

## EN BANC

[ G.R. No. 217725, May 31, 2016 ]

**GLENN A. CHONG AND ANG KAPATIRAN PARTY, REPRESENTED BY NORMAN V. CABRERA, PETITIONERS, VS. SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON; HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER FELICIANO S. BELMONTE, JR.; COMMISSION ON ELECTIONS, REPRESENTED BY ACTING CHAIRPERSON CHRISTIAN ROBERT S. LIM; ADVISORY COUNCIL, REPRESENTED BY UNDERSECRETARY LOUIS NAPOLEON C. CASAMBRE; TECHNICAL EVALUATION COMMITTEE, REPRESENTED BY DOST SECRETARY MARIO G. MONTEJO; DEPARTMENT OF BUDGET AND MANAGEMENT, HEADED BY SECRETARY FLORENCIO B. ABAD, RESPONDENTS.**

### DECISION

**REYES, J.:**

This petition for *certiorari*<sup>[1]</sup> and/or prohibition with prayer for the issuance of a writ of preliminary injunction and/or a temporary restraining order, assails the constitutionality of Sections 8, 9, 10 and 11 of Republic Act (R.A.) No. 8436,<sup>[2]</sup> as amended by Section 9<sup>[3]</sup> of R.A. No. 9369,<sup>[4]</sup> providing for the creation of an Advisory Council (AC) and a Technical Evaluation Committee (TEC), on the ground that it encroaches on the Commission on Elections' (COMELEC) mandate to administer and enforce all laws relating to the elections as provided for in Section 2(1),<sup>[5]</sup> Article IX-C of the 1987 Constitution.

#### The Facts

The factual background of this case dates back to the enactment of R.A. No. 8436 on December 22, 1997 authorizing the adoption of an automated election system (AES) in the May 11, 1998 national and local elections and onwards. On January 23, 2007, R.A. No. 9369 was signed into law, amending R.A. No. 8436. Of particular relevance in R.A. No. 9369 are Sections 8, 9, 10 and 11 which calls for the creation of the AC and the TEC.

In *Roque, Jr., et al. v. COMELEC, et al.*,<sup>[6]</sup> the Court stated that the AC is to recommend, among other functions, the most appropriate, secure, applicable and cost-effective technology to be applied to the AES; while the TEC is tasked to certify, through an established international certification committee, not later than three months before the elections, by categorically stating that the AES, inclusive of its hardware and software components, is operating properly and accurately based on defined and documented standards.<sup>[7]</sup>

Nevertheless, almost eight years after the passage of R.A. No. 9369, and almost six years after the conclusion of the 2010 elections, and just several months before the 2016 elections, Glenn Chong and Ang Kapatiran Party (petitioners) came to this Court to assail the constitutionality of the creation of the AC and the TEC. According to the petitioners: (1) the AC and the TEC are so patently incompatible with a functioning COMELEC; (2) a mere AC should not be allowed to dictate upon the COMELEC in regard with the technology to be applied in the AES; and (3) the recommendation of the AC for the COMELEC to re-use the Precinct Count Optical Scan machines, Consolidation and Canvassing System, peripherals, laptops, equipment, software, *etcetera*, in the 2016 elections, as well as its past actions, are patent nullities.

In compliance with the Court's Resolution<sup>[8]</sup> dated June 16, 2015, the respondents submitted its Comment.<sup>[9]</sup> Summing up the arguments of the respondents, they essentially stated that: (1) the existence of the AC and the TEC does not limit or prevent the exercise of the COMELEC's constitutional mandate to enforce election laws; (2) the AC and the TEC merely ensure that the COMELEC will put in place an effective AES that will clearly and accurately reflect the will of the sovereign people; (3) the power to provide these safeguards is within the authority of the Congress, whose power includes the power to ensure the faithful execution of its policies; and (4) the assailed provisions of R.A. No. 8436, as amended by Section 9 of R.A. No. 9369 enjoys the presumption of constitutionality.

### **The Issue**

The crux of this petition is whether Sections 8, 9, 10 and 11 of R.A. No. 8436, as amended by Section 9 of R.A. No. 9369, insofar as they provide for the creation of the AC and the TEC, are unconstitutional for allegedly being violative of Section 2(1), Article IX-C of the 1987 Constitution.

### **Ruling of the Court**

The petition has no merit.

The petitioners conclude that with the creation of the AC and the TEC, pursuant to Sections 8, 9, 10 and 11 of R.A. No. 8436, the Congress undermine the independence of the COMELEC and infringe upon its power.

The Court, however, finds that the petitioners' thesis finds no support in the evidence presented. A careful examination of the assailed provisions would reveal that the AC and the TEC's functions are merely advisory and recommendatory in nature. The AC's primordial task is to recommend the most appropriate technology to the AES, while the TEC's sole function is to certify that the AES, including its hardware and software components, is operating properly, securely and accurately, in accordance with the provisions of law.

The functions of the AC are recommendatory, as can be gleaned from the assailed provision itself in Section 9 of R.A. No. 8436 which provides that the functions of the AC are merely to recommend, to provide advice and/or assistance, and to participate as nonvoting members with respect to the COMELEC's fulfillment of its mandate and authority to use the AES, and which in all instances, is subject to the

approval and final decision of the COMELEC. On the other hand, the TEC's exclusive function is to certify, through an established international certification entity to be chosen by the COMELEC from the recommendations of the AC that the AES, including its hardware and software components, is operating properly, securely, and accurately, in accordance with the provisions of law.

The Court has conspicuously observed that the petitioners expediently removed in their petition the following paragraph when they quoted Section 9 of R.A. No. 9369 which amended Section 9 of R.A. No. 8436, which recognizes the authority of the COMELEC to enforce the said laws:

Nothing in the role of the Council or any outside intervention or influence shall be construed as an abdication or diminution of the Commission's authority and responsibility for the effective development, management and implementation of the AES and this Act.

Evidently, the AC and the TEC were created to aid the COMELEC in fulfilling its mandate and authority to use an effective AES for free, orderly, honest, peaceful, credible and informed elections. The actions of the AC and the TEC neither bind nor prohibit the COMELEC from enforcing and administering election laws.

Moreso, the AC and the TEC are not permanent in nature. This is evident in Sections 8 and 11 of R.A. No. 8436, as amended. The AC shall be convened not later than 18 months prior to the next scheduled electoral exercise, and deactivated six months after completion of canvassing, while the TEC shall be immediately convened within 10 days after the effectivity of R.A. No. 9369; however, the TEC shall make the certification not later than three months before the date of the electoral exercises.

Lastly, the petitioners have failed to discharge the burden of overcoming the presumption that the assailed provisions are valid and constitutional since they failed to present substantial evidence to support their claim.

Besides, the constitutionality of R.A. No. 9369 has already been upheld by this Court in *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. COMELEC*.<sup>[10]</sup> In the said case, therein petitioners alleged that R.A. No. 9369 violates Section 26(1), Article VI of the 1987 Constitution, claiming that the title of R.A. No. 9369 is misleading because it speaks of poll automation but contains substantial provisions dealing with the manual canvassing of election returns. They further alleged that Sections 34, 37, 38, and 43 are neither embraced in the title nor germane to the subject matter of R.A. No. 9369. The Court then sustained the constitutionality of R.A. No. 9369 holding that a title which declares a statute to be an act to amend a specified code is sufficient and the precise nature of the amendatory act need not be further stated. Moreso, the assailed provisions dealing with the amendments to specific provisions of R.A. No. 7166<sup>[11]</sup> and *Batas Pambansa Bilang 881*<sup>[12]</sup> are likewise germane to the subject matter of R.A. No. 9369.

Settled is the rule that every law is presumed valid.<sup>[13]</sup> Courts are to adopt a liberal interpretation in favor of the constitutionality of legislation, as Congress is deemed to have enacted a valid, sensible, and just law.<sup>[14]</sup> To strike down a law as unconstitutional, the petitioners have the burden to prove a clear and unequivocal

breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because to invalidate a law based on baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.<sup>[15]</sup>

All told, the Court finds no clear violation of the Constitution which would warrant a pronouncement that Sections 8, 9, 10 and 11 of R.A. No. 8436, as amended by Section 9 of R.A. No. 9369, are unconstitutional and void. The power to enforce and administer R.A. No. 8436, as amended by R.A. No. 9369, is still exclusively lodged in the COMELEC, and the AC and the TEC may not substitute its own opinion for the judgment of the COMELEC, thus:

In sum, the Congress created the [AC] and the TEC not to encroach upon the exclusive power of the COMELEC to enforce and administer laws relating to the conduct of the elections, but to (1) ensure that the COMELEC is guided and assisted by experts in the field of technology in adopting the most effective and efficient [AES]; and (2) to ensure clean elections by having disinterested parties closely monitor the COMELEC in procuring systems that operate properly, securely, and accurately. As such, it is apparent that, through the [AC] and the TEC, the Congress merely checks and balances the power of the COMELEC to enforce and administer R.A. No. 8436, as amended by R.A. No. 9369. It does not, however, substitute its own wisdom for that of the COMELEC.<sup>[16]</sup>

**WHEREFORE**, the instant petition is hereby **DISMISSED**.

**SO ORDERED**.

*Sereno, C. J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Leonen, and Caguioa, JJ., concur.*

*Leonardo-De Castro, and Perlas-Bernabe, JJ., on official business.*

*Jardeleza, J., on official leave.*

---

### **NOTICE OF JUDGMENT**

Sirs/Mesdames:

Please take notice that on May 31, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 12, 2016 at 2:20 p.m.

Very truly yours,  
**(SGD) FELIPA G. BORLONGAN-ANAMA**  
Clerk of Court

---

<sup>[1]</sup> *Rollo*, pp. 3-54.