Republic of the Philippines
Supreme Court
Manila

EN BANC

GLENN A. CHONG and ANG
KAPATIRAN PARTY, represented
by NORMAN V. CABRERA,
          Petitioners,

- versus -

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.

G.R. No. 217725

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,[*]
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,[*]
LEONEN,
JARDELEZA,[**] and
CAGUIOA, *JJ.*

Promulgated:

May 31, 2016

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DECISION

REYES, J.:

This petition for *certiorari*[1] 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,[2] as amended by Section 9[3] of

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[1]   *Rollo*, pp. 3-54.

[2]   AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on December 22, 1997.

[3]   SEC. 9. New section 8, 9, 10 and 11 are hereby provided to read as follows:

"SEC. 8. *The Advisory Council.* - The Commission shall create an Advisory Council, hereafter referred to as the Council, which shall be convened not later than eighteen (18) months prior to the next scheduled electoral exercise, and deactivated six months after completion of canvassing: *Provided*, for purposes of the 2007 elections, the Advisory Council shall be immediately convened within ten (10) days after the effectivity of this Act.

The Council shall be composed of the following members, who must be registered Filipino voters, of known independence, competence and probity:

(a)   The Chairman of the Commission on Information and Communications Technology (CICT) who shall act as the chairman of the Council;

(b)   One member from the Department of Science and Technology;

(c)   One member from the Department of Education;

(d)   One member representing the academe, to be selected by the chair of the Advisory Council from among the list of nominees submitted by the country's academic institutions;

(e)   Three members representing ICT professional organizations to be selected by the chair of the Advisory Council from among the list of nominees submitted by Philippine-based ICT professional organizations. Nominees shall be individuals, at least one of whom shall be experienced in managing or implementing large-scale IT projects.

(f)   Two members representing non-governmental electoral reform organizations, to be selected by the chair of the Advisory Council from among the list of nominees submitted by the country's non-governmental electoral reform organizations.

A person who is affiliated with any political party or candidate for any national position, or is related to a candidate for any national position by affinity or consanguinity within the fourth civil degree, shall not be eligible for appointment or designation to the Advisory Council. Should any such situation arise at any time during the incumbency of a member, the designation or appointment of that member, shall *ipso facto* be terminated.

Any member of the Advisory Council is prohibited from engaging, directly or indirectly, with any entity that advocates, markets, imports, produces or in any manner handles software, hardware or any equipment that may be used for election purposes for personal gain.

Any violation of the two immediate preceding paragraphs shall disqualify said member from the Advisory Council and shall be punishable as provided in this Act and shall be penalized in accordance with the Anti-Graft and Corrupt Practices Act and other related laws.

The council may avail itself of the expertise and services of resource persons who are of known independence, competence and probity, are nonpartisan, and do not posses any of the disqualifications applicable to a member of the Advisory Council as provided herein. The resource persons shall also be subject to the same prohibitions and penalties as the members of the Advisory Council.

The Commission on Information and Communications Technology (CICT), shall include in its annual appropriation the funds necessary to enable the Council to effectively perform its functions."

"SEC. 9. *Functions of the Advisory Council.* - The Council shall have the following functions:

1. Recommend the most appropriate, secure, applicable and cost-effective technology to be applied in the AES, in whole or in part, at that specific point in time.
2. Participate as nonvoting members of the Bids and Awards Committee in the conduct of the bidding process for the AES. Members of the Advisory Council representing the ICT professional organizations are hereby excluded from participating in any manner in the Bids and Awards Committee.
3. Participate as nonvoting members of the steering committee tasked with the implementation of the AES. Members of the Advisory Council representing the ICT professional organizations are hereby excluded from participating in any manner in the steering committee.
4. Provide advice and assistance in the review of the systems planning, inception, development, testing, operationalization, and evaluation stages.
5. Provide advice and/or assistance in the identification, assessment and resolution of systems problems or inadequacies as may surface or resurface in the course of the bidding, acquisition, testing, operationalization, re-use, storage or disposition of the AES equipment and/or resources as the case may be.
6. Provide advice and/or assistance in the risk management of the AES especially when a contingency or disaster situation arises.
7. Prepare and submit a written report, which shall be submitted within six months from the date of the election to the oversight committee, evaluating the use of the AES.

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.

The Advisory Council shall be entitled to a just and reasonable amount of *per diem* allowances and/or *honoraria* to cover the expenses of the services rendered chargeable against the budget of the Commission."

"SEC. 10. *The Technical Evaluation Committee.* - The Commission, in collaboration with the chairman of the Advisory Council, shall establish an independent technical evaluation committee, herein known as the Committee, composed of a representative each from the Commission, the Commission on Information and Communications Technology and the Department of Science and Technology who shall act as chairman of the Committee.

The Committee shall be immediately convened within ten (10) days after the effectivity of this Act."

"SEC. 11. *Functions of the Technical Evaluation Committee.* - The Committee shall certify, through an established international certification entity to be chosen by the Commission from the recommendations of the Advisory Council, not later than three months before the date of the electoral exercise, categorically stating that the AES, including its hardware and software components, is operating properly, securely, and accurately, in accordance with the provisions of this Act based, among others, on the following documented results:

1. The successful conduct of a field testing process followed by a mock election event in one or more cities/municipalities;
2. The successful completion of audit on the accuracy, functionality and security controls of the AES software;
3. The successful completion of a source code review;
4. A certification that the source code is kept in escrow with the *Bangko Sentral ng Pilipinas*;
5. A certification that the source code reviewed is one and the same as that used by the equipment; and
6. The development, provisioning, and operationalization of a continuity plan to cover risks to the AES at all points in the process such that a failure of elections, whether at voting, counting or consolidation, may be avoided.

For purposes of the 2007 elections, the certification shall be done not later than eight weeks prior to the date of the elections.

If the Commission decides to proceed with the use of the AES without the Committee's certification, it must submit its reason in writing, to the Oversight Committee, no less than thirty (30) days prior to the electoral exercise where the AES will be used.

The Committee may avail itself of the expertise and services of resource persons who are of known independence, competence and probity, are nonpartisan, and who do not possess any of the disqualifications applicable to a member of the Advisory Council as provided herein. The resource persons shall also be subject to the same prohibitions and penalties as the members of the Advisory Council.

The Committee shall closely coordinate with the steering committee of the Commission tasked with the implementation of the AES in the identification and agreement of the project deliverables and timelines, and in the formulation of the acceptance criteria for each deliverable."

R.A. No. 9369,[4] 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),[5] 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.,*[6] 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.[7]

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[8] dated June 16, 2015, the respondents submitted its Comment.[9] 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,

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[8] *Rollo*, pp. 78-79.
[9] Id. at 104-149.

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*.[10] 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

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[10] 612 Phil. 793 (2009).

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[11] and Batas Pambansa Bilang 881[12] are likewise germane to the subject matter of R.A. No. 9369.

Settled is the rule that every law is presumed valid.[13] 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.[14] 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.[15]

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.[16]

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[11] AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES. Approved on November 26, 1991.
[12] OMNIBUS ELECTION CODE OF THE PHILIPPINES. Approved on December 3, 1985.
[13] *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.,* 686 Phil. 357, 372 (2012), citing *Fariñas v. The Executive Secretary,* 463 Phil. 179, 197 (2003).
[14] Id.
[15] *Smart Communications, Inc. v. Municipality of Malvar, Batangas,* 727 Phil. 430, 447 (2014), citing *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.,* supra note 13, at 373.
[16] *Rollo,* p. 137.

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

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:
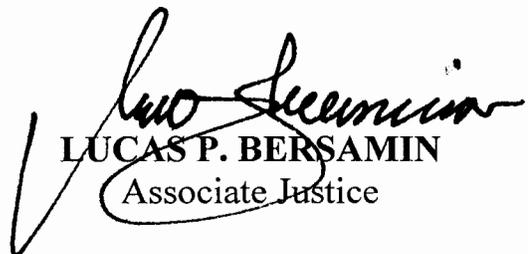
MARIA LOURDES P. A. SERENO
Chief Justice

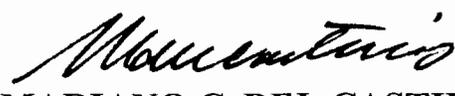**ANTONIO T. CARPIO**
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

On official business
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

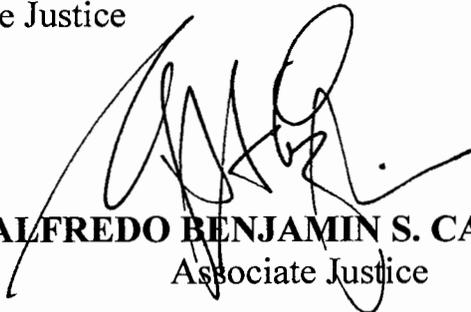**MARIANO C. DEL CASTILLO**
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

On official business
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

On official leave
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice