

EN BANC

[G.R. No. 213953, September 26, 2017]

ENGR. OSCAR A. MARMETO, PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC), RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

Before the Court is a Petition for *certiorari* and *mandamus*^[1] seeking to annul the Resolution No. 14-0509 dated July 22, 2014^[2] of the respondent Commission of Elections (COMELEC). The assailed resolution declared that the power of initiative could not be invoked by the petitioner, Engr. Oscar A. Marmeto (Marmeto), for the passage of a proposed ordinance in Muntinlupa City, citing the lack of budgetary appropriation for the conduct of the initiative process.^[3]

THE FACTS

On January 21, 2013, Marmeto filed in behalf of the Muntinlupa People Power^[4] (MPP) a proposed ordinance with the *Sangguniang Panlungsod* of Muntinlupa.^[5] The proposal sought the creation of a sectoral council and the appropriation of the amount of P200 million for the livelihood programs and projects that would benefit the people of Muntinlupa City.

For failure of the *Sanggunian Panlungsod* to act on the proposition within 30 days from its filing, Marmeto filed a petition for initiative with the same body to invoke the power of initiative under the Republic Act (RA) No. 7160, otherwise known as the Local Government Code of 1991 (LGC).

The secretary of *Sanggunian Panlungsod* of Muntinlupa wrote a letter dated June 11, 2013 to the COMELEC stating that the proposal could not be acted upon by the *Sanggunian* because the City's budget for FY 2013 had already been enacted. Thus, the secretary claimed that a new appropriation ordinance was needed to provide funds for the conduct of the initiative.

On July 31, 2013, the COMELEC issued **Resolution No. 13-0904** setting aside Marmeto's initiative petition because the propositions therein were beyond the powers of the *Sanggunian Panlungsod* to enact and were not in accordance with the provisions of existing laws and rules.^[6]

Marmeto sought reconsideration^[7] of COMELEC's Resolution No. 13-0904 by contending that the sectoral council sought to be created would not constitute as a legislative body separate from the *Sanggunian Panlungsod*. He clarified that the sectoral council would merely act as the people's representative, which would facilitate the exercise of the people's power of initiative and referendum.

However, the COMELEC did not find Marmeto's motion for reconsideration meritorious and issued **Resolution No. 13-1039** dated September 17, 2013,^[8] affirming its earlier ruling dismissing the initiative petition. It ruled that the issues Marmeto raised in his motion were mere reiterations of his petition which it had already addressed. Nonetheless, it noted that Marmeto might opt to re-file his initiative petition, since the then newly-elected members of the *Sangguniang Panlungsod* of Muntinlupa might be more sympathetic to Marmeto's propositions.

Accordingly, on December 2, 2013, Marmeto filed a second proposed ordinance with the *Sangguniang Panlungsod* of Muntinlupa. Again, no favorable action was done by the *Sanggunian* within 30 days from the filing of the proposal, prompting Marmeto file a **second initiative petition** with the Office of the City Election Officer on February 10, 2014.^[9]

On April 1, 2014, Marmeto filed a Supplemental Petition to comply with the requirements of COMELEC Resolution No. 2300,^[10] which provided the *Rules and Regulations Governing the Conduct of Initiative on the Constitution, and Initiative and Referendum on National and Local Laws*.

The Assailed COMELEC Resolution

On July 22, 2014, the COMELEC issued the assailed **Resolution No. 14-0509**^[11] which effectively dismissed Marmeto's second initiative petition for **lack of budgetary allocation**. The pertinent portion of the assailed resolution reads as follows:

Considering the absence of any provision in the Commission's FY 2014 budget for the expenses for local initiative or any other election activity x x x the Commission RESOLVED, as it hereby RESOLVES, to adopt the foregoing recommendation x x x that **the power of local initiative cannot be invoked by Engr. Oscar A. Marmeto** x x x for the passage of an ordinance for the appropriation of funds for livelihood projects for the residents of Muntinlupa City since the setting up of signature stations, verification of signatures, the certification of the number of registered voters, and all other acts to be done in exercise thereof will entail expenses on the part of the Commission.^[12] (Emphasis supplied)

Disagreeing with **Resolution No. 14-0509**, Marmeto filed the present *certiorari* and *mandamus* petition contending that the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed his second initiative petition.

THE PARTIES' ARGUMENTS

Marmeto assails the COMELEC's Resolution No. 14-0509, contending that the denial of an initiative petition due to lack of appropriated funds constitutes a gross neglect and abandonment of the COMELEC's duties under the Constitution.^[13]

Marmeto believes that the COMELEC has a ministerial duty to conduct the initiative proceedings under pertinent laws upon compliance with the legal requirements for the exercise of the right. He asserts that the COMELEC evaded its mandated duty by citing unavailability of funds as ground to frustrate the conduct of local initiative.^[14]

The COMELEC, on the other hand, claims that the denial of Marmeto's initiative petition was proper, since the propositions therein were beyond the legal powers of the *Sangguniang Panlungsod* to enact.^[15] Section 124(b) of the LGC provides that the "[i]nitiative shall extend only to subjects or matters which are within the legal powers of the *Sanggunian* to enact." According to the COMELEC, Marmeto's second initiative petition proposed the creation of a council composed of 12 sectoral representatives. This sectoral council will act as a legislative body that will directly propose, enact, approve, or reject any ordinance through the power of initiative and referendum.^[16]

The COMELEC refers to Section 458 of the LGC which enumerates the powers and duties of the *Sangguniang Panlungsod*, noting that nothing in the provision grants the *Sanggunian* the power to create a separate local legislative body. Moreover, Section 457 of the LGC allows only three sectoral representatives to become members of the *Sangguniang Panlungsod*. These sectoral representatives are to be elected by the residents of the city as members of the *Sanggunian*, and cannot be appointed through an initiative election.

THE COURT'S RULING

The Court **dismisses** the Petition.

The COMELEC is mandated to enforce and administer the laws on local initiative and

referendum

Initiative has been described as an instrument of direct democracy whereby the citizens directly propose and legislate laws.^[17] As it is the citizens themselves who legislate the laws, direct legislation through initiative (along with referendum) is considered as an exercise of original legislative power,^[18] as opposed to that of derivative legislative power which has been delegated by the sovereign people to legislative bodies such as the Congress.^[19]

Section 1 of Article VI of the Constitution recognizes the distinction between original and derivative legislative power by declaring that "legislative power shall be vested in the Congress x x x *except to the extent reserved to the people by the provision on initiative and referendum.*" The italicized clause pertains to the original power of legislation which the sovereign people have reserved for their exercise in matters they consider fit. 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.^[20]

The Constitution further mandated the Congress to "provide for a system of initiative and referendum, x x x whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof by the Congress or local legislative body x x x."^[21] In compliance, the Congress enacted RA No. 6735 on August 4, 1989 which provided for a system of initiative and referendum on national and local laws. To implement RA No. 6735, the COMELEC promulgated Resolution No. 2300 on January 16, 1991, which provided the rules and regulations governing the conduct of initiative on the Constitution,^[22] and initiative and referendum on national and local laws. Since the LGC codified all laws pertaining to local governments,^[23] the provisions on local initiative and referendum found in RA No. 6735 were reiterated, with slight modifications, in Sections 120 to 127 of the LGC; all other provisions in RA No. 6735 not inconsistent within the Sections 120 and 127 of the LGC remained valid and in effect.

RA No. 6735 and the LGC are thus the pertinent laws on local initiative and referendum which the COMELEC is mandated to enforce and administer under Article IX-C, Section 2(1) of the Constitution. Naturally, the conduct of initiative and referendum (as with any election exercise) will entail expenses on the part of the government. The budget for the conduct of the exercise of political rights, specifically those on suffrage and electoral rights, is given to the COMELEC, where annual appropriations are automatically and regularly released.^[24]

The COMELEC cannot defeat the exercise of the people's original legislative power for lack of budgetary allocation for its conduct

In *Goh v. Hon. Bayron*,^[25] the Court has definitely ruled the question of **whether the COMELEC may prevent the conduct of a recall election for lack of specific budgetary allocation therefor**. In as much as the issue resolved in *Goh* is similar to the present one before the Court, a brief summary thereof is necessary.

In 2014, Alroben Goh commenced the proceedings for the conduct of recall elections against Puerto Princessa City Mayor Lucilo Bayron. Although the COMELEC found Goh's petition sufficient in form and substance, it resolved to suspend the recall election because there was no appropriation provided for the conduct of recall elections in the FY 2014 General Appropriations Act (GAA). As there was no line item in the GAA for recall elections, there could likewise be no augmentation according to the COMELEC.

Contrary to the COMELEC's assertions, the Court ruled that the FY 2014 GAA "actually expressly provides for a line item appropriation for the conduct and supervision of recall elections."^[26] Under the Program category of the COMELEC's 2014 budget,^[27] the following amounts were provided:

XXXII. COMMISSION ON ELECTIONS

For general and administration support, and operations, including locally-funded projects,

as indicated hereunder

P2,735,321,000

New Appropriations, by
Programs/Activities/Projects, by Operating Units

		<u>Current Operating Expenditures</u>			<u>Totals</u>
		<u>Personnel Services</u>	<u>Maintenance and Other Operating Expenses</u>	<u>Capital Outlays</u>	
PROGRAMS					
100000000	General Administration and Support	<u>P 454,457,000</u>	<u>P 276,749,000</u>		<u>P 731,206,000</u>
100010000	General management and supervision	<u>454,457,000</u>	<u>276,749,000</u>		<u>731,206,000</u>
	National Capital Region (NCR)	<u>454,457,000</u>	<u>276,749,000</u>		<u>731,206,000</u>
	Central Office	<u>454,457,000</u>	<u>276,749,000</u>		<u>731,206,000</u>
Sub-total,	General Administration and Support	<u>454,457,000</u>	<u>276,749,000</u>		<u>731,206,000</u>
300000000	Operations				
301000000	MFO 1 : REGULATION OF ELECTIONS	<u>1,483,087,000</u>	<u>174,188,000</u>		<u>1,657,275,000</u>
301010000	Management and supervision of elections and other electoral exercises	<u>1,437,272,000</u>	<u>172,058,000</u>		<u>1,609,330,000</u>
301010001	Conduct of voter's education and information campaign thru print/radio/television and social media	<u>10,141,000</u>	<u>1,363,000</u>		<u>11,504,000</u>
	National Capital Region (NCR)	<u>10,141,000</u>	<u>1,363,000</u>		<u>11,504,000</u>
	Central Office	<u>10,141,000</u>	<u>1,363,000</u>		<u>11,504,000</u>
301010002	Preparation of maps of territorial units of voting centers, the establishment of new voting centers, and the transfer, merger or abolition of existing ones	<u>21,662,000</u>	<u>2,161,000</u>		<u>23,823,000</u>
	National Capital Region (NCR)	<u>21,662,000</u>	<u>2,161,000</u>		<u>23,823,000</u>
	Central Office	<u>21,662,000</u>	<u>2,161,000</u>		<u>23,823,000</u>
301010003	Development of software system and procedures	<u>6,432,000</u>	<u>5,674,000</u>		<u>12,106,000</u>
	National Capital Region (NCR)	<u>6,432,000</u>	<u>5,674,000</u>		<u>12,106,000</u>
	Central Office	<u>6,432,000</u>	<u>5,674,000</u>		<u>12,106,000</u>
301010004	Monitoring the	<u>10,379,000</u>	<u>120,644,000</u>		<u>131,023,000</u>

	implementation on the conduct of election and other political exercises and development of measures to improve the registration and election systems including the dissemination of election results of previous elections			
	National Capital Region (NCR)	<u>10,379,000</u>	<u>120,644,000</u>	<u>131,023,000</u>
	Central Office	10,379,000	120,644,000	131,023,000
301010005	Conduct and supervision of elections, referenda, recall votes and plebiscites	<u>1,360,975,000</u>	<u>40,526,000</u>	<u>1,401,501,000</u>
	National Capital Region (NCR)	<u>67,917,000</u>	<u>6,439,000</u>	<u>74,356,000</u>
	Central Office	67,917,000	6,439,000	74,356,000

Notably, for its Major Final Output (MFO) 1 on the Regulation of Elections, the COMELEC was provided with a total of P1,401,501,000 for the "**Conduct and supervision of elections, referenda, recall votes and plebiscites**," which amount was subdivided among the 15 administrative regions in the country.

The Court added that "[w]hen the COMELEC receives a budgetary appropriation for its '**Current Operating Expenditures**,' such appropriation includes expenditures to carry out its constitutional functions x x x."^[28] The Court considered the appropriation of P1.4 billion as specific enough to fund elections, which includes both regular and special elections, including recall elections.

Further, the allocation of a specific budget for the conduct of elections constituted as "a line item which can be augmented from the COMELEC's savings to fund the conduct of recall elections in 2014."^[29] Thus, the Court concluded that -

[c]onsidering that there is an existing line item appropriation for the conduct of recall elections in the 2014 GAA, we see no reason why the COMELEC is unable to perform its constitutional mandate to 'enforce and administer all laws and regulations relative to the conduct of x x x recall.' Should the finds appropriated in the 2014 GAA be deemed insufficient, then the COMELEC Chairman may exercise his authority to augment such line item appropriation from the COMELEC's existing savings, as this augmentation is expressly authorized in the 2014 GAA.^[30]

There is no reason not to extend the *Goh* ruling to the present case. In fact, Marmeto's second initiative petition was also filed in 2014; in dismissing Marmeto's petition for lack of funds, the COMELEC was referring to its budget under the FY 2014 GAA.

Although *Goh* involved the conduct of recall elections, the 1.4 billion appropriation under the FY 2014 GAA was for the "conduct and supervision of **elections**, referenda, recall votes and plebiscites."^[31] The term "election" is comprehensive enough to include other kinds of electoral exercises, including initiative elections. As earlier mentioned, the COMELEC's constitutional mandate is to enforce and administer all laws relative to the conduct of an election, plebiscite, initiative, referendum, and recall. The Constitution further states that the "[f]unds certified by the [COMELEC] as necessary to defray the expenses for holding regular and special elections,