one year and reset it to 9 September 2000.⁸² The law, likewise, gave the incumbents an additional one-year holdover capacity.⁸³

83. Two weeks before the election, RA 8953⁸⁴ was approved on 1 September 2000 postponing it to 14 May 2001. RA 8953 retained the provision on holdover of the incumbents.⁸⁵ This was, again, followed five months thereafter by the signing into law on 28 February 2001 of RA 9012⁸⁶ postponing the election to 10 September 2001.⁸⁷ The holdover capacity⁸⁸ remained in the law that gave incumbent officials four months extension of their term of office.

Revised ARMM (RA 9054)

84. The original ARMM charter, RA 6734, was revised by RA 9054,⁸⁹ it lapsed into law on 31 March 2001⁹⁰ and thereafter ratified in a plebiscite. But on 22 July 2001, RA 9140⁹¹ was signed into law

⁷⁸ Entitled "An Act Changing the Date of Elections for the Elective Officials of the Autonomous Region for Muslim Mindanao, Amending for the Purpose Section One of Republic Act Numbered Seventy-Six Hundred and Forty-Seven Entitled 'An Act Providing for the Date of the Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly for the Autonomous Region in Muslim Mindanao and for other purposes', which changed the date of the ARMM elections to the second Monday of March, 1993 and every three (3) years thereafter.

⁷⁹ Sec. 1, RA 8176.

⁸⁰ Sec. 1, RA 8176.

⁸¹ Entitled "An Act Resetting the Regular Elections for the Elective Officials of the Autonomous Region in Muslim Mindanao Provided for Under Republic Act No. 8746 and for other purposes", which reset the regional elections, scheduled on September 13, 1999, to the second Monday of September 2000.

⁸² Sec. 1, RA 8753.

⁸³ Sec. 1, RA 8753.

⁸⁴ Sec. 1, RA 8753.

⁸⁵ Sec. 4, RA 8953.

⁸⁶ Entitled "An Act Resetting the Regular Elections for Elective Officials of the Autonomous Region in Muslim Mindanao to the Second Monday of September 2001, Amending for the Purpose Republic Act No. 8953", which reset the May 2001 elections in ARMM to September 2001.

⁸⁷ Sec. 2, RA 9012.

⁸⁸ Sec. 4, RA 8953.

⁸⁹ Entitled An Act To Strengthen And Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For The Purpose Republic Act No. 6734, Entitled 'An Act Providing For The Autonomous Region In Muslim Mindanao' As Amended.

⁹⁰ An Act To Strengthen And Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For The Purpose Republic Act No. 6734, Entitled 'An Act Providing For The Autonomous Region In Muslim Mindanao' As Amended.

⁹¹ Entitled "An Act Fixing the Date of the Plebiscite for the Approval of the Amendments to Republic Act No. 6734 and setting the date of the regular elections for elective officials of the Autonomous Region in Muslim Mindanao on the Last Monday of November 2001, Amending for the Purpose Republic Act No. 9054, Entitled "An Act to Strengthen and Expand the Organic Act

that postponed the ARMM's election to 10 September 2001 or merely eleven weeks postponement.⁹² Again incumbents continued to serve under holdover for 11 weeks. The election finally took place, and Parouk Hussien won as Regional Governor

85. Less than 2 months before the regular election on 29 November 2004, RA 9333⁹³ was approved on 21 September 2004 postponing said election to 8 August 2005.⁹⁴ The incumbents not surprisingly benefited from holdover capacity for 11 months. The Regional Governor that won on 8 August 2005 was Zaldy Ampatuan.

86. Because of the clamor for institutionalizing synchronized election and to prevent postponements of elections and holdover capacity, RA 10153 was enacted.⁹⁵ It was questioned in *Kida* but its constitutionality was affirmed.

87. Except the synchronized elections on 13 May 2013 and 9 May 2016, since its birth the elections in the autonomous government were held on different months February,⁹⁶ March,⁹⁷ August,⁹⁸ September,⁹⁹ and November¹⁰⁰ in gross disregard of synchronized elections mandated by the Constitution.

BARMM (RA 11054)

88. After due deliberation by Congress, RA 11054 created BARMM as a political entity thereby replacing ARMM. Under Section 13, Article XVI, the "first regular election for the Bangsamoro Government under this Organic Law shall be held and synchronized with the 2022 national elections."

89. One of the features of RA 11054 is the creation of BTA that shall exercise the full powers and functions of Bangsamoro Government during the transition period from the time of its

for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled 'An Act Providing for the Autonomous Region in Muslim Mindanao,' as amended," and For Other Purposes."

⁹² Sec. 2, RA 9140.

⁹³ Entitled "An Act Fixing the Date of Regular Elections for Elective Officials of the Autonomous Region in Muslim Mindanao Pursuant to Republic Act no. 9054, Entitled "An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, Entitled 'An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao', as Amended," which rescheduled the ARMM regional elections scheduled for the last Monday of November 2004 to "the second Monday of August 2005."

⁹⁴ Sec. 1, RA 9333.

⁹⁵ An Act to Providing for the Synchronization of the Elections in the Autonomous region in Muslim Mindanao (ARMM) with the National and Local Elections and for other purposes
Date of Promulgation:

⁹⁶ 12 February 1990.

⁹⁷ 25 March 1993.

⁹⁸ 8 August 2005.

⁹⁹ 9 September 1996.

¹⁰⁰ 26 November 2001.

ratification on 21 January 2019 to 30 June 2022.¹⁰¹ But even before the expiration of the transition period, the BTA on 17 November 2020, adopted Resolution No. 93¹⁰² urging Congress to extend the transition period of the BTA to 30 June 2025.

90. Congress, because of the appeal of BTA, RA 11593 was enacted and signed into law on 28 October 2021 it postponed its election from 9 May 2022 to 12 May 2025. It took effect even without people’s ratification in a plebiscite.

3

91. The table summarized the addiction to electoral postponements:

Laws	Approval/ Ratified	Number of months were elective offices in the ARMM/BARMM were occupied by persons not elected by the Bangsamoro for the holdover period served.
1) RA 6734	1 Aug 1989	N/A
2) RA 7647	5 Mar 1993	N/A
3) RA 8176	29 Dec 1995	8 months
4) RA 8753	8 Sep 1999	12 months
5) RA 8953	8 Sep 1999	8 months
6) RA 9012	28 Feb 2001	4 months
7) RA 9140	22 Jul 2001	N/A
8) RA 9054	31 Mar 2001	2 months
9) RA 9333	29 Nov 2004	11 months
10) RA 10153	30 Jun 2011	18 months officer-in-charge
11) RA 11054	21 Jan 2019	39 months transition period
12) RA 11593	28 Oct 2021	36 months extended transition period
Total		135 months or 11 years and 3 months

92. The enumerated list of postponements is yet to come to an end as there is a forthcoming postponement of elections lurking in the halls of the Congress, HB 4220 and SB 1874, respectively, pending in the House of Representatives and Senate, seeking to cancel the Parliament’s election for six and three years, respectively. The pendency of these bills is a manifestation of an ominous horizon ahead of the Bangsamoro: the possibility of another election postponement.

93. With the foregoing context in mind, we now argue the constitutionality of Section 1 of RA 11593 which provides:

Section 1. Section 13, Article XVI of Republic Act No. 11054 xxx is hereby amended to read as follows:

Section 13. First Regular Election. - The first regular election for the Bangsamoro Government

¹⁰¹ See Sec. 13, Art. VI, RA 11054.
¹⁰² Entitled: Resolution Urging The House Of Representatives And The Senate Of The Philippines To Extend The BARMM Transition Period To June 30, 2025 To Afford The Bangsamoro Transition Authority Sufficient Period To Fulfill Its Mandate. Accessed on 13 August 2023 at <https://officialgazette.bangsamoro.gov.ph/2022/07/14/resolution-no-93-bta>

under this Organic Law shall be held and synchronized with the 2025 national elections. xxx.

94. *Sabio v. Gordon*,¹⁰³ held: “A statute may be declared unconstitutional because it is *not within the legislative power to enact*; or it creates or establishes methods or forms that *infringe constitutional principles*; or its purpose or effect violates the Constitution or its basic principles.”

95. We argue that RA 11593 is unconstitutional because it violated: (1) Section 1, Article II; (2) Section, 2, Article X in relation to Section 18, 1st par., Art X; (3) Section 18, 2nd par., Art X; and, (4) Section 8, Article X of the Constitution.

1(1) Whether or not Section 1 of RA 11593 is unconstitutional for violation of Section 1, Article II of the Constitution.

1

96. Congress exercised its legislative power under Section 1, Article VI of the Constitution when it enacted RA 11593. We argued that it is unconstitutional because it violated Section 1, Article II of the Constitution which provides:

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

97. Its violation pertains to its repudiation of the sovereign power of the people where the people collectively were all denied the exercise of their sovereign power on 9 May 2022 synchronized elections to elect their Parliament.

98. While “sovereignty power” cannot be found in RA 11593 in its text, its applicability and result have ousted the people of the BARMM to exercise their sovereign power. Its Section 1 is cloaked in sheep’s clothing¹⁰⁴ making it appear that the amendment of Section 13, XVI of RA 11054 is innocuous that it is a mere change in a single digit number from “2022” to “2025.” But this single digit number denied the more

¹⁰³ *Sabio v. Gordon*, G.R. No. 174340, 17 October 2006, 504 SCRA 704.

¹⁰⁴ Paraphrasing Justice Antonin Scalia dissent in *Morrison v. Olson* 487 U.S. 654 (1988) on his biblical allusion to a wolf in sheep’s clothing, he wrote: “Frequently an issue of this sort will come before the Court clad, so to speak, in sheep’s clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf.”

than 2 million registered votes to exercise their sovereign power on 9 May 2022.

99. Its applicability affected a one-term cycle of a term of office—under Section 8, Article X of the Constitution—that ultimately resulted to making the Parliament, an elective office, being served by individuals not elected by the sovereign people.

2

100. In jurisprudence suffrage is referred to as “the mean (*sic*) through which then people exercise that sovereignty”¹⁰⁵ and an “*expression* of their sovereign will.”¹⁰⁶ We underscore that suffrage is the means through which sovereign power is expressed and realized. We have to make this distinction because suffrage is subject to Congress’ legislative powers, whereas sovereign power is not.

101. We argue Congress’ legislative power cannot regulate sovereign power of the people because people is the source of its authority. Thus, we assail RA 11593 is unconstitutional because: (1) Congress’ legislative power cannot prevail over sovereign power;¹⁰⁷ (2) representation in the Parliament is decided only by election, not legislation.

102. In *Yick Wo v. Hopkins*¹⁰⁸ declared:

Sovereignty itself is, of course, not subject to law, for it is the author and source of law... sovereignty itself remains with the people, by whom and for whom all government exists and acts.
(*italic added*)

103. Legislative power cannot supersede the sovereign power of the people as the Congress’ legislative power is sourced from people’s sovereignty. The United States Supreme Court in *District of Columbia v. Heller*,¹⁰⁹ discussed “the people” in the text of Constitution, thus:

Three provisions of the Constitution refer to “the people” in a context other than “rights”—the famous preamble (“We the

¹⁰⁵ *Monsale v. Nico*, G.R. No. L-2539, 28 May 1949 (Per Perfecto, *J.*, Dissenting Opinion)

¹⁰⁶ *Lacson v. Posadas*, A.M. No. 74-MJ July 30, 1976

¹⁰⁷ Before we proceed to our argument, we examined jurisprudence that when it comes to choosing the representatives to the government, regardless of the elected positions involved, “sovereign power” (at times, interchangeably used with “sovereign will” and “sovereign capacity”) is the term used, but if it pertains to amendment or revision of the Constitution or proposal thereto, either at the instant of the people or the Congress, it is an exercise of “constituent power.” *Garcia v. COMELEC*, G.R. No. 111230 September 30, 1994, *Peralta v. COMELEC*, G.R. No. L-47771 March 11, 1978, and *Sanidad v. COMELEC*, G.R. No. L-44640, *Santiago v. COMELEC*, G.R. No. 127325 March 19, 1997)

¹⁰⁸ *Yick Wo v. Hopkins*, 118 U.S. 356.

¹⁰⁹ 554 U.S. 570 (2008).

people”), §2 of Article I (providing that “the people” will choose members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with “the States” or “the people”). Those provisions arguably refer to “the people” acting collectively—but they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a “right” attributed to “the people” refer to anything other than an individual right.

104. In a long line of cases, the Honorable Court characterized “sovereignty” as power, not a right, qualified by multitude of superlatives to underscore its supremacy over all powers that exist in the structure of our government.

105. Jurisprudence described sovereignty as the “highest power exists,”¹¹⁰ “great reservoir of power,”¹¹¹ “unlimited power,”¹¹² “illimitable,”¹¹³ “source of all political power,”¹¹⁴ “original power of the people,”¹¹⁵ “absolute power,”¹¹⁶ and “supreme, absolute, and uncontrollable,”¹¹⁷ and so forth.

106. In the eloquent dissent of Chief Justice Reynato Puno, in *Lambino v. COMELEC*,¹¹⁸ he discussed sovereignty in this wise:

Legal sovereignty, he explained, is “the possession of unlimited power to make laws. Its possessor is the legal sovereign. It implies the absence of any other party endowed with legally superior powers and privileges. It is not subject to law “for it is the author and source of law.” Legal sovereignty is thus the equivalent of legal omnipotence.”¹¹⁹

¹¹⁰ The people “according to the Constitution [is] the highest power exists.” (*Sanidad v. COMELEC*, G.R. No. L-44640, 12 Oct. 1976 *citing* Orfield, Amending the Federal Constitution, 140-143.)

¹¹¹ As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the *great reservoir of power* must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. (*Moya v. Del Fierro*, 69 Phil. 204.)

¹¹² *Lambino v. COMELEC*, G.R. No. 174153, 25 Oct. 2006 (Per Puno, *J.*, Dissenting Opinion)

¹¹³ It is axiomatic that sovereignty is *illimitable*. The representatives cannot dictate to the sovereign people. They may guide them; but they cannot supplant their judgment.” *Sanidad v. COMELEC*, G.R. No. L-44640, 12 Oct. 1976, (Makasias, *J.*, *Concurring and Dissenting Opinion*)

¹¹⁴ *Supra* at note 112.

¹¹⁵ Considering that derivative legislative power is merely delegated by the sovereign people to its elected representatives, it is deemed subordinate to the *original power of the people*. (*Garcia v. Commission on Elections*, 307 Phil. 296, 303 (1994).)

¹¹⁶ The principles of our government are widely different in this particular. Here the sovereign and *absolute power* resides in the people; and the legislature can only exercise what is delegated to them according to the constitution. (*People v. Vera*, G.R. No. L-45685, 16 Nov. 1937 *citing* *Holden vs. James* ([1814], 11 Mass., 396; 6 Am. Dec., 174, 177, 178).)

¹¹⁷ To be sure, the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions.¹¹⁷ There necessarily exists, in every government, a power from which there is no appeal, and which, for that reason, may be termed *supreme, absolute, and uncontrollable*.¹¹⁷ (*Supra* at note 112. *citing* G. Wood, *The Creation of the American Republic*, 530.)

¹¹⁸ G.R. No. 174153, 25 Oct. 2006 (*Puno J.*, *Dissenting Opinion*).

¹¹⁹ Vicente G. Sinco, *Philippine Political Law*, 2nd ed., p. 46. at 20-21.

To be sure, sovereignty or popular sovereignty, emphasizes the supremacy of the people's will over the state which they themselves have created. The state is created by and subject to the will of the people, who are the source of all political power. xxx.¹²⁰

107. The legislative power of the Congress is derivative because it is “merely delegated by the sovereign people to its elected representatives, it is deemed subordinate to the original power of the people.”¹²¹ The people are sovereign, in power they are supreme, and the legislature acts by delegated and circumscribed authority; circumscribed as to its objects, circumscribed as to its extent over these objects.”¹²²

108. *Mandanas v. Ochoa*¹²³ pronounced that “[a]lthough the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution.”¹²⁴

109. Lawmaking, Section 1 of Article VI of the Constitution provides that “legislative power shall be vested in the Congress... except to the extent reserved to the people by the provision on initiative and referendum.” Apart from initiative¹²⁵ and referendum,”¹²⁶ there are *questions* that remained to be exercised by the people. Those “questions which, under the Constitution, are *to be decided by the people in their sovereign capacity*,” as declared in *Frivaldo v. COMELEC*,¹²⁷ are not subject to legislative power even this Honorable Court refrained from intruding into “those *questions* which, under the Constitution, are to be decided by the people in their sovereign capacity.”¹²⁸

110. The “questions” that are reserved for the people upon which the Congress cannot interfere is found in the 1987 Constitutions as we, the People, “retained a republican system of government, but emphasized and created more channels for the exercise of the sovereignty of the people through [election],¹²⁹ recall, initiative,

¹²⁰ 257 SCRA 727.

¹²¹ *Garcia v. Commission on Elections*, 307 Phil. 296, 303 (1994).

¹²² *Lopez v. Reyes*, G.R. No. L-34361, 5 Nov. 1930 citing *State vs. Parkhurst*, 9 N. J. Law [4 Halst.], 427 443. [Villamor and Ostrand, *JJ.*, concurring and dissenting]

¹²³ *Mandanas v. Ochoa*, G.R. No. 199802, 10 April 2019.

¹²⁴ *Id.*

¹²⁵ Initiative has been described as an instrument of direct democracy whereby the citizens directly propose and legislate laws. (*Sanidad v. COMELEC*, G.R. No. L-44640, 12 Oct. 1976)

¹²⁶ “referendum” is merely consultative in character. It is simply a means of assessing public reaction to the given issues submitted to the people for their consideration. (*Sanidad v. COMELEC*, G.R. No. L-44640, 12 Oct. 1976.)

¹²⁷ *Tañada v. Cuenco* G.R. No. L-10520, 28 Feb. 1957.

¹²⁸ *Id.*

¹²⁹ In the Constitution, it refers to “recall, initiative, and referendum” as “mechanism.” (Sec. 3, Art. X, Constitution) Thus, election and plebiscite being of the same genus, can be included of the same class as mechanism of the exercise of right to suffrage.

referendum and plebiscite.”¹³⁰ These *channels* expressed in the Constitution, *viz.*:

(1) Elections;

- (a) The President and the Vice-President “shall be elected by direct vote of the people” under Section 4, Article VII;
- (b) Senator shall be “elected at large by the qualified voters of the Philippines” under Section 2, Article VI;
- (c) Members of the House of Representatives “shall be elected” Section 7, Article VI;
- (d) “executive department and legislative assembly” in the autonomous region shall “be elective and representative of the constituent political units” under Section 18, Article X; and
- (e) Local government officials “term of office of elective local officials, except barangay officials... shall be three years” under Section 8, Article X;

(2) Recall under Section 3, Article X;

(3) Initiatives;

- (a) to “propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body law” Section 32, Article VII of the Constitution;
- (b) to directly propose amendments to the Constitution under Section 2, Article XVII;

(4) Referendum Section 32, Article VII of the Constitution;

(5) Plebiscites;

- (a) on the proposal to revise or amend the Constitution in Section 1 to Section 4, Art XVII;
- (b) in the creation, division, merger, abolition, or substantial alteration of its boundaries of local government units under Section 10, Article X;
- (c) in the creation special metropolitan political subdivisions, under Section 11, Article X; and
- (d) in the creation, revision, or amendment of an organic act of the autonomous region under Section 18, Article X

¹³⁰ *Republic v Sandiganbayan*, G.R. No. 104768, 21 July 2003 citing Article X, Sec. 3 and Article XII, Sec. 4 of the 1987 Constitution.

111. Under the Constitution, the election of the following officials is directly reserved to be chosen by the people in the exercise of their sovereign power, namely: President,¹³¹ Vice-President,¹³² Senator,¹³³ House of Representatives,¹³⁴ Members of the Parliament,¹³⁵ and Governor,¹³⁶ Vice-Governor,¹³⁷ Mayor,¹³⁸ Vice-Mayor,¹³⁹ and their *Sanggunian* Members.¹⁴⁰

112. Election is a mechanism reserved exclusively to the people to exercise their sovereign power. Each time the people gather at polling places on a synchronized election day, they collectively establish the *governments* created by the Constitution itself: *national government*, *autonomous government*, and *local government*. The people may choose different candidates to represent them in these governments but their collective sovereign power remains undivided.

113. The sum of their will, the plurality of votes, ultimately determines who will be their representatives in the *national government*: they elect the President and Vice-President for the executive branch, and Senators, district representatives, and party-lists for the legislative branch. In *local governments*, they elect city, municipal, and provincial officials with their respective executive and legislative branches. In the case of the *autonomous government*, the Parliament, where both the executive and legislative branches are fused.

114. On May 9, 2022, registered voters exercised their sovereign power to elect their government representatives. There were 55.5 million electors who cast their ballots,¹⁴¹ yet NOT A SINGLE BALLOT contained the names of candidates for the Parliament. By an act of Congress, RA 11593, the voices of the people in the BARMM were silenced. Instead, the Congress retained BTA's existence for another three years and its members were issued with a one-page *appointment paper* by the President, with all respect to his Office, over 2 million

¹³¹ Sec. 4, Art. VII, Constitution.

¹³² Sec. 4, Art. VII, Constitution.

¹³³ Sec. 2, Art. VI, Constitution.

¹³⁴ Sec. 7, Art. VI, Constitution.

¹³⁵ Sec. 18, Art. X, Constitution.

¹³⁶ Sec. 8, Art. X, Constitution.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Del Leon, D. (19 May 2022). *Philippines logs record voter turnout for 2022 polls*, Rappler, accessed at <https://www.rappler.com/nation/voter-turnout-philippines-2022-polls/> on 23 August 2023.

ballots cast by the registered votes of BARMM where the BTA to exercise the full powers and functions of the Parliament.

115. The irony here is that RA 11593 was enacted by Senate whose 24 members are not registered voters of the BARMM, and of the 340 Members of the House of Representatives only 8 are from the region, the President is not from BARMM too. Collectively, they decided to capitulate the power of the Bangsamoro's sovereign power to choose who shall be their representatives in the Parliament.

116. Patently, RA 11593 has no constitutional authority to wrestle the sovereignty of the Bangsamoro people that inherently resides with them in electing the Parliament and establishing the government that shall serve them—*salus populi est suprema lex*—under the constitutional framework of Section 1, Article II of the Constitution that “[s]overeignty resides in the people, and all government authority emanates from them.”

4

117. Election is the embodiment of the popular will, the expression of the sovereign power of the people.¹⁴² It involves the choice or selection of candidates to public office by popular vote.¹⁴³

118. The Constitution prescribes that it is the people, in their sovereign capacity as electorate, to determine who among the candidates is best qualified for that position.¹⁴⁴ Election is the expression of the sovereign power of the people.¹⁴⁵ Their mighty sovereignty mainly thru the election ballot where they decide, free from any fetter, who will represent them in government.¹⁴⁶

119 As we have argued, what has been delegated to Congress is “derivative legislative power which has been delegated by the sovereign people to legislative bodies.”¹⁴⁷ It is “the authority, under the Constitution, to make laws, and to alter and repeal them.”¹⁴⁸

120. The legislative power of the Congress is limited to making laws. It does not include decision-making as to who shall be the people's representatives in the government. The Congress' legislative power is not the normative mechanism established by the Constitution to decide who shall be the people's representatives in the government.

¹⁴² *Taule v. Santos*, G.R. No. 90336, 12 August 1991, 200 SCRA 512.

¹⁴³ *Id.*

¹⁴⁴ *Poe v. COMELEC*, G.R. No. 221697, 8 March 2016.

¹⁴⁵ *People v. Jalosjos*, 381 Phil. 690, 700 (2000).

¹⁴⁶ *Supra* at note 144.

¹⁴⁷ *Supra*. at note 121.

¹⁴⁸ *Government of the Philippine Islands v. Springer*, 50 Phil. 259, 276 [1927].

121. Our submission is that elective offices can be filled only by the will of people in an election, in the exercise of their *sovereign power*; not the Congress in the exercise of their *legislative power*; and, definitely, not by the President, by issuance of appointments, in the exercise of his or her *executive power*.

122. Section 18, Article X of the Constitution that: “legislative assembly, both of which shall be elective and representative of the constituent political units.” Legislative power, under Section 1, Article VI of the Constitution being not a mechanism of the Constitution to determine “who will represent them in government,”¹⁴⁹ RA 11593, therefore, is unconstitutional.

1(2) Whether or not Section 1 of RA 11593 is unconstitutional for violation of Sections 2 and 18, 1st par., Article X of the Constitution.

1

123. The BARMM is an autonomous region, a corporate entity with a distinct and separate juridical personality from the State.¹⁵⁰ It has territorial and political subdivision of the State and enjoy local autonomy, respectively, provided under Section 1 and 2, Article X of the Constitution. The BARMM is more than a local government but is a political entity with “basic structure of government for the region.”¹⁵¹

124. The BARMM as a body politic incorporated into the State has its own “social compact by which the whole people covenant with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for common good.”¹⁵² The Bangsamoro have a covenant, RA 11054, ratified in a plebiscite on 21 January 2019. They agreed that they shall be bound by RA 11054. It is a covenant mandated by the Constitution.

125. With the issue at hand, the Honorable Court must now rule on the power relations between “territorial and political subdivision of the State,”¹⁵³ the autonomous region which have the attributes of a “basic structure of government” *vis-a-vis* the extent of the Congress legislative power.

¹⁴⁹ *Supra*. at note 144.

¹⁵⁰ *Bagabuyo v. COMELEC*, G.R. No. 176970, 8 Dec. 2008.

¹⁵¹ Sec. 18, Art. X, Constitution.

¹⁵² *Body politic or corporate*. Black, H.C. (1991), Black's Law Dictionary Revised 6th Ed.

¹⁵³ See *supra* at note 52.

126. “Congress will have to re-examine national laws and make sure that they reflect the Constitution's adherence to local autonomy.”¹⁵⁴ And in case of conflicts, “the underlying spirit which should guide its resolution is the Constitution's desire for genuine local autonomy.”¹⁵⁵

127. Father Joaquin Bernas pointed out during the deliberation of the autonomous region provisions of the Constitution that:¹⁵⁶

FR. BERNAS. I think what we were saying is that when we speak of autonomy, we are speaking of autonomy not just vis-à-vis the President but also vis-à-vis the Legislature. So that while we are curtailing the power of the President, *we are also curtailing the power of the Legislature. (italic added)*

128. As for the power of the President over the autonomous region, the Constitution is clear that the former “exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.”¹⁵⁷

2

129. The Bangsamoro people, in electing the members of the Parliament in their capacity as a “corporate entity with a distinct and separate juridical personality from the State,”¹⁵⁸ are not subject to the legislative power of Congress due to their juridical personality¹⁵⁹ (their enjoyment of local autonomy,¹⁶⁰ and with basic structure of government.¹⁶¹

130. When people exercise sovereign power, they act as a single, undivided political entity. Unlike the right to suffrage, this sovereign power cannot be exercised individually, but by the people acting as one body. Within the BARMM, in the exercise of this sovereign power, the people are the supreme authority with the specific purpose of establishing their government through an election. The State cannot intervene, as doing so would undermine the constitutional boundaries of a separate political subdivision, the enjoyment of autonomy, and the possession of a basic governmental structure, making them meaningless.

¹⁵⁴ *Disomangcop v. DPWH*, G.R. No. 149848, 25 Nov. 2004.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* citing III Record 515; 19 Aug. 1986.

¹⁵⁷ Section 16, Article X of the Constitution Section 16, Article X of the Constitution.

¹⁵⁸ *Bagabuyo v. COMELEC*, G.R. No. 176970, 8 Dec. 2008.

¹⁵⁹ Sec. 1, Art. X, Constitution.

¹⁶⁰ Sec. 2, Art. X, Constitution.

¹⁶¹ Sec. 18, Art. X, Constitution.

131. *Disomangcop v. DPWH*,¹⁶² held:

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

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

xxx

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

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

1(3) Whether or not Section 1 of RA 11593 is unconstitutional for violation of Section 18, 2nd par., Article X of the Constitution.

132. RA 11593 violated Section 18, Article X of the Constitution because it was not submitted to a plebiscite for purposes of ratification, thus:

SECTION 18. xxx

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose. xxx.

¹⁶² G.R. No. 149848, 25 Nov. 2004 citations omitted.

133. In interpreting the provision, *Kida* held:

[W]e interpret the requirement to mean that only amendments to, or revisions of, the Organic Act *constitutionally-essential* to the creation of autonomous regions – i.e., those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act – require ratification through a plebiscite. These amendments to the Organic Act are those that relate to: (a) *the basic structure of the regional government*. xxx.¹⁶³ (*italic added*)

134. 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.”¹⁶⁴ The constitutional attributes of the Parliament is that it shall be “elective and representative.” RA 11593, therefore, altered the mechanism of the representation in the legislative assembly from “elective and representative” to *appointive* position.

135. The alteration by RA 11593 is “*constitutionally-essential* to the creation of autonomous” government because people’s sovereign power to elect their representatives in the Parliament is the foundation of the autonomous government—the people themselves are the source of its power. The RA 11593, therefore, requires ratification in a plebiscite in the BARMM.

136. The Honorable Court can take judicial notice of the fact that no plebiscite took place to ratify RA 11593 given that its effectivity clause in Section 5 has not provide for its ratification in a plebiscite that it “shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least one (1) newspaper of general circulation.

137. RA 11593, having been not ratified in a plebiscite, it violated Section 18, Article X of the Constitution.

1(4) Whether or not Section 1 of RA 11593 is unconstitutional for violation of Section 8, 1st par., Article X Constitution in relation to synchronized election.

¹⁶³ G.R. No. 196271, 18 Oct. 2011.

¹⁶⁴ Sec. 18, Art. X, Constitution.

139. In a 1954 case of *Cometa vs. Andanar*,¹⁶⁵ it requires that the right to suffrage shall be exercised at a *proper time*, thus:¹⁶⁶

It is only at the *proper time*, by the exercise of the citizen's right of suffrage at the *periodic election* to be held, that the people may directly exercise its power of removal with or without cause. (*italic supplied*)

138. The *property time* refers to the actual date of election while *periodic election* pertains to time cycle of the occurrence of election at a particular interval. The Constitution determined what constitutes *proper time* of election: it was first scheduled on the Second Monday of May 1992 and *deterministically* continued, except ARMM and BARMM, its periodic occurrence every three years or six years for three-year-term and six-year-term offices, respectively.

139. As to *periodic election*, Section 8, Article X of the Constitution provides that the “term of office of elective local officials... shall be three years.” The “term of office” refers to “time which the law describes that an officer may hold an office;”¹⁶⁷ it is a “period of time – three years – during which an official has title to office and can serve¹⁶⁸ the functions of an elective office.”¹⁶⁹

140. Under the Constitution, it scheduled election every three years for the positions of the House of Representatives, elective regional and local officials;¹⁷⁰ and, every six years for the position of President, Vice-President,¹⁷¹ and Senator.¹⁷² *Macalintal* uphold that “genuine periodic election” is protected and guaranteed by the Constitution, thus:

[F]ree and meaningful exercise of the right to vote, as protected and guaranteed by the Constitution, requires the holding of *genuine periodic elections* which must be held at intervals which are not unduly long, and which ensure that the authority of government continues to be based on the free expression of the will of electors.

141. The corollary of *property time* and *periodic election* is synchronized elections. It is the simultaneous holding of national, regional, and local elections, except barangay. The Constitution does not allow a separate holding of the elections for Preside, Vice-President, Senators, Congressmen, Members of the Parliament,

¹⁶⁵ G.R. No. L-7662, 31 July 1954.

¹⁶⁶ *Id.*

¹⁶⁷ *Appari v. Court of Appeals*, 127 SCRA 231, 240.

¹⁶⁸ *Aldovino v COMELEC*, G.R. No. 184836, 23 Dec. 2009.

¹⁶⁹ *Id.*

¹⁷⁰ We have not included here *Barangay* and *Sanggunian Kabataan* elections because they are subject to police power of the Congress in fixing the proper time of election and the synchronized election but the fixed term of three years is beyond the power of the Congress.

¹⁷¹ Sec. 4, Art. VII, Constitution.

¹⁷² *Id.*

Governors, Vice-Governors, Mayors, Vice-Mayors, and the members of the *Sanggunian* must be simultaneous, it must be on the same date.

142. The synchronicity of election is mandatory as held in *Kida* and *Osmena*. The “synchronization of national and local elections is a constitutional mandate that Congress must provide for and this synchronization must include the ARMM elections.”¹⁷³

143. *Osmena*, also ruled that:

[T]heof *synchronization* is used synonymously as the phrase *holding simultaneously* since this is the precise intent in terminating their Office Tenure on the same *day or occasion*. This common termination date will synchronize future elections to once every three years.¹⁷⁴

144. RA 11593 is, thus, unconstitutional it violated that electoral time, period, and synchronization prescribed by the Constitution. By postponing the election on 9 May 2022 of the Parliament by RA 11593: (1) the election was not held at *proper time* of election on 9 May 2022; (2) it interrupted the *periodic election* three-year cycle interval provided in Section 8, Article X of the Constitution; and, (3) it was not *synchronized elections* with the national and local elections held on 9 May 2022.

2. Whether or not Section 17 (3rd par.), Article IV of BAA 35 is unconstitutional for violation of: (1) Section 1, Article II; (2) Section 18, 2nd par., Article X; (3) Section 8, Article X in relation to synchronized election; and (4) Section 20, Article X of the Constitution.

145. Section 17, Article IV of BAA 35 provides:

SEC. 17. *Manner of Election of Sectoral Representatives.* – xxx

The election of sectoral representatives shall commence in the 2028 elections. For the 2025 election, Section 1 of Article X of this Code, shall apply.

¹⁷³ *Supra* at note 52.

¹⁷⁴ *Supra* at note 74 *citing* Bernas, the Constitution of the Republic of the Philippines, Vol. II, p. 605.

146. The foregoing provision postponing the election of the sectoral representatives¹⁷⁵ is unconstitutional as argued above for it violated: (1) Section 1, Article II; (2) Section 18, 2nd par., Article X; (3) Section 8, Article X in relation to synchronized election; and, 4) Section 20, Article X of the Constitution.

147. We, therefore, replead our arguments above inasmuch as they are applicable.

148. As for violation of Section 20, Article X of the Constitution, the BTA is vested with “[l]egislative and executive powers in the Bangsamoro Autonomous Region during transition”¹⁷⁶ including “[a]ll powers and functions of the Bangsamoro Government as provided in this Organic Law.”¹⁷⁷

149. Section 20, Article X of the Constitution¹⁷⁸ enumerated eight specific powers and a general welfare clause but none of these enumerated legislative powers include the postponement of election. Likewise, nothing in Section 2, Article V of RA 11054 which particularized the *Powers of the Bangsamoro Government* listed that election postponement as one of the powers of the Bangsamoro Government.

150. The BTA, therefore, or the Parliament has no constitutional neither statutory power under Section 20, Article X of the Constitution and RA 11054, respectively, to postpone the election in BARMM.

3. Whether or not Section 17 (1st and 2nd par.), Article IV in relation to Section 1, Article X of BAA 35 are unconstitutional for violation

¹⁷⁵ The texts of the BAA 35 refers to “sectoral representatives” to include “reserved representatives”. Thus, the BAA 35 refers to the totality of the eight seats of both the sectoral representatives” to include “reserved representatives” in the Parliament.

¹⁷⁶ Section 3, Article XVI, RA 11054.

¹⁷⁷ Section 3, Article XVI, RA 11054.

¹⁷⁸ It provides:

SECTION 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

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

of: Section 1, Article II; (2)
Section 18, Article X; (3)
Section 20, Article X of the
Constitution.

151. Section 17, Article IV of BAA 35 provide:

SEC. 17. *Manner of Election of Sectoral Representatives.* - Except for the Non-Moro Indigenous Peoples, ‘Ulama, and traditional leaders, representatives, the sectoral representatives shall be elected through a direct plurality of votes cast for the respective sectors. For this purpose, the COMELEC, through the BEO, shall conduct registration of voters that shall include the identification of the sector(s) that they are members of. A voter who identifies as belonging to more than one (1) sector that has reserved seats may register to be a voter for a maximum of three (3) such sectors.

xxx

152. While Section 1, Article X of BAA 35 reads:

SECTION 1. *Manner of Election of Sectoral Representatives in the First Parliamentary Election.*—In the first Parliamentary election, the selection of the sectoral representatives for the reserved seats in the Parliament shall be on the basis of election during assemblies especially called for the purpose by registered and accredited sectoral organizations of women, settlers, youth, ‘Ulama, traditional leaders and NMIP. xxx.

153. We question the creation of assemblies in Section 17, Article IV in relation to Section 1, Article X of BAA 35 because it violated sovereign power of the people under Section 1, Article II of the Constitution in relation to Section 18, Article X therein in which provides that “legislative assembly” such as the Parliament shall be “elective and representative.”

3(1)(2) Whether or not Section 17
(1st and 2nd par.), Article
IV in relation to Section 1,
Article X of BAA 35 are
unconstitutional for
violation of: Section 1,
Article II; (2) Section 18,
Article X.

155. The two issues being related, they shall be discussed jointly.

156. Sectoral and reserved seats in the Parliament consist of eight representatives under Section 7, Article VII of RA 11054: (a) two (2) seats for non-Moro indigenous peoples;¹⁷⁹ (b) two (2) seats for settler communities;¹⁸⁰ (c) one (1) seat for women;¹⁸¹ (d) one (1) youth;¹⁸² (e) one (1) traditional leader;¹⁸³ and (f) one (1) Ulama.¹⁸⁴

157. The assailed Section 17, Article IV of BAA 35 provides that non-Moro Indigenous Peoples, 'Ulama, and traditional leaders shall not be elected in an election. Instead, the provision created assemblies composed of registered and accredited parties, conferring upon them the power to select the eight (8) sectoral and reserved representatives to the Parliament.

158. In the same manner, in Section 1, Article X of BAA 35, the remaining seats for settler communities, women, and youth, although to be voted directly in election under Section 17, Article IV of BAA 35, for purposes of postponing the election on 12 May 2025, they shall be selected “on the basis of election during assemblies especially called for the purpose.”

159. We note, however, that BAA 35 uses the terms “reserved seats” and “sectoral seats” interchangeably. Thus, when we refer to the term 'sectoral seats,' we include 'reserved seats' as well.

160.. We argued that the creation of assemblies is unconstitutional because it violated Section 1, Article II of the Constitution: *First*, only a citizen, a natural person not an artificial person, is vested with right to suffrage to elect his or her representatives in the government under Section 1, Article V of the Constitution. *Second*, people’s sovereign power to elect their representatives is non-delegable and non-transferrable it resides with the people inherently it cannot be delegate to an artificial person created by law. *Third*, the exercise of right to suffrage in an election is directly exercised by the electorate without the medium of assemblies. *Fourth*, assemblies as artificial persons are not recognized by the Constitution to exercise right to suffrage.

161. It violated Section 18, 1st par., Article X Constitution which provides that “legislative assembly” such as the Parliament shall be “elective and representative.” The process of choosing the reserved and sectoral seats for the Parliament through “assemblies” is not an

¹⁷⁹ Under Section 8, Article VII of RA 11054 non-Moro indigenous peoples are Teduary, Lambangian, Dulangan Manobo, B'laan, and Higaanon.

¹⁸⁰ Sec. 8, Art. VII, RA 11054.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

election it is selection. It is not the mechanism provided by the Constitution.

4. Whether or not Section 2 of RA 11593 and Section 12, Article VII of RA 11054 are unconstitutional for violation of Section 8, Article X of the Constitution.

162. Section 2, RA 11593¹⁸⁵ reads:

Section 2. xxx 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. (*emphasis supplied*)

163. The operative phrase “or until their successors shall have been elected and qualified” is unconstitutional because it provides for holdover capacity for appointive officials of the BTA beyond the date of the commencement of term of office of elective officials to be elected on 12 May 2025.

164. The assailed clause is a reincarnation of Section 7, Article VII of RA 9054¹⁸⁶ which was declared unconstitutional because it is contrary to Section 8, Article X of the Constitution, thus, *Kida*:

The clear wording of Section 8, Article X of the Constitution expresses the intent of the framers of the Constitution to categorically set a limitation on the period within which all elective local officials can occupy their offices. xxx Thus, the term of three years for local officials should stay at three (3) years, as fixed by the Constitution, and cannot be extended by holdover by Congress. (*emphasis supplied*)

165. In an earlier ruling in *Osmeña*, the Honorable Court pronounced: “It is not competent for the legislature to extend the term of officers by providing that they shall hold over until their successors are elected and qualified.”

¹⁸⁵ Entitled: 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" and was approved on approved on 29 October 2021

¹⁸⁶Entitled: An Act To Strengthen And Expand The Organic Act For The Autonomous Region In Muslim Mindanao, Amending For The Purpose Republic Act No. 6734, Entitled "An Act Providing For The Autonomous Region In Muslim Mindanao," As Amended:

166. Section 12, Article VII of RA 11054 provides:

Section 12. *Dissolution of the Bangsamoro Transition Authority.* - Immediately upon the election and qualification of the Chief Minister under the first Parliament, the Bangsamoro Transition Authority shall be deemed dissolved.

167. The assailed provision will automatically extend the statutory life of the BTA beyond the noon of 30 June 2025 in the event the Chief Minister of the first Parliament failed to be elected and qualified, the BTA shall continue to exercise its powers and functions because Section 12, Article VIII of RA 11054 provided that they shall not be dissolved. This is a holdover clause declared unconstitutional in *Kida and Osmeña*.

168. Consequently, the hold over operative phrase in Section 2, RA 11593¹⁸⁷ and Section 12, Article VII of RA 11054 are unconstitutional contrary to the Section 8, Article X of the Constitution.

B

5. Whether or not the Section 7(a), 2nd par., Article VII of RA 11054 and Section 9 Article VII of RA 11054's clause which reads "only regional political parties duly accredited by the Bangsamoro Electoral Office" and their implementing resolution issued by the COMELEC in Resolution No. 10680 promulgated on 7 October 2020 and by the BTA under Article II, Article III, and Sections 6, 7, and 8, Article IV of BAA 35 are unconstitutional for violation of: (1) Section 2(5), Article IX-C; (2) Section 1 Article XI-A; and (3) Section 1, Article VI of the Constitution.

169. Section 7(a), Article VII of RA 11054 provides:

¹⁸⁷ Entitled: 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." Approved on 29 October 2021.

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

(a) Party Representatives.—xxx.

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.

170. Section 9, Article VII of RA 11054 reads:

Section 9. *Regional Parties.* - 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. xxx.

171. The two provisions pertain to registration and accreditation of political parties. The first clause in Section 7(a), 2nd par., Article VII of RA 11054 reads: “[a]ny organized group in the Bangsamoro Autonomous Region may register as a political party with the Bangsamoro Electoral Office,” and the clause in Section 9, Article VII of RA 11054 states that “only regional political parties duly accredited by the Bangsamoro Electoral Office.”

172. We assail these provisions for being unconstitutional for violation of:

(1)Section 2(5), Article IX-C of the Constitution because registration and accreditation political parties, organizations, or coalitions is an *exclusive* powers and functions of the COMELEC; and

(2)Section 1 Article XI-A of the Constitution because it violated the *independence* of the COMELEC.

173. The last phrase in Section 7(a), 2nd par., Article VII of RA 11054 which states that “qualifications [of political parties are] to be prescribed by the Bangsamoro Electoral Code” by the Parliament is unconstitutional for violation of:

(3) Section 1, Article VI of the Constitution because it constitutes as *undue delegation* of legislative power.

174. The foregoing provisions were subsequently implemented by COMELEC in Resolution No. 10680 promulgated on 7 October 2020,¹⁸⁸ it reads:

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 and register political 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.

175. BAA 35 created BEO and BRAC in its Article II and Article III and substantive powers to these entities despite that they are offices within the COMELEC and under the latter's supervision and control. Elsewhere in BAA 35, various provisions relate to procedural matter pertain to BEO and BRAC.

176. We emphasize, however, that in BAA 35, there are no provisions vesting registration and accreditation with the BEO and BRAC. Nevertheless, this is inconsequential because our current concern is the unconstitutional provisions of RA 11054. As long as these operative provisions remain in RA 11054, the Parliament cannot be prevented from amending BAA 35 and exercising the powers provided in RA 11054. It can still serve as a source of legislative authority, albeit unconstitutional. This has to be brought before this Honorable Court, if not now, it may be eventually raised here in the future.

5(1) Violation of Section 2(5),
Article IX-C of the
Constitution.

1

177. One of the exclusive powers and functions of the COMELEC is to “[r]egister, after sufficient publication, political parties, organization, or coalitions.”¹⁸⁹ Here, the COMELEC is granted by the Constitution exclusive power to register political parties¹⁹⁰ to the exclusion of any other entity including the BRAC or BEO.

¹⁸⁸ Accessed on 12 August 2023 at

https://lawphil.net/administ/comelec/comres2020/comres_10680_2020.pdf

¹⁸⁹ Section 2(5), Article IX-C of the Constitution

¹⁹⁰ The power to register political parties, however, is not a mere clerical exercise. The COMELEC does not simply register every party, organization or coalition that comes to its office and manifests

178. Although Section 2(5), Article IX-C only made mention of registration, it is argued that accreditation is subsumed in the legal term of registration.¹⁹¹ The *exclusive power* of the COMELEC is comprehensive that it all include all parties such as political parties, sectoral parties or coalition parties. There is no restriction neither limitations imposed by the Constitution upon the COMELEC whether a party operate in a region or a province or the autonomous region. Hence, the parties that shall participate in the Parliament election in the BARMM are well-within the exclusive power of the COMELEC.

179. Consequently, Section 7(a), 2nd par., Article VII of RA 11054 that empowers the BEO to register parties and Section 9 Article VII of RA 11054, the “only regional political parties duly accredited by the Bangsamoro Electoral Office” a clause in Section 9, Article VII of RA 11054 are unconstitutional for it is contrary to Section 2(5), Article IX-C of the Constitution that registration and accreditation of parties are exclusive powers and functions of the COMELEC.

2

180. During Bicameral Conference Committee deliberation of the Congress,¹⁹² this concern was raised, thus:

THE CHAIRMAN (REP. FARÍÑAS). May we propose that we adopt the House version? Because, with due respect to the Senate, with each version of Section 11, especially on the grant of powers to the regional Comelec, it infringes on the powers of the Comelec under the Constitution. For example, in granting the power to register and accredit regional political parties, that is a power granted by the Constitution to the Comelec.

xxx

Now, if we will create an electoral office in the ARB, or that ARB ARMM, the power to accredit political parties, it will transgress the constitutional power of the Comelec. So paragraph (c) is “prepare rules and regulations for the Bangsamoro elections and plebiscites for the promulgation of the Comelec.” That will again violate the first power of the Comelec which is to enforce and administer all laws and

its intent to participate in the elections. (*Atong Paglaum, Inc. v. COMELEC*, G.R. No. 203766, 2 April 2013, Concurring and Dissenting Opinion, Justice Bienvenido I. Reyes).)

¹⁹¹ Registration is the act that bestows juridical personality for purposes of our election laws; accreditation, on the other hand, relates to the privileged participation that our election laws grant to qualified registered parties. (*Liberal Party v. COMELEC*, 620 SCRA 393.) Thus, the COMELEC’s power to accredit political party is not derived from statute, it included from its constitutional power to register political party.

¹⁹² Bicameral Conference Committee On The Disagreeing Provisions Of Senate Bill No. 1717 And House Bill No. 6475 (Bangsamoro Basic Law), 9 July 2018, at pp. 72 to 83.

regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall. So may I propose that we just adopt Section 11 of the House bill which says, “The Comelec shall establish a Bangsamoro Regional Election Office under its supervision and control and which shall implement and enforce the orders, rulings and decisions of the Comelec.” (*emphasis supplied*)

181. In *Aggabao v. COMELEC*,¹⁹³ it ruled that it is only the *en banc* of the COMELEC that shall have exclusive jurisdiction over registration and accreditation. In compliance with *Aggabao*, COMELEC issued Resolution 10878.

5(2) For violation of Section 1
Article XI-A of the
Constitution.

182. The COMELEC shall be an independent body¹⁹⁴ created solely to protect people’s right to suffrage. “Independent” is defined as “...not subject to control, restriction, modification, or limitation from a given outside source.”¹⁹⁵ The COMELEC should be allowed considerable latitude in devising means and methods that will ensure the accomplishment of the great objective for which it was created—free, orderly and honest elections.”¹⁹⁶

183. In *Brillantes, Jr. v. Yorac*,¹⁹⁷ it declared unconstitutional the President’s designation of a temporary appointment of an Acting Chairman of the Comelec. And in a very old case of *Nacionalista Party vs. Bautista*,¹⁹⁸ a case decided under the 1935 Constitution, which did not have a provision prohibiting temporary or acting appointments to the COMELEC, declared unconstitutional the designation of the Solicitor General as acting member of the COMELEC. In upholding the independence of the COMELEC *Macalintal v. Comelec*¹⁹⁹ ruled that a mere review of its rules by Congress is considered as a “trampling” of its independence.

184. Even this Honorable Court did not cross that line of independence of the COMELEC when it was sought to provide guidelines on political party’s accreditation, it ruled that it is “unbecoming and presumptive encroachment” upon the power of the

¹⁹³ G.R. No. 258456, 26 July 2022.

¹⁹⁴ Sec. 1, Art. IX-A, Constitution.

¹⁹⁵ Black, H.C. (1991), Black’s Law Dictionary Revised 6th Ed.

¹⁹⁶ *Sumulong v. COMELEC*, 73 Phil. 288, 294-295 (1941).

¹⁹⁷ 192 SCRA 358.

¹⁹⁸ 85 Phil. 101 (1949).

¹⁹⁹ 453 Phil. 586, 658-659.

COMELEC to issue the guidelines, thus in *Liberal Party v COMELEC*,²⁰⁰ the Honorable Court expressed its reservation:

For this Court at this stage to impose additional criteria for the accreditation of political parties in future elections is an *unbecoming and presumptive encroachment on the rule-making powers of respondent Commission on Elections*, barring any findings that it has exceeded the authority granted it by law. (*italic added*)

185. Here, the assailed provision restricted the exclusive powers of the COMELEC because the BEO is vested with powers to register and accredit political party thereby violating COMELEC as an independent body.

5(3) Violation of Section 1,
Article VI of the
Constitution.

1

186 The assailed provision violated Section 1, Article VI of the Constitution which provides that the “legislative power shall be vested in the Congress.”

187. While legislative power may be delegated, there are legislation expressed in the Constitution, the exercise of which is exclusively belong to the Congress and it cannot be delegated without violating the principle that “*delegata potestas non potest delegari*”–“delegated power may not be delegated.”²⁰¹ That the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority.²⁰²

188. Where the sovereign power of the state has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed.²⁰³ The distribution by the Constitution of the powers of government to the Legislative, Executive, and Judicial Departments operates, by implication, as an inhibition against the exercise by one department of the powers which belong to another, and imposes upon each of the three departments the duty of exercising its own peculiar powers by itself, and prohibits the delegation of any of those powers.²⁰⁴

²⁰⁰ G.R. No. 247645, 22 July 2022.

²⁰¹ *Chavez v. Romulo*, G.R. No. 157036, 9 June 2004.

²⁰² *Supra.* at note 56.

²⁰³ *Id.*

²⁰⁴ *Araneta v Dinglasan*, G.R. No. L-2044, 26 Aug 1949 (*Feria, J., concurring Opinion*)

189. It is our submission that when the text of the Constitution used “law”, unless otherwise indicated that it is used in its generic usage, shall refer specifically to “law” passed by the Congress. We argue this because the Constitution mentioned “law” 188 times. Article IX, in particular, an article that created the constitutional constitution commissions, mentioned “law” 17 times, to wit:

- (a) “shall be fixed by law”;²⁰⁵
- (b) “in accordance with law”;²⁰⁶
- (c) “Unless otherwise provided by this Constitution or by law”;²⁰⁷
- (d) “as may be provided by law”;²⁰⁸
- (e) “except for cause provided by law”;²⁰⁹
- (f) “as may be provided by law”;²¹⁰
- (g) “Unless otherwise allowed by law”;²¹¹
- (h) “unless specifically authorized by law”;²¹²
- (i) “Enforce and administer all laws”;²¹³
- (j) “in addition to other requirements [as may be provided by law],”²¹⁴
- (k) “in addition to other penalties that may be prescribed by law”;²¹⁵
- (l) “prosecute cases of violations of election laws”;²¹⁶
- (m) “in accordance with law”;²¹⁷
- (n) “which are required by law”;²¹⁸
- (o) “as may be provided by law”;²¹⁹
- (p) “No law shall be passed;”²²⁰
- (q) “within the time fixed by law”; and²²¹
- (r) “as may be required by law.”²²²

190. As we have argued, the “law” expressed in the text of the Constitution refers to the law enacted by the Congress. It has to be distinguished to “law” in the *due process of law clause* or *equal protection clause*, or other provisions in the Constitution. In this generic or collective term, “law” is understood to refer to all laws that

²⁰⁵ Sec. 3, Art. X-A, Constitution.

²⁰⁶ Sec. 4, *Id.*

²⁰⁷ Sec. 7, *Id.*

²⁰⁸ Sec. 8, *Id.*

²⁰⁹ Sec. 2(3), Art. IX-B, Constitution.

²¹⁰ Sec. 2(6), *Id.*

²¹¹ Sec. 7, Art. IX-B, Constitution.

²¹² *Id.*

²¹³ Sec. 2(1), Art. IX-C, Constitution.

²¹⁴ Sec. 2(5), Art. IX-C, Constitution.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Sec. 2(1), Art. IX-D, Constitution.

²¹⁹ *Id.*

²²⁰ Sec. 3, Art. IX-D, Constitution.

²²¹ Sec. 4, Art. IX-D, Constitution.

²²² *Id.*

includes ordinance, statute, organic act, rules, procedures, and so forth.

191. Consequently, the “law” found in the provisions of Article IX of the Constitution is without doubt refers to the “law” passed by the Congress.

2

192. The point of our argument is based in Section 2(5), Article IX-C of the Constitution on the phrase “in addition to other requirements,” thus:

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

xxx

(5) *Register*, after sufficient publication, political parties, organizations, or coalitions which, *in addition to other requirements*, must present their platform or program of government; and accredit citizens’ arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be *prescribed by law*. (*italic added*)

193. We quoted “in addition to other requirements” to underscore and argue that this phrase pertain to: *first*, the qualification of political parties, organizations, or coalitions under the provision is *not exhaustive*, and, *second*, it is an operative term that delegates a power to the Congress to prescribe additional qualification for political parties, organizations, or coalitions. Since this is a legislative power directly and expressly delegated to the Congress, it cannot be delegated: *delegata potestas non potest delegari*.

194. Our argument is further buttressed by the electoral-related provisions in the Constitution in Article V of the Constitution which relates to suffrage. In this article, legislation of enabling electoral laws were expressly vested with the Congress, to wit: (1) *Congress* shall provide a system for securing the secrecy and sanctity of the ballot;²²³ and, (2) *Congress* shall also design a procedure for the disabled and

²²³ Sec.2, Art. V, Constitution.

the illiterates to vote without the assistance of other persons.²²⁴ Its Section 1 also provides “[s]uffrage may be exercised by all citizens of the Philippines not otherwise disqualified by *law*.”²²⁵ The law refers therein definitely pertains to the *law* enacted by the Congress. We have also cited *Macalintal*, *Akbayan-Youth*, and *Kabataan Party-List* in support of this argument on States exclusive regulation on matters that concern right to suffrage and elections.

195. With the foregoing, it is clear that the power to legislate the qualifications of political parties, organizations, or coalitions “in addition to other requirements” already provided in Section 2(5), Article IX-C of the Constitution is vested with the Congress exclusively. Not elsewhere, not with the Parliament, not with the BTA. And such power is non-delegable. Thus, the Congress has the non-delegable legislative power to prescribed additional requirements of qualification of registration and accreditation of political parties, organizations, or coalitions.

196. With the foregoing arguments, the last phrase in Section 7(a), 2nd par., Article VII of RA 11054 which states that “qualifications [of political parties are] to be prescribed by the Bangsamoro Electoral Code” by the Parliament is unconstitutional.

3

197. Be that as it may, the assailed provisions violated undue delegation of legislative power because it failed to comply with the two tests that determine the validity of delegation.

198. *Abakada Guro Party List vs COMELEC*,²²⁶ pronounced:

Purely legislative power, which can never be delegated, has been described as the authority to make a complete law – complete as to the time when it shall take effect and as to whom it shall be applicable – and to determine the expediency of its enactment. Thus, the rule is that in order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature – that is, one appertaining exclusively to the legislative department. It is the nature of the power, and not the liability of its use or the manner of its exercise, which determines the validity of its delegation.

199. The rationale for the constitutional proscription is that “legislative discretion as to the substantive contents of the law cannot

²²⁴ Sec.2, Art. V, Constitution.

²²⁵ Sec.1, Art. V, Constitution.

²²⁶ G.R. No. 168056, 1 Sept. 2005 *citing* 16 Am Jur 2d, Constitutional Law, § 337.

be delegated. What can be delegated is the discretion to determine how the law may be enforced, not what the law shall be.²²⁷ The ascertainment of the latter subject is a prerogative of the legislature²²⁸ which cannot be abdicated or surrendered by the legislature to the delegate.²²⁹

200. The assailed operative phrase “with qualifications to be prescribed by the Bangsamoro Electoral Code” practically confers to the Parliament the full discretion to determine, as it may deem fits, on what the law shall be in prescribing additional qualifications of political parties, organizations, and coalitions in BARMM. It, therefore, failed to comply with *completeness test* and *sufficient standard test*. These tests are intended to prevent a total transference of legislative authority to the delegate, who is not allowed to step into the shoes of the legislature and exercise a power essentially legislative.²³⁰

201. A law is *complete* when it sets forth therein the policy to be executed, carried out or implemented by the delegate.²³¹ When it left the hands of the legislature so that nothing was left to the judgment of any other appointee or delegate of the legislature.²³² The first test requires the law to be complete in all its terms and conditions, such that the only thing the delegate will have to do is to enforce it.²³³

202.. It 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.²³⁴ It indicates the circumstances under which the legislative command is to be effected.²³⁵ 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.²³⁶

203. The clause “with qualifications to be prescribed by the Bangsamoro Electoral Code”²³⁷ is too broad and comprehensive thereby vesting blanket authority to the BTA or Parliament full discretion in crafting the qualification for political parties, organizations, coalitions in the electoral code.

²²⁷ *Eastern Shipping Lines, Inc. v. POEA*, 248 Phil 762, 771 (1998).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Pelaez v. Auditor General*, 122 Phil. 965 (1965).

²³² *People vs. Vera*, 65 Phil. 56.

²³³ *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997).

²³⁴ *Supra.* at note 227.

²³⁵ *Edu v. Ericta*, G.R. No. L-32096, 24 Oct. 1970.

²³⁶ *Abakada Guro Party List v. Purisima*, G.R. No. 166715, 14 Aug. 2008 citing Cruz, Isagani, *Philippine Political Law*, 1991 edition, p. 97.

²³⁷ Last clause of the second paragraph of Section 7(a), Article VII of RA 11054

204. As to *sufficient standard test*, there is no guidelines or limitations imposed upon the delegate, the BTA or Parliament, so that it will not exceed the authority delegated. A single-liner-phrase “with qualifications to be prescribed” does not suffice to meet the constitutional requirement of sufficient standard test because it failed to map out the boundaries of the delegate's authority.

205. Our best evidence on its failure to meet the completeness and sufficient standard tests is the text of BAA 35 itself. The classical example of a law *running riot* against so many provisions of the Constitution.

6. Whether or not “through the Bangsamoro Electoral Office” a phrase in Section 13, Art. XVI of RA 11054 is unconstitutional for violation of Sections 1 and 6 Article X-A of the Constitution.

206. Section 13, Art. XVI of RA 11054, as amended by RA 11593, provides:

Section 13. *First Regular Election.* - xxx. 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. (*italic added*)

207. The COMELEC is an independent body under Section 1, Article IX-C of the Constitution. This assailed provision violated the Constitution because it made the COMELEC dependent on the BEO in the exercise of its constitutional powers and functions, to the extent that it cannot act in the BARMM without the BEO. By binding the COMELEC to act through the BEO, Congress usurped the former's administrative power of supervision and control over offices within its organization.

208. The COMELEC cannot be commanded by Congress on how it shall administer offices within its jurisdiction. The COMELEC can directly exercise its powers and functions in BARMM at its full discretion, with or without acting through the BEO. In the past, a Commissioner-in-Charge in a region was assigned by the COMELEC to provide controlling supervision over its regional offices. To restrict

the COMELEC to act only through the BEO is an intrusion on its independence and a violation of Section 1, Article IX-C of the Constitution.

7. Whether or not Section 1 in relation to Section 13, Article III of BAA 35 are unconstitutional for violation of: (1) Section 23, Article II; (2) Section 26, Article II; (3) Section 1, Article III; (4) Section 2(5), Article IX-C; (5) Section 6, Article IX-C; (6) Section 8, Article III; (7) Section 1, Article XIII; (8) Section 15, Article XIII; and, (9) Section 16, Article XIII of the Constitution.

1

209. We argue against the 10,000-membership threshold provided in Section 1, Article III of BAA 35, to wit:

SECTION 1. *Establishment of Regional Political Parties.*—Regional political parties in the Bangsamoro, hereinafter referred to as “parties” or “party,” shall be established by at least ten thousand (10,000) members who are residents and registered voters therein. xxx.

210. The provision institutionalizes hegemony. Odious to Bangsamoro’s right to self-determination.

211. Ordinarily, invoking a single provision is insufficient for us to establish the strength of our arguments against this tyrannical threshold. The audacity of the 10,000 members requirement, aimed to eliminate free electoral contests among well-intentioned individuals or groups in the BARMM, is one of the primary reasons that has brought us before this Honorable Court. This threshold pushes minorities into submission, preventing their participation in nation-building within this region. It compelled us to invoke numerous constitutional provisions to completely obliterate BAA 35’s *political caste system* from the face of our legal system.

212. Consequently, we found a constitutional antidote readily available to us to cleanse the poisoned well of our democracy in the

BARMM, the Constitution is magnanimous, it is abundant in support for our legal arguments.

213. At the very least, the challenged provision violates no fewer than nine constitutional provisions. And we seek indulgence from this Honorable Court for delving nearly ten percent of this petition arguing against the tyrannical provision. Our verbosity, perhaps, is excusable given that it threatens to corrode the very bedrock of our democracy and the Bangsamoro's right to self-determination.

214. Finally, this is also the reason why the regulation of party registration and accreditation must be exclusively exercised by the State (Congress, composed of the Senate and House of Representatives, to legislate and the President with veto power). This provides a more secure and comfortable means of safeguarding our right to suffrage and other related electoral rights, while rule-making power remains within the jurisdiction of the COMELEC. The blatant disregard of the Constitution by BAA 35 underscores how this power can be arbitrarily used to perpetuate political advantages and effectively legitimize it through the lawmaking power.

215. The following are provisions of the Constitution violated by the 10,000 members threshold:

- (1) *Equal Protection*: (a) Section 26, Article II, (b) Section 1, Article III, and (c) Section 1, Article XIII;
- (2) *Right to Association*: Section 8, Article III;
- (3) *Open and Free Political Party System*: Section 6, Article IX-C;
- (4) *Right to Effective and Reasonable Political Participation*: (a) Section 15; and (c) Section 16, Article XIII;
- (5) *Encouraging Organizations*: Section 23, Article II; and
- (6) *Ultra-Vires Act*: Section 2(5), Article IX-C.

216. Equal Protection Clause, under Section 1, Article III of the Constitution, is the catch-all operative clause on equality mentioned 12 times in the Constitution.

217. The Constitution is not blind but cognizant of the factual systemic political, economic, and social disparities in the country. For these reasons, in addition to “equality,” *equity*, *equitableness*, and, conversely, *inequalities*, populate with much density in the text of the Constitution, rendering these legal terms enforceable and demandable constitutional rights. In total, they are mentioned 13 times in the Constitution, collectively forming a legal framework aimed at preserving and ensuring fairness and justice: the living epitome of *Calalang v. Williams*.²³⁸

218. “Equality” is found in the text of Constitution, to wit: “under the rule of law and a regime of truth, justice, freedom, love, *equality*, and peace, do ordain and promulgate this Constitution;”²³⁹ “adheres to the policy of peace, *equality*, justice, freedom, cooperation, and amity with all nations;”²⁴⁰ “*equally* protect the life of the mother and the life of the unborn from conception;”²⁴¹ “*equality* before the law of women and men;”²⁴² “*equal* access to opportunities for public service;”²⁴³ “to ensure equal opportunity, time, and space, and the right to reply, including reasonable, *equal* rates therefor, for public information campaigns and forums among candidates;”²⁴⁴ “trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of *equality* and reciprocity;”²⁴⁵ “*equality* of employment opportunities for all;”²⁴⁶ and, “*equal* access to cultural opportunities.”²⁴⁷

219. With respect to “equity,” “equitable,” and “inequality,” the text of the Constitution reads: “taxation shall be uniform and *equitable*;”²⁴⁸ reporting of non-governmental entities on receiving “subsidy or equity;”²⁴⁹ LGUs “shall be entitled to an *equitable* share in the proceeds of the utilization and development of the national wealth;”²⁵⁰ the “goals of the national economy are a more *equitable* distribution of opportunities, income, and wealth;”²⁵¹ the “State shall encourage *equity* participation in public utilities by the general public,”²⁵² “protect and enhance the right of all the people to human

²³⁸ 70 Phil. 726, 734 (1940).

²³⁹ Preamble of the Constitution.

²⁴⁰ Sec. 2, Article II, Constitution.

²⁴¹ Sec. 12, *Id.*

²⁴² Sec. 14, *Id.*

²⁴³ Sec. 26, *Id.*

²⁴⁴ Sec. 4, Article IX-C, Constitution.

²⁴⁵ Sec. 13, Article XII, Constitution.

²⁴⁶ Sec. 3, *Id.*

²⁴⁷ Sec. 18(1), Article XIV, Constitution.

²⁴⁸ Sec. 28, Article VII, Constitution.

²⁴⁹ Sec. 2(1)(b), Article IX-D, Constitution.

²⁵⁰ Sec. 7, Article X, Constitution.

²⁵¹ Sec. 1, Article XII, Constitution.

²⁵² Sec. 11, *Id.*

dignity, reduce social, economic, and political *inequalities*, and remove cultural *inequities* by equitably diffusing wealth and political power for the common good;”²⁵³ “taking into account ecological, developmental, or *equity* considerations,”²⁵⁴ “[f]inancial instruments used as payment for their lands shall be honored as *equity* in enterprises of their choice;”²⁵⁵ “Congress may, however, require increased Filipino *equity* participation in all educational institutions;”²⁵⁶ and “[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and *equitable* admission and academic requirements.”²⁵⁷

220. In light of the well-entrenched normative framework on both *equality* and *equity* within the Constitution’s text, it becomes evident that laws, especially BAA 35, are expected to comply with this constitutional mandate on *equality* and *equity*. It is surprising that BAA 35 is not mindful of the constitutional framework, as fundamental to assertion of the right to self-determination is diffusion of political and economic inequalities.

Equal Access to Office
(Sec. 26, Art. II of Constitution)

221. The “State shall guarantee equal access to opportunities for public service”²⁵⁸ including elective offices.

222. The assailed law restricted equal access to opportunities for party representatives in the Parliament. The 10,000 members threshold limits the opportunity for access to party representatives in the Parliament, as those who are unable to meet the threshold are disqualified from being registered and accredited as a political party, thereby depriving them of participation in the election thereby making public office inaccessible.

Equal Protection Clause
(Sec. 1, Art. III of Constitution)

223. There is no substantial distinction, under the Constitution’s equal protection clause²⁵⁹ between political parties with 10,000

²⁵³ Sec. 1, Article XIII, Constitution.

²⁵⁴ Sec. 4, Art. XIII, Constitution.

²⁵⁵ Sec. 8, Art. XIII, Constitution.

²⁵⁶ Sec. 4(2), Art. XIV, Constitution.

²⁵⁷ Sec. 5(3), Art. XIV, Constitution.

²⁵⁸ Sec. 26, Article II, Constitution.

²⁵⁹ Sec. 1, Art. III, Constitution.

membership and those with less than that number in relation to representing the people and serving them.

224. The 10,000 membership cannot justify substantial distinction on the basis of the quantity of membership. There is totally lacking reasonable connection between the 10,000 membership and the registration of political party.

225. The basis of valid qualification to alienating minority group as a class from an arbitrary number is irrelevant to political participation and right to suffrage.

*Removing Political Inequalities
and Equitably Diffusing Political
Power (Sec. 1, Art. XIII,
Constitution)*

226. Section 1, Article XIII of the Constitution provides:

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and *political inequalities*, and remove cultural inequities by *equitably diffusing wealth and political power for the common good*.

227. The mandatory command of the Constitution is “to reduce... political inequalities... and to “remove cultural inequities by equitably diffusing wealth and political power.”

228. Thus, it was held that these “are clear commands to the State to take affirmative action in the direction of greater equality.... There is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.”²⁶⁰

229. Giving undue advantage to political party with 10,000-membership group do not reduce political inequalities neither equitably defuse political power mandated by Section 1 of Article XIII. On the contrary, it perpetuates concentration of political power to few, and eternalize political inequalities in the political participation in the BARMM.

²⁶⁰ *Paglaum v. COMELEC*, G.R. No. 20 3766, 2 April 2013.

Right to Self-Organization
(Sec. 8, Art. III, Constitution)

230. The assailed provision infringes the right to association under Section 8, Article III of the Constitution which provides that “right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.”

231. The right to self-organization to participate in the party representatives in the Parliament is barred to organizations with less than 10,000 members because they are disqualified from registering and accrediting as a party.

232. The threshold requirement is prohibitory because it demands significant human and financial resources. It is unattainable to marginalized and vulnerable groups who are equally entitled to fair participation in the political process.

233. While acquiring juridical personality through registration and accreditation as a political party is a prerogative and cannot be claimed as a right, the requirement of 10,000 members renders political participation prohibitive, making self-organization for political participation legally impossible.

Free and Open Party System
(Sec. 6, Art. IX-C, Constitution)

234. Section 6, Article IX-C of the Constitution provides that a “free and open party system shall be allowed to evolve according to the free choice of the people.”

235. The threshold is a ground for disqualification and cancellation of registration. The disqualification ground of 10,000 memberships is contrary to “free and open party system.”

236. In Section 2, the Section 2 of Republic Act No. 7941 is associated with a “free and open party system” that aims “to attain the broadest possible representation of parties.” This means that the party system must be characterized by wide and comprehensive participation from individuals or groups interested in participating in

the political process, as opposed to the closed and limited participation provided in the assailed provision of 10,000 membership threshold.

237. The objective of the party system under the Constitution is that it shall “evolve according to the free choice of the people.” There can be no free choice of the people because the assailed provision has set up a filtering mechanism to exclude minority groups while freely allowing parties with dominant numbers. Under this party system, only a select elite few are permitted to participate for the 40 party representatives in the Parliament.

238. The people, in the exercise of their sovereign power, cannot be subjected to a filtering and exclusionary threshold based on an arbitrary number. The people are entitled to choose from among the broadest possible candidates in the elections, not from among the candidates filtered by Section 1, Article III of BAA 35.

5

Encouragement of Sector to Promote the Welfare of the Nation (Sec. 23, Art. II, Constitution)

239. Section 23, Article II of the Constitution provides that “State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.”

240. The stringent requirement outlined in Section 1, Article III of BAA 35 is meteorically high that effectively discourages “non-governmental, community-based, or sectoral organizations” from participating in the political process. This law deters these organizations from engaging in the electoral process, thereby limiting the promotion of “the welfare of the nation” to only a select few parties.

6

Right of the People to Political Participation (Sec. 15 and Sec. 16, Art. XIII, Constitution)

241. Section 15 and 16 Article XIII of the Constitution, provides:

SECTION 15. The State shall respect the role of independent people’s organizations to enable the people to pursue and protect,

within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means. *(emphasis supplied)*

xxx

SECTION 16. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. xxx *(emphasis supplied)*

242. The foregoing provisions provide that participation in political exercise such as election shall not be abridged. That such participation must be “effective” and “reasonable.”

243. We replead our arguments above. The BAA 35 threshold is prohibitory, an abridgment of “effective and reasonable participation.”

7

Ultra Vires Act (Sec. 2(5), Art. IX-C, Constitution)

244. As we have argued earlier, the BTA has no power to alter and expand disqualification of political party under Section 2(5), Article IX-C of the Constitution.

245. The disqualification grounds in the Constitution is exhaustive, it did not allow the Congress to legislate additional grounds for disqualification. Neither the BTA can do that. Likewise, the BTA has no legislative power to amend the Omnibus Election Code that provides for the qualification and disqualification of a political party.

8. Whether or not Section 18, Article IV of BAA 35 is unconstitutional for violation of: (1) Section 6, Article IX-A; (2) Section 6, Article IX-A; (3) Section 2(5), Article IX-C of the Constitution.

1

246. Section 18, Article IV of BAA 35 provides:

SEC.18. *Registration Requirement for Sectoral Organizations, or Political Parties Fielding Candidates for Sectoral Representation Elections.*—Sectoral organizations duly registered with the COMELEC through the BRAC, may participate in the sectoral representative elections: Provided, That sectoral organizations for indigenous peoples, including their indigenous political structures (IPS), shall be certified by the Ministry of Indigenous Peoples’ Affairs; sectoral organizations for women shall be certified by the Bangsamoro Women Commission; sectoral organizations for the youth shall be certified by the Bangsamoro Youth Commission; sectoral organizations for the ‘Ulama shall be certified by the Bangsamoro *Daru’l Ifta*; sectoral organizations by the settler communities shall be certified by the Office of Settler Communities; and the sectoral organizations of traditional leaders shall be certified by the Bangsamoro Commission for the Preservation of Cultural Heritage. (*emphasis supplied*)

247. The foregoing provision usurped the rule-making power of the COMELEC to promulgate rules under Section 6, Article IX-A of the Constitution to enforce and administer election laws. The BTA, or the Parliament, as we have already argued, has no power to promulgate rules on registration of political parties because it is an exclusive domain of the COMELEC under the Constitution.

248. Such usurpation further intruded into the independence of the COMELEC under Section 1, Article IX-A of the Constitution. We replead our arguments earlier that its independence is violated when its powers under the Constitution is violated.

2

249. We further argue that Section 18, Article IV of BAA 35 is unconstitutional because it conferred full discretionary power in the issuance of certification to administrative agencies, namely: Ministry of Indigenous Peoples’ Affairs, Bangsamoro Women Commission, Bangsamoro Youth Commission, Bangsamoro *Daru’l Ifta*, Office of Settler Communities, Bangsamoro Commission for the Preservation of Cultural Heritage.

250. The certification, as an additional requirement for registration, have given these agencies unconstitutional power superior to that of the COMELEC. At their levels, these agencies can deny certification that would then stop the process of party’s registration and accreditation process. Thus, the issuance of certification is determinative of acquisition of juridical personality. It is not a mere routinary process but essential requirement for registration.

251. These agencies cannot be expected to be impartial as they are political and administrative offices created by the BTA whose officials were appointed by the Head of the Government, the Chief Minister, the highest-ranking officials in the domain of the BTA.

252. Let me present a theoretical but plausible situation. If one of the agencies issues certifications to 50 sectoral parties, among them, 30 of the certified parties have close political ties to the issuing agency, while the other 20 certified parties represent various groups, fairness and credible election is already compromised. Because these agencies are not the COMELEC, which enjoys the presumption of independence under the Constitution, partisanship may influence their certification process. In this situation, the assemblies will consist of the 50 sectoral parties, electing their representatives in the Parliament. The election's outcome is clear: the 30 parties allied with the issuing agencies can form alliances to become the majority and have the capability to choose the representatives in the Parliament. This flawed certification system, along with the assemblies, fails to ensure a free, honest, and credible election.

C

9. Whether or not COMELEC can be compelled by writs of mandamus: (1) to prepare for the registration and accreditation of regional political parties, organizations, or coalitions in the BARMM; (2) to hold and conduct the election for the 80 elective representative seats in the Parliament on 12 May 2025 synchronized national, regional, and local elections; and, in default BTA in enacting 32 districting representatives in the BARMM, to apportion the 32 districting representatives *pro hac vice* only for 12 May 2025 synchronized national, regional, and local elections.

253. The writs of mandamus sought are cautionary reliefs thus we ask for their issuance in the event the Honorable Court grants the certiorari and prohibition herein prayed in declaring unconstitutional RA 11953, provisions of the RA 11054, BTA 35, and COMELEC Resolution 10680.

254. These writs mandamus consist of:

- (1) Directing the COMELEC to issue resolutions that shall administer and enforced the registration and accreditation of political parties, sectoral parties, and reserved parties who intend to participate in the synchronized election on 12 May 2025 election for the party seats, district seats, and reserved seats in the Parliament and that the Verified Petition to Register and Manifestation to Participate be filed directly with the Clerk of the Commission of the COMELEC *en banc* pursuant to *Aggabao*.
- (2) Directing the COMELEC to issue resolutions that shall enforce and administer the filing of Certificate of Candidacy and other election activities for the elections of all the 80 party seats, district seats, sectoral seats, and reserved seats of the Parliament for its first regular election on 12 May 2025 synchronized with the national and local elections.
- (3) Directing the COMELEC, in the event that BTA failed to enact redistricting for the 32 district representative seats, to issue resolutions, in the exercise its residual power under the Constitution and Section 13, Article XVI of RA 11054, apportioning the 32 District Seats *pro hac vice* in the BARMM for purposes only of the Parliament elections on 12 May 2025.

255. Section 3, Rule 65 of the Rules of Court, provides:

Section 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. xxx.

256. This Honorable Court takes jurisdiction to control, order and direct both the executive and legislative departments of the

government [including the constitutional bodies such as COMELEC] to do and to perform what are generally termed *purely ministerial duties*.²⁶¹

257. The COMELEC, even if it is an independent body, it can be compelled by a writ of mandamus by this Honorable Court to perform a ministerial duty. The requirements upon which a writ of mandamus may be issued as enunciated *AES WATCH v. COMELEC*,²⁶² are:

The following requirements must be present to warrant the issuance of a writ of mandamus, to wit: (1) the petitioner has a clear and unmistakable legal right to the act demanded; (2) it is the duty of the respondent to perform the act because it is required by law; (3) the respondent unlawfully neglects the duty enjoined by law or unlawfully excludes the petitioner from the use or enjoyment of the right or office; (4) the act to be performed is ministerial; and (5) there is no plain, speedy, and adequate remedy in the ordinary course of law.

- (a) *Clear and unmistakable legal right.*
- (b) *Duties is required by law.*
- (c) *Duties are enjoined by law for enjoyment of the right.*

258. The foregoing requirements are related, they shall be discussed jointly.

On the first writ of mandamus

259. The COMELEC's "constitutional power to enforce and administer all laws and regulations relative to the conduct of an elections includes the power to issue rules and regulations on the accreditation of political parties."²⁶³

260. The Constitution provides that the "State shall respect the role of independent people's organizations to enable the people to pursue and protect".²⁶⁴ And that the "right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged."²⁶⁵ The States shall also guarantee "[a] free and open party

²⁶¹ *Alejandrino v. Quezon* citing, G.R. No. 22041, 11 September 1924 citing *Tennessee & Railway Co. vs. Governor*, 36 Ala., 371; *Middleton vs. Governor*, 30 Cal., 596; *State vs. Governor*, 72 Ind., 567; *State vs. Governor*, 5 Ohio State, 528.

²⁶² G.R. No. 246332, 9 Dec. 2020.

²⁶³ *Liberal Party v. Comelec*, G.R. No. 247645, 22 July 2022.

²⁶⁴ Sec. 15, Art. Art. XIII, Constitution.

²⁶⁵ Sec. 16, Art. Art. XIII, Constitution.

system shall be allowed to evolve according to the free choice of the people." ²⁶⁶

261. Petitioners have clear and unmistakable constitutional right being citizens and registered voters to demand that candidates for all the positions in the Parliament have equal access without discrimination to participate in the election for the Parliament's party seats, sectoral district seats, sectoral seats, and reserved seats access for purposes of registration and accreditation as party asserting our rights under Section 6, Article IX-C of the Constitution that "free and open party system shall be allowed to evolve according to the free choice of the people." We assert that *free choice* in *free and open party system* as our constitutional right.

On the second writ of mandamus

262. The Bangsamoro people's sovereign power is expressed in election by casting their votes on 12 May 2025 for all the 80 candidates for the Parliament is a constitutional right to suffrage. The Bangsamoro should not be deprived again to exercise sovereign that power expressed in the election.

263. Petitioners have clear and unmistakable legal right being citizens and registered voters to elect Parliament's members. To ensure that election will take place for the Parliament all 80 elective seats on 12 May 2025 election, the COMELEC has constitutional duty to enforce and administer it.

On the third writ of mandamus

264. Section 7(b), Article VII of RA 11054 provides:

(b) *Parliament District Seats.* - Not more than forty percent (40%) of the members of the Parliament shall be elected from single member parliamentary districts apportioned for the areas and in the manner provided for by the Parliament. For the first parliamentary election following the ratification of this Organic Law, the allocation of the parliamentary district seats shall be determined by the Bangsamoro Transition Authority as provided for in Section 4, Article XVI of this Organic Law. xxx.

²⁶⁶ Sec. 6, Art. IX-C, Constitution.

265. In relation thereto, Section 4(b), Article XVI of RA 11054 states:

Section 4. *Functions and Priorities.* - The Bangsamoro Transition Authority shall ensure the accomplishment of the following priorities during the transition period:

xxx

(b) Determination of parliamentary districts for the first regular election for the members of the Parliament subject to the standards set in Section 10, Article VII of this Organic Law;

266. To date, the BTA is yet to enact a law on the “parliamentary districts for the first regular election for the members” for the 12 May 2025 synchronized elections. This mandate is imposed by Section 4(b), Article XVI of RA 11054. It is mandatory and it is ministerial for the BTA to determine the “parliamentary districts for the first regular election for the members of the Parliament” because it is a legal framework before the Bangsamoro can elect their district representatives.

267. It is less than one year from the filing of the certificate of candidacy in August 2024 of the elective offices of the Parliament, and yet no legislation has been heard in the committee in the BTA that pertains to parliamentary districts. Based on its website, no bills have been filed by the lead-government of the BTA except from a non-majority members.

268. It is for this reason that the inaction in legislating the districting of the 32 district seats compelled us to seek this writ so that election for the 32 elective district representatives can be administered by the COMELEC to ensure people’s exercise of our sovereign power and protecting our constitutional right to vote for our representative in the Parliament this 12 May 2025.

269. Consequently, petitioner’s right is clear and unmistakable legal right. The duties are required by the Constitution to the COMELEC for it to perform so that the electorate can enjoy the right to suffrage in electing the Parliament’s members.

(d) Duties to be performed is ministerial

270. If the law imposes a duty upon a public officer and gives him a right to decide how or when the duty shall be performed, it is

discretionary and not ministerial.²⁶⁷ A ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his or her own judgment upon the propriety or impropriety of the act done.²⁶⁸

271. The powers vested by the Constitution in the COMELEC is “either be classified as those pertaining to its adjudicatory or quasi-judicial functions, or those which are inherently administrative and *sometimes ministerial in character*.”²⁶⁹

272. Its administrative functions refers to the enforcement and administration of election laws and are found in Section 2 (1), (3), (4), (5), (6), (7), (8), and (9) of Article IX-C of the Constitution.

273. The administrative powers of the COMELEC, for example, include the power to determine the number and location of polling places, appoint election officials and inspectors, conduct registration of voters, deputize law enforcement agencies and government instrumentalities to ensure free, orderly, honest, peaceful and credible elections; register political parties, organization or coalitions, accredit citizens’ arms of the Commission, prosecute election offenses, and recommend to the President the removal or imposition of any other disciplinary action upon any officer or employee it has deputized for violation or disregard of its directive, order or decision.²⁷⁰

274. The Honorable Court on many occasions have upheld ministerial duties of the COMELEC which if not performed can be subject to writs of mandamus, thus: The COMELEC’s power to administer elections includes the power to conduct a plebiscite beyond the schedule prescribed by law;²⁷¹ the COMELEC has the ministerial duty to make available the source code for purposes of examination and test by any political party or candidate, or even their representatives;²⁷² Commission has ministerial duty to apply the formula as decided by this Court after interpreting the existing law on party-list representation;²⁷³ proclamation of all the winning candidates in the municipal elections is a ministerial duty of the canvassing board;²⁷⁴ it is a mandatory and ministerial duty of the MBOC concerned to count the votes based on such returns and declare

²⁶⁷ *Lamb v. Phipps*, 22 Phil. 456, 474 (1912).

²⁶⁸ *Department of Education v. Rizal Teachers Kilusang Bayanfor Credit, Inc.*, G.R. No. 202097, 3 July 2019 citing *Umali v. Judicial and Bar Council*, 814 Phil. 253, 293-294 (2017)

²⁶⁹ *Salva v. Makalintal*, G.R. No. 132603, 18 Sept. 2000.

²⁷⁰ *Cipriano v. COMELEC*, 479 Phil. 677, 690 (2004).

²⁷¹ *Cagas v COMELEC*, G.R. No. 209185, 25 Oct. 2013.

²⁷² *Bagumbayan-VNP Movement, Inc. v. COMELEC*, G.R. No. 206719, 10 April 2019.

²⁷³ *Partido Ng Manggagawa v COMELEC*, G.R. No. 164702, 15 March 2006.

²⁷⁴ *Romato v. COMELEC*, G.R. No. 157007, 17 March 2004.

the result;²⁷⁵ it is also enjoined by law to canvass all votes on election returns submitted to it in due form;²⁷⁶ the administration of oath and the registration of the petitioner in the Roll of Members of the House of Representatives representing the 4th legislative district of Leyte is no longer a matter of discretion on the part of the public respondents;²⁷⁷ and so forth.

275. In *Salva*:

We agree with the Solicitor General that "[t]he issuance of [COMELEC] Resolution No. 2987 is thus a ministerial duty of the COMELEC that is enjoined by law and is part and parcel of its *administrative* functions. xxx. Briefly, COMELEC Resolution No. 2987 which provides for the rules and regulations governing the conduct of the required plebiscite, was not issued pursuant to the COMELEC's quasi-judicial functions but merely as an incident of its inherent administrative functions over the conduct of plebiscites xxx. (*emphasis supplied*)

On the first writ of mandamus

276. In the event that COMELEC in Resolution No. 10680 is nullified on the ground of unconstitutionality as herein prayed, there will be no existing resolution that shall enforce and administer the filing of registration and accreditation of parties that shall participate in the Parliament in the forthcoming 12 May 2025 synchronized election.

277. Hence, this cautionary writ of mandamus, that in such eventuality, the COMELEC has ministerial duty to promulgate procedure under its rule-making power in Section 6, Article IX-A of the Constitution so that registration and accreditation of party seats, district seats, sectoral seats, and reserved seats can file petition and manifestation to participate with the Clerk of the Commission of the COMELEC *en banc*. The duty of the COMELEC is ministerial to enforce and administer election.

On the second and third writ of mandamus

278. We had already presented in the past in the autonomous region, 11 years and 3 months where elective positions were occupied

²⁷⁵ *Ibrahim v COMELEC*, G.R. No. 192289, 8 January 2013 citing *Grego v. Commission on Elections*, 340 Phil. 591, 608 (1997), and , G.R. No. L-28517, 21 February 1968.

²⁷⁶ *Mastura v. COMELEC* 349 Phil. 423 (1998)

²⁷⁷ *Velasco v. Belomonte*, G.R. No. 211140, 12 Jan. 2016.

for the very long period of time without the benefit of popular sovereignty from the people.

279. The holding of election on 12 May 2025 is a ministerial duty on the part of the COMELEC under Section 2(1), Article IX-C of the Constitution that it shall “enforce and administer all laws and regulations relative to the conduct of an election.”

280.. In anticipation and as a precautionary measure, in the event that BAA 35, as prayed for in the *Pansar Petition* which states, "DECLARING the Bangsamoro Electoral Code, in its entirety or pro tanto to the extent of the assailed provisions thereof, as UNCONSTITUTIONAL and VOID," is granted, *proportionate party representative seats* in the Parliament prevent the election of its 40 seats in the Parliament. Secondly, *BAA 35 has postponed the eight seats of sectoral and reserved representatives*. In order to hold the election on 12 May 2025 of party representatives, sectoral representatives, and reserved representatives, a writ of mandamus is sought to compel the COMELEC for such constitutional command.

281. As for the 32 seats designated for district representatives of the Parliament, there is currently no law apportioning the district representation enacted by the BTA. In the event that the BTA fails to enact such a law, the COMELEC, under its express and residual constitutional powers, as well as the provisions in RA 11054, has the authority to issue resolutions for the apportionment of district representatives *pro hac vice*, for the sole purpose of the synchronized election on 12 May 2025 only.

282. Our argument is supported by Section 4(a), Article XVI of RA 11054, which provides, among other things, that in the event of the non-passage of the Bangsamoro Electoral Code, “subsisting laws on elections and other electoral matters shall apply in the Bangsamoro Autonomous Region.”

283. This is buttressed by the Bicameral Conference Committee,²⁷⁸ during the deliberation of the subject, affirmed this contention, thus:

REP. LOBREGAT. The first regular election, it says here on line 41, “It shall be governed by the Bangsamoro Electoral Code.” Will it be governed by the Bangsamoro Electoral Code or will it be governed by the Electoral Code?

THE CHAIRMAN (REP. FARIÑAS). *Hindi, bahala na sila diyan*. Let’s not indicate anymore.

²⁷⁸ Minutes of the Congress’ Bicameral Conference Committee On The Disagreeing Provisions Of Senate Bill No. 1717 And House Bill No. 6475 (Bangsamoro Basic Law), 18 July 2018 at p. 125.

“First regular election.” *Okay na iyan, sir, tutal may section naman ito* about the conduct of elections in their Electoral Code *dahil kung wala silang Electoral Code, di Omnibus Election Code ang uubra* and everything. So let’s not just specify. (*italic added*)

284. Indisputably, the text of this constitutional provision is “to give COMELEC all the necessary and incidental powers for it to achieve its primordial objective of holding free, orderly, honest, peaceful and credible elections.”²⁷⁹ The COMELEC has the power to ensure whatever necessary to hold the election for the 80 seats in the Parliament.

- (e) *There is no plain, speedy,
and adequate remedy
available to the
Petitioners*

285. As we have stated at the outset, petitioners have no plain, speedy, and adequate remedy.

PAYER

WHEREFORE, it is respectfully prayed of this Honorable Court that:

1. With leave of this Honorable Court, TO ADMIT this Petition-in-Intervention;
2. Upon docketing this petition, it be subjected to special raffle for immediate consideration;
3. After due consideration, *Status Quo Ante Order*, be issued ordering respondents TO REFRAIN AND DESIST from enforcing and administering the unconstitutional provisions of RA 11054, BAA 35, and Resolution 10680;
4. After due proceedings, a decision be rendered:

²⁷⁹ *Pangandaman v. COMELEC*, 377 Phil. 297 (1999).

RA 11593 and RA 11054

- (1)DECLARING UNCONSTITUTIONAL RA 11593 for VIOLATION of: (a) Section 1, Article II; (b) Section 2, Article X; (c) Section 18, Article X; and, (d) Section 8, Article X Constitution in relation to synchronized election.
- (2)DECLARING UNCONSTITUTIONAL Section 2 of RA 11593 and Section 12, Article VII of RA 11054 FOR VIOLATION of Section 8, Article X of the Constitution.
- (3)DECLARING UNCONSTITUTIONAL Section 7(a), 2nd par., Article VII of RA 11054; Section 9 Article VII of RA 11054’s clause which reads “only regional political parties duly accredited by the Bangsamoro Electoral Office” for VIOLATION of: (a) Section 2(5), Article IX-C; (b) Section 20, Article X; and, (c) Section 1, Article VI of the Constitution.
- (4)DECLARING UNCONSTITUTIONAL THE PHRASE “through the Bangsamoro Electoral Office” under Section 13, Art. XVI of RA 11054 for VIOLATION of: (a) Section 1, Article X-A; and, (b) Section 6, Article X-A of the Constitution.

Resolution No. 10680

- (5) DECLARING UNCONSTITUTIONAL Resolution No. 10680 promulgated on 7 October 2020²⁸⁰ by the COMELEC for VIOLATION of Section 2(5), Article IX-C of the Constitution.

BAA 35

- (6)DECLARING UNCONSTITUTIONAL: Section 17 (3rd par.), Article IV of BAA 35 for VIOLATION of: (a) Section 1, Article II; (b) Section 18, Article X; (c) Section 8, Article X (in relation to synchronized election); and, (d) Section 20, Article X of the Constitution.
- (7)DECLARING UNCONSTITUTIONAL Article III, BAA 35 including all its sections for VIOLATION of: (a) Section 1, Article VI; (b) Section 1, Article IX-A; (c) Section 6, Article

²⁸⁰ Accessed on 12 August 2023 at https://lawphil.net/administ/comelec/comres2020/comres_10680_2020.pdf

IX-A; (d) Section 2(5), Article IX-C; and, (e) Section 20, Article X of the Constitution.

- (8) DECLARING UNCONSTITUTIONAL Section 17 (1st and 2nd par), Article IV in relation to Section 1, Article X of BAA 35 for VIOLATION of: (a) Section 1, Article II; (b) Section 18, Article X; and, (c) Section 20, Article X of the Constitution;
- (9) DECLARING UNCONSTITUTIONAL Section 1 and Section 13, Article III of BAA 35 for VIOLATION of: (a) Section 26, Article II; (b) Section 23, Article II; (c) Section 1, Article III; (d) Section 8, Article III; (e) Section 1, Article XIII; (f) Section 15, Article XIII; (g) Section 16, Article XIII, (h) Section 6, Article IX-C; and, (i) Section 2(5), Article IX-C of the Constitution.
- (10) DECLARING UNCONSTITUTIONAL Section 18, Article IV of BAA 35 for VIOLATION of: (a) Section 1, Article IX-A; (b) Section 6, Article IX-A; and, (c) Section 2(5), of the Constitution;
- (11) DECLARING UNCONSTITUTIONAL Article II (and its sections) and Article VI of BAA 35 (inclusive of its sections) for VIOLATION of: (a) Sections 1, Article IX-A; (b) Sections 6, Article IX-A; and, (c) Section 2(1), Article IX-C of the Constitution;
- (12) DECLARING UNCONSTITUTIONAL Article III of BAA 35 (inclusive of its sections), and Sections 6, 7, and 8, Sections 19 to 40 Article IV of BAA 35, and Article VII of BAA 35 (inclusive of its sections) for VIOLATION of: (a) Sections 1, Article IX-A; (b) Sections 6, Article IX-A; (c) Section 2(5), Article IX-C; (d) Section 20, Article X; and, (d) Section 1, Article VI of the Constitution;
- (13) Except Sections 1 to 5 and 9 to 15, Article IV and Article V of BAA 35, DECLARING UNCONSTITUTIONAL: Article VI (inclusive of its sections), Article VII (inclusive of its sections), Article VIII (inclusive of its sections), Article X (inclusive of its sections) of BAA 35, and such other related provisions of BAA 35 for VIOLATION of: (a) Section 1, Article V; (b) Section 2, Article V; (c) Section 1, Article IX-A; (d) Section 6, Article IX-A; (e) Section

2(1), Article IX-C; and, (f) Section 20, Article X of the Constitution.

5. After due proceedings, a decision be rendered INVALIDATING the provisions of the BAA 35 and other related provisions of BAA 35 to the extent that they are inconsistent with the specific provisions of the Omnibus Election Code.
6. PROHIBITING PERMANENTLY respondents and any person or entities acting on their behalf from enforcing and administering the foregoing provisions except RA 11953 (under doctrine of operative fact);
7. Upon the DECLARATION OF UNCONSTITUTIONALLITY of the foregoing laws and resolution, writs of mandamus, to enable the people of BARMM to exercise their sovereign power on 12 May 2025 elections, and express their right to suffrage, consisting of:
 - (1)DIRECTING THE COMELEC to issue resolutions that shall administer and enforced the registration and accreditation of political parties, sectoral parties, and reserved parties who intend to participate in the synchronized election on 12 May 2025 election for the party seats, district seats, and reserved seats in the Parliament and that the Verified Petition to Register and Manifestation to Participate be filed directly with the Clerk of the Commission of the COMELEC *en banc* pursuant to *Aggabao*.
 - (2)DIRECTING THE COMELEC to issue resolutions that shall enforce and administer the filing of Certificate of Candidacy and other election activities for the elections of all the 80 party seats, district seats, sectoral seats, and reserved seats of the Parliament for its first regular election on 12 May 2025 synchronized with the national and local elections.
 - (3)DIRECTING THE COMELEC, in the event that BTA failed to enact redistricting for the 32 district representative seats, to issue resolutions, in the exercise its residual power under the Constitution and Section 13, Article XVI of RA 11054, apportioning the 32 District Seats *pro hac vice* in the BARMM for purposes only of the Parliament elections on 12 May 2025.

8. On administrative matter:


- (1) subsequent filing of pleadings and motions be filed and served by electronic means subject to existing rules of the Honorable Court;
- (2) petitioner Latiph, is hereby authorized to sign pleadings, motion, orally argue, and other legal process on behalf of all other petitioners in relation to this case; and
- (3) should this case become subject of oral arguments and the pleadings and motions are posted publicly in the website of the Supreme Court, personal and professional information in the pleadings and motions of petitioners such as the signature, address, emails, telephone numbers, and such other personal and professional details of the parties and counsel BE REDUCTED under data privacy in RA 10173.

9. Other just and equitable relies are likewise prayed under the premises.

Respectfully submitted.

12 October 2023.


ALGAMAR A. LATIPH
Petitioner


AMENODIN CALI
Petitioner


ARLENE NAPOLES SEVILLA
Petitioner

[REDACTED]
ALGAMAR A. LATIPH

Counsel & Co-Petitioner

Lifetime Membership No. [REDACTED]
[REDACTED]

PTR No. [REDACTED]

MCLE Compliance [REDACTED]
[REDACTED]
[REDACTED]

cc:

BANGSAMORO TRANSITION AUTHORITY

Office Of The Secretariat

Parliament Building

Bangsamoro Government Center

Cotabato City, BARMM.

COMMISSION ON ELECTIONS

Palacio del Gobernador,

General Luna St., Intramuros,

Manila 1002. Its statutory counsel,

OFFICE OF THE SOLICITOR GENERAL

134 Amorsolo Street,

Legaspi Village Makati City

EXPLANATION

Due to late filing of motion was
filed through a [REDACTED]

ALGAMAR A. LATIPH