

EN BANC

[G.R. No. 206794, November 26, 2013]

**BANKERS ASSOCIATION OF THE PHILIPPINES AND PERRY L. PE,
PETITIONERS, VS. THE COMMISSION ON ELECTIONS,
RESPONDENT.**

RESOLUTION

BRION, J.:

The petitioners, Bankers Association of the Philippines and Perry L. Pe, assail the constitutionality and legality of the respondent Commission on Elections' (Comelec's) **Resolution No. 9688**^[1] dated May 7, 2013, entitled "*In the Matter of Implementing a Money Ban to Deter and Prevent Vote-Buying in Connection with the May 13, 2013 National and Local Elections*" (*Money Ban Resolution*).^[2] The petitioners included a prayer for the issuance of a status *quo ante*/temporary restraining order and/or writ of preliminary injunction to enjoin its implementation.

THE ASSAILED RESOLUTION

Under the Money Ban Resolution, the Comelec resolved:

1. To prohibit the withdrawal of cash, encashment of checks and conversion of any monetary instrument into cash from May 8 to 13, 2013 exceeding One Hundred Thousand Pesos (P100,000.00) or its equivalent in any foreign currency, per day in banks, finance companies, quasi-banks, pawnshops, remittance companies and institutions performing similar functions. However, all other non-cash transactions are not covered.

For this purpose, the Bangko Sentral ng Pilipinas and other financial agencies of the government are hereby deputized to implement with utmost dispatch and ensure strict compliance with this resolution without violating the provisions of Republic Act No. 1405 , as amended, and Republic Act No. 6426[.]

2. To prohibit the possession, transportation and/or carrying of cash exceeding Five Hundred Thousand Pesos (P500,000.00) or its equivalent in any foreign currency from May 8 to May 13, 2013. For this purpose, *all cash being transported and carried exceeding such amount shall be presumed for the purpose of vote-buying and electoral fraud in violation of the money ban.* xxx.

3. All withdrawals of cash or encashment of checks or series of withdrawals or encashment of checks in cash involving a total

amount exceeding Five Hundred Thousand Pesos (P500,000.00) within one (1) banking day from date of the publication of this resolution until May 13, 2013 shall be presumed to be for the purpose of accumulating funds for vote-buying and election fraud and shall therefore be treated as a “suspicious transaction” under Republic Act No. 9160 or the “Anti-Money Laundering Act of 2001” as amended by Republic Act No. 9194. For this purpose, the Anti-Money Laundering Council (AMLC) is hereby deputized to monitor and initiate investigations, and if necessary, inquire into and examine the deposit and related accounts involved in the suspected transaction pursuant to procedure and requirements of Republic Act No. 10167.^[3]

The Comelec’s Resolution No. 9688-A,^[4] issued on May 9, 2013, amended the Money Ban Resolution by:

1. exempting withdrawals that are routine, regular and made in the ordinary course of business of the withdrawing client on the basis of the prevailing “Know-Your-Client/Customer” policy of the Bangko Sentral ng Pilipinas (BSP), which requires banks “not only to establish the identity of their clients but also to have background knowledge of their normal business transactions,”^[5] and
2. presuming that the possession or transportation of cash in excess of P500,000.00 from May 8 to 13, 2013 was for the purpose of vote-buying and electoral fraud when the same was without tenable justification or whenever attended by genuine reason engendering belief that the money would be used for vote-buying.

The Comelec issued Resolution No. 9688-A on the same day that the petitioners filed the present petition.

On May 10, 2013, the Court issued a *Status Quo Ante* Order,^[6] enjoining the parties to maintain the *status quo* prevailing before the issuance of the Money Ban Resolution.

THE PARTIES’ ARGUMENTS

The petitioners invoke the Court’s power of judicial review to strike down the Money Ban Resolution.

They contend that the Comelec’s Money Ban Resolution was issued without jurisdiction since the Comelec’s power to supervise and regulate the enjoyment or utilization of franchises or permits under Section 4, Article IX-C of the Constitution does not extend to the BSP which is not a holder of any special privilege from the government. The BSP’s power to regulate and supervise banking operations stems from its mandate under the Constitution^[7] and Republic Act (RA) No. 8791 (*The General Banking Law of 2000*).^[8] Section 4, Article IX-C of the Constitution states –

Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of **all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary.** Such supervision or regulation shall aim 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 in connection with the objective of holding free, orderly, honest, peaceful, and credible elections. [emphasis ours]

They thus conclude that the Comelec's power of supervision and regulation cannot be exercised over the BSP and the Anti-Money Laundering Council (*AMLC*) as they can exercise authority only over public transportation and communication entities given special privileges by the government.

The petitioners also posit that the Comelec's power to deputize extends only to law enforcement agencies and only if the President concurs. Section 2(4), Article IX-C of the Constitution states:

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

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4. Deputize, **with the concurrence of the President, law enforcement agencies and instrumentalities of the Government,** including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections. [emphasis ours]

They argue that the BSP and the AMLC are not law enforcement agencies unlike the National Bureau of Investigation and the Philippine National Police. Assuming they may be considered as such, the Comelec failed to secure the concurrence of the President to the deputation.

The petitioners note that paragraph 3 of the Money Ban Resolution effectively amended RA No. 9160 (*Anti-Money Laundering Act of 2001 or AMLA*) by treating the withdrawal of cash or encashment of checks exceeding P500,000.00 within one banking day from May 8 to 13, 2013 as a "suspicious transaction," thus authorizing the AMLC to monitor, initiate investigations, inquire into and examine the deposit. This type of transaction, however, is not among those enumerated as suspicious under Section 3(b) of the AMLA. As an administrative issuance, the Money Ban Resolution cannot amend a law enacted by Congress.

The petitioners also claim that the Money Ban Resolution violates a number of constitutional rights.

The Constitution guarantees that no person shall be deprived of life, liberty and property without due process of law.^[9] The Money Ban Resolution violates an individual's due process rights because it unduly and unreasonably restricts and prohibits the withdrawal, possession, and transportation of cash. The prohibition effectively curtails a range of legitimate activities, and hampers and prejudices property rights. Though the intent (*i.e.*, to curb vote-buying and selling) is laudable, the means employed is not reasonably necessary and is oppressive on an individual's rights. The limitation on withdrawal also goes against the non-impairment clause because the prohibitions and restrictions impair the banks' contractual obligations with their depositors.

Finally, the petitioners claim that the Money Ban Resolution violates the constitutional presumption of innocence because it declares that "all cash being transported and carried exceeding [P500,000.00] shall be presumed for the purpose of vote-buying and electoral fraud in violation of the money ban."^[10] There is no logical connection between the proven fact of possession and transportation of an amount in excess of P500,000.00 and the presumed act of vote-buying because there are many other legitimate reasons for the proven fact.

The Comelec, through the Office of the Solicitor General, filed its Comment on the petition, insisting on the validity of the Money Ban Resolution and its amendment.

The Comelec argues that it has the constitutional authority to supervise and regulate banks and other financial entities, citing Section 4, Article IX-C of the Constitution. It alleges that its power to regulate covers banks and other finance companies, since these entities operate under an "authority" granted by the BSP under Section 6 of RA No. 8791. This authority is of the same nature as "grants, special privileges, or concessions" under Section 4, Article IX-C of the Constitution; thus, it may be validly regulated by the Comelec.

The Comelec also claims that it may validly deputize the BSP, since the latter is a government instrumentality covered by Section 2(4), Article IX-C of the Constitution. Contrary to the petitioners' claim, the Comelec's power to deputize is not limited to law enforcement agencies, but extends to instrumentalities of the government. The constitutional intent is to give the Comelec unrestricted access to the full machinery of the State to ensure free, orderly, honest, peaceful, and credible elections.

The Comelec further contends that Presidential concurrence with the exercise of the Comelec's deputation power is required only if it involves agencies and instrumentalities within the Executive Department, of which the BSP is not a part. Even assuming that Presidential concurrence is required, this has been secured through Memorandum Order No. 52,^[11] s. 2013, where the President gave his blanket concurrence to the deputation of all "law enforcement agencies and instrumentalities of the Government[.]"^[12]

That the BSP is constitutionally and statutorily tasked to provide "policy direction in the areas of money, banking, and credit," and vested with "supervision over the operations of bank," does not preclude the Comelec from exercising its power to supervise and regulate banks during the election period. Notably, the Comelec's power is limited in terms of purpose and duration, and should prevail in this specific