

**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**EN BANC**

**VICE MAYOR SHIRLYN L.  
BAÑAS-NOGRALES, ET AL.,\***  
Petitioners,

**G.R. No. 246328**

Present:

**BERSAMIN, CJ.,  
CARPIO,  
PERALTA,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA,  
CAGUIOA,  
A. REYES, JR.,  
GESMUNDO,  
J. REYES, JR.,  
HERNANDO,\*\*  
CARANDANG,  
LAZARO-JAVIER,  
INTING, and  
ZALAMEDA, JJ.**

-versus-

**COMMISSION ON ELECTIONS,**  
Respondent.

Promulgated:  
September 10, 2019

X ----- X

**RESOLUTION**

**CARANDANG, J.:**

This instant Petition for Review<sup>1</sup> under Rule 64 of the Rules of Court assails Commission on Elections' (COMELEC) Resolution No. 10524<sup>2</sup>

\* Petitioners Vice Mayor Shirlyn L. Bañas-Nogralas is joined by her co-petitioners Councilor Atty. Franklin M. Gacal, Jr., Noel Samillano Elicanacan, Brgy. Capt. Roger A. Gomez, Brgy. Kagawad Emmanuel Dolorosa Labrador, Valentin Gunto Mariano, Jr., Alexander Avena Robleza, Eliberto Landicho Prudente, Jeffrey Del Mundo Mariano, Joselito Gabriel Yabut, Manolito Magno Gonzales, Nestor Galngan Tamblik, Wenonah Guerrero Sambog, Bienvenido Fermo Barroso, Charlotte Uy Hassan, Richard Ross Calonzo Barroso, Jose Nilo Galino Vargas, Charlotte Aspiras Reyna, Osiel Alexis Piñol Par, Celso Yñiguez Derecho, Jr., Juan Anciano Yñiguez, Mario Hortillano Navales, and Melanette Moralde Lastima.

\*\* On official business.

<sup>1</sup> Rollo, pp. 3-34.

dated April 11, 2019. The assailed Resolution suspended the May 13, 2019 national and local elections (2019 general elections) for the Representative of the First Legislative District of South Cotabato, including General Santos City (1<sup>st</sup> District).

### Factual Antecedents

On March 11, 2019, President Rodrigo Roa Duterte signed into law Republic Act No. (R.A.) 11243.<sup>3</sup> Under R.A. 11243, the 1<sup>st</sup> District was reapportioned, thereby creating the lone legislative district of General Santos City. Under Section 1 of the said law, the creation of the lone legislative district of General Santos City was “to commence in the next national and local elections after the effectivity of this Act.” Consequently, R.A. 11243 took effect on April 4, 2019 – just over a month before the 2019 general elections.

The same law directed the incumbent Representatives of First and Second Legislative Districts of South Cotabato to continue representing their respective districts “until new representatives shall have been elected and qualified.”<sup>4</sup> Thereafter, COMELEC was mandated to issue the necessary rules and regulations to implement R.A. 11243.<sup>5</sup>

On April 11, 2019, COMELEC issued the assailed Resolution, the pertinent portions of which read:

Sec 3. *First Regular Elections.* – The electoral data for the position of Member, House of Representatives for the First Legislative District of South Cotabato, which included General Santos City, as well as the names of the candidates for the said position, have already been configured into the automated election system.

As configured, voters of the First Legislative District of the Province of South Cotabato will vote for one (1) position for Member, House of Representatives. This configuration is inconsistent with Section 1 of R.A. 11243 which reapportioned the First Legislative District of the Province of South Cotabato thereby creating the Lone Legislative District of General Santos City.

The present configuration can no longer be revised or modified in time for the May 13, 2019 national and local elections, without jeopardizing the preparations for the election of other positions, due to the following operational and logistical constraints, such as but not limited to:

<sup>2</sup> “Implementing Rules and Regulations of Republic Act No. 11243 entitled, ‘An Act Reapportioning the First Legislative District of the Province of South Cotabato Thereby Creating the Lone Legislative District of General Santos City,’” promulgated April 11, 2019; id. at 109-111.

<sup>3</sup> “An Act Reapportioning the First Legislative District of the Province of South Cotabato Thereby Creating the Lone Legislative District of General Santos City,” approved March 11, 2019; id. at 107-108.

<sup>4</sup> R.A. 11243, Sec. 2; id. at 108.

<sup>5</sup> R.A. 11243, Sec. 3; id.



- a) Filing of Certificates of Candidacy for the newly created legislative districts;
- b) Finalization of the list of candidates;
- c) Finalization of the ballot face;
- d) Printing of ballots.

In view of the above reasons, the Commission:

- a) **SUSPENDS** the election of Representatives for the First Legislative District, including General Santos City, in the Province of South Cotabato, scheduled on May 13, 2019. In case the position for Member, House of Representatives in the First Legislative District, including General Santos City, is voted upon in the May 13, 2019 elections, all votes for the said position shall be considered stray; and
- b) **SETS** the first regular election for the new Representatives of the First and Third Legislative Districts of the Province of South Cotabato, within six (6) months from May 13, 2019.

*Sec. 4. Incumbent Representative.* – The Incumbent Representatives of the First and Second Legislative Districts of the Province of South Cotabato shall continue to represent the legislative districts until noon of June 30, 2019.

x x x x.<sup>6</sup> (Emphasis in the original)

Petitioners contest the validity of the assailed Resolution for violating R.A. 7166.<sup>7</sup> Under R.A. 7166, the elections for elective members of the House of Representatives shall be on the second Monday of May, every three years.<sup>8</sup> While they admitted that special elections may be held, petitioners claim that none of the exceptional circumstances are present to warrant the same.<sup>9</sup>

Petitioners also averred that scheduling the first regular election “within six (6) months from May 13, 2019”<sup>10</sup> violated R.A. 11243. R.A. 11243 intended the reapportionment to commence in the **next** national and local elections after the effectivity of the said Act, or on the second Monday

<sup>6</sup> Id. at 110-111.

<sup>7</sup> “An Act Providing for Synchronized National and Local Elections for Electoral Reforms, Authorizing Appropriations therefor, and for Other Purposes,” approved on November 26, 1991.

<sup>8</sup> R.A. 7166, Sec. 2 provides:

*Sec. 2. Date of Elections.* – In accordance with the policy hereinbefore stated, there shall be an election for President, Vice-President, twenty-four (24) Senators, all elective Members of the House of Representatives, and all elective provincial, city and municipal officials on the second Monday of May, 1992. Thereafter, the President and Vice-President shall be elected on the same day every six (6) years; while the Senators, elective Members of the House of Representatives and all elective provincial, city and municipal officials shall be elected on the same day every three (3) years, except that with respect to Senators, only twelve (12) shall be elected.

<sup>9</sup> *Rollo*, p. 20.

<sup>10</sup> Id. at 110-111.

of May 2022 – not May 13, 2019. According to petitioners, the legislators were well aware that the election period for the 2019 general elections have already begun at the time R.A. 11243 was passed. Furthermore, petitioners doubted the feasibility of conducting a special election within six months from May 13, 2019.<sup>11</sup>

Petitioners also questioned COMELEC’s directive to consider votes for the 1<sup>st</sup> District as stray votes in the 2019 general elections. They claim that if the same were implemented, there would be no representatives for the 1<sup>st</sup> District from July 1, 2019 until the time elections for such position are held. On the other hand, to allow the 1<sup>st</sup> District’s incumbent representative to continue in a holdover capacity “would be extending his term of office for another three years without being elected by the people.”<sup>12</sup>

Lastly, petitioners sought for the issuance of a *Status Quo Ante* Order in order to “restor[e] the right of the people to vote for their representative for the [1<sup>st</sup> District] in [the] upcoming May 13, 2019 Mid-term Elections[.]”<sup>13</sup>

Without issuing a *Status Quo Ante* Order, this Court ordered COMELEC to file its comment on the petition in a Resolution<sup>14</sup> dated May 3, 2019.

The scheduled elections ensued on May 13, 2019. Inevitably, votes were cast for the representative of the 1<sup>st</sup> District. Out of the 284,351<sup>15</sup> votes cast, 194,929 votes (68.55%) were for Shirlyn L. Bañas-Nogales (Bañas-Nogales). However, following Section 3 of the assailed Resolution, all the votes for the 1<sup>st</sup> District’s representative were considered stray. Thus, Bañas-Nogales was not proclaimed as the 1<sup>st</sup> District’s representative-elect.

As a result, Bañas-Nogales filed multiple manifestations on May 24,<sup>16</sup> May 27,<sup>17</sup> June 6,<sup>18</sup> July 17,<sup>19</sup> and August 22, 2019.<sup>20</sup> praying for: (1) the petition to be granted; (2) her to be proclaimed the winning candidate for the 1<sup>st</sup> District; and (3) a *Status Quo Ante* Order be issued in the interim.<sup>21</sup> Meanwhile, COMELEC filed its Comment<sup>22</sup> on May 24, 2019.

Petitioners likewise brought to this Court’s attention the passage of R.A. 11257, which was approved on April 5, 2019. In R.A. 11257, the Sixth Legislative District of the Province of Cebu was reapportioned, thereby

<sup>11</sup> Id. at 20-26.

<sup>12</sup> Id. at 28.

<sup>13</sup> Id. at 32.

<sup>14</sup> Id. at 120-121.

<sup>15</sup> Computed as 194,929 votes for petitioner Bañas-Nogales + 42,005 votes for Art Cloma + 44,802 votes for Menchie Dinopol-Cataluna + 2,615 votes for Abelardo Plaza; id. at 128.

<sup>16</sup> Id. at 126-135.

<sup>17</sup> Id. at 188-198.

<sup>18</sup> Id. at 199-205.

<sup>19</sup> Id. at 208-215.

<sup>20</sup> Id. at 217-221.

<sup>21</sup> Id. at 213.

<sup>22</sup> Id. at 154-183.

creating the Lone Legislative District of the City of Mandaue. While both laws were passed during the election period, there was a proclamation for the winning candidate of the Sixth Legislative District of the Province of Cebu. The same outcome allegedly arose for the Province of Southern Leyte after the passage of R.A. 11198.<sup>23</sup> Thus, petitioners cried foul over the difference in treatment between the Provinces of Cebu and Southern Leyte, on one hand, and the Province of South Cotabato, on the other.<sup>24</sup>

For its part, COMELEC<sup>25</sup> averred that the petition should be dismissed. It claims to be authorized under Section 2(1),<sup>26</sup> Article IX-C of the 1987 Constitution, Section 5<sup>27</sup> of Batas Pambansa Blg. (B.P.) 881, and its overall power of “ensuring free, orderly and honest elections,”<sup>28</sup> to postpone and to set the elections relating to the legislative districts of the Province of South Cotabato. Postponement was allegedly warranted because at the time R.A. 11243 took effect: (1) COMELEC was already finished with most of the pre-election activities; and (2) it had no time to revise or modify electoral data in the automated election system in the remaining 38 days before the 2019 general elections.<sup>29</sup> Given the logistical and financial impediments, it was thus constrained to reset the elections for the First and Third Legislative Districts for the Province of South Cotabato to a period “within six months from May 13, 2019.”<sup>30</sup>

Anent the assailed Resolution’s declaration that incumbent officials shall hold office only until June 30, 2019, COMELEC reasoned that such was more in compliance with Section 7,<sup>31</sup> Article VI of the 1987 Constitution.<sup>32</sup>

<sup>23</sup> Id. at 131.

<sup>24</sup> Id.

<sup>25</sup> Through the Office of the Solicitor General.

<sup>26</sup> CONSTITUTION, Sec. 2, paragraph 1, provides:

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

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

x x x x

<sup>27</sup> B.P. 881, Sec. 5 provides:

Sec 5. *Postponement of election.* – When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.

<sup>28</sup> B.P. 881, Sec. 52.

<sup>29</sup> *Rollo*, p. 175.

<sup>30</sup> Id. at 179.

<sup>31</sup> CONSTITUTION, Article VI, Sec. 7, provides:

Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

### Our Ruling

The petition is meritorious.

In resolving the merits of the instant petition, We refer to Sections 7 and 8, Article VI of the 1987 Constitution, which provide:

Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their elections.

No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Sec. 8. Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May. (Underscoring ours)

The 1987 Constitution is clear: Elections for Congress should be held on the 2<sup>nd</sup> Monday of May unless otherwise provided by law. The term “unless otherwise provided by law” contemplates two situations (1) when the law specifically states when the elections should be held on a date other than the second Monday of May; and (2) when the law delegates the setting of the date of the elections to COMELEC.

Section 1 of R.A. 11243 categorically states that the reapportionment of the 1<sup>st</sup> District shall “commence in the *next* national and local elections after the effectivity of this Act.” R.A. 11243 did not specifically provide for a different date. Neither did it delegate unto COMELEC the setting of a different date.

COMELEC insists that R.A. 11243 contemplated the 2019 general elections to be the “next” elections. As a result, COMELEC’s act of adjusting the scheduled election to a date “within six (6) months from May 13, 2019” was due to “logistic and financial impossibility x x x analogous to *force majeure* and administrative mishaps covered in Section 5 of [the OEC].”<sup>33</sup>

We need not discuss COMELEC’s powers under Section 5 of the Omnibus Election Code. The issue lies in ascertaining when Congress

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No member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

<sup>32</sup> *Rollo*, p. 179-180.

<sup>33</sup> *Id.* at 175.



intended R.A. No. 11243 to be implemented. The law was passed with the view of implementing the reapportionment of the First Legislative District of the Province of South Cotabato at the most feasible and practicable time, *i.e.*, during the next elections on the second Monday of May **2022**. Congress could **not** have intended to enforce R.A. 11243 during the 2019 general elections as the election period had already begun when R.A. 11243 was enacted. To require implementation last May 13, 2019 would lead COMELEC to act precipitously.

Also, if We were to follow COMELEC's interpretation, an incongruity would result as the winning candidate in COMELEC's special elections<sup>34</sup> would serve a term *less* than that provided for in Section 7, Article VI of the 1987 Constitution. Similar to Section 8, the only exception is when another term is "otherwise provided by law." Again, R.A. 11243 did not provide for a term less than three years, as provided in the 1987 Constitution.

The elections for the First Legislative District of the Province of South Cotabato scheduled on May 13, 2019 should not have been suspended, and the candidate obtaining the most number of votes for the said position must be proclaimed. Consequently, the holdover provision under Section 2 of R.A. 11243 would be inapplicable since there would already be a newly elected and qualified Representative.

**WHEREFORE**, the instant petition is hereby **GRANTED**. COMELEC Resolution No. 10524 is hereby declared **NULL** and **VOID**. The elections for the representative of the First Legislative District of South Cotabato, including General Santos City is **UPHELD**. COMELEC is hereby **DIRECTED** to **CONVENE** a Special Provincial Board of Canvassers to **PROCLAIM** petitioner Shirlyn L. Bañas-Nogralles, the winning candidate, as Representative of the First Legislative District of South Cotabato, including General Santos City.

**SO ORDERED.**

  
**ROSMARIE D. CARANDANG**  
Associate Justice

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<sup>34</sup> Which COMELEC planned to hold within six months from May 13, 2019.

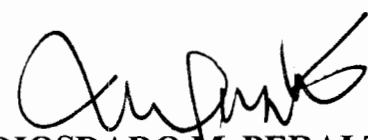
WE CONCUR:




LUCAS P. BERSAMIN  
Chief Justice



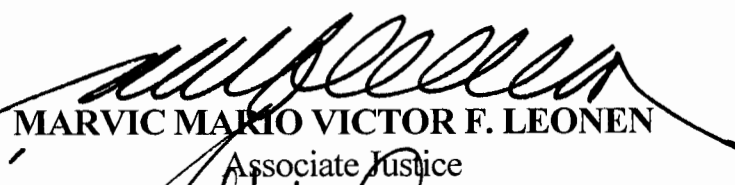
ANTONIO T. CARPIO  
Associate Justice



DIOSDADO M. PERALTA  
Associate Justice



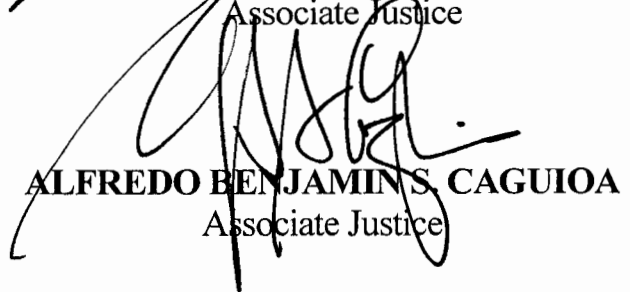
ESTELA M. PERLAS-BERNABE  
Associate Justice




MARVIC MARIO VICTOR F. LEONEN  
Associate Justice



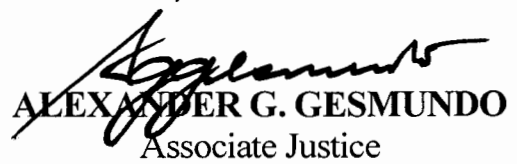
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Associate Justice



ALFREDO BENJAMINS CAGUIOA  
Associate Justice



ANDRES B. REYES, JR.  
Associate Justice



ALEXANDER G. GESMUNDO  
Associate Justice



JOSE C. REYES, JR.  
Associate Justice

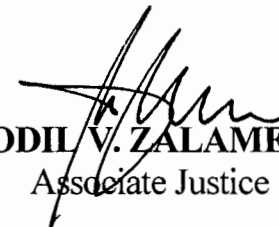
(on official business)  
RAMON PAUL L. HERNANDO  
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AMY C. LAZARO-JAVIER  
Associate Justice



HENRI JEAN PAUL B. INTING  
Associate Justice



RODIL V. ZALAMEDA  
Associate Justice

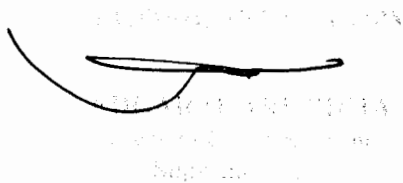


**CERTIFICATION**

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



**LUCAS P. BERSAMIN**  
Chief Justice



*[Faint signature and stamp]*