EN BANC

G.R. No. 234228 – JUSTO Q. SINAG, ET AL., Petitioners, **v. THE HONORABLE SANGGUNIANG PANLALAWIGAN NG BATANGAS, ET AL.,** Respondents.

Promulgated:

February 25, 2025

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DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* grants the petition in this case and declares void Ordinance No. 002, series of 2009, titled "An Ordinance Repealing Sangguniang Panlalawigan Ordinance No. 05, Year 1997 Abolishing Barangay San Rafael, Calaca, Batangas, and Merging it with Barangay Dacanlao of Said Municipality" (Assailed Ordinance). According to the *ponencia,* the Assailed Ordinance is void for its failure to comply with the constitutional and statutory requirements for the creation of a barangay.

I disagree.

The Assailed Ordinance did not need to comply with the requirements of the Local Government Code (LGC) for the creation of a local government unit (LGU) for the simple reason that it did ***not*** create a barangay. Barangay San Rafael, the LGU subject of this case, never ceased to exist as a legal entity, and the Assailed Ordinance merely repealed the ordinance which originally mandated its abolition. Legislative bodies, including those with delegated legislative powers like the Sanggunians under the LGC, have the power to repeal their own enactments, especially before full implementation. As such, I submit that the Assailed Ordinance is valid.

Brief review of the salient facts

In 1997, the Sangguniang Panlalawigan of Batangas enacted Ordinance No. 05, series of 1997[1] (First Ordinance) abolishing Barangay San Rafael (and merging it with another barangay, Barangay Dacanlao) and ordering the Commission on Elections (COMELEC) to conduct a plebiscite on the matter.

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[1] Declaring the Abolition of Barangay San Rafael and its Merger with Barangay Dacanlao, Municipality of Calaca and Instructing the COMELEC and All Other Concerned Agencies as Mentioned in Sections 9 & 10 of the Local Government Code to Effect the Mandatory Requirements to Complete the Said Abolition in the Period Set Forth in the Mentioned Section of the Local Government Code, June 23, 1997.

COMELEC then made the necessary preparations for the plebiscite regarding the abolition of Barangay San Rafael.

Meanwhile, some residents and officials of Barangay San Rafael filed a case before Branch 11, Regional Trial Court of Balayan, Batangas (RTC-Branch 11), docketed as Civil Case No. 3442, to assail the validity of the First Ordinance. They also prayed for the issuance of a temporary restraining order (TRO) against the COMELEC's conduct of the plebiscite.

Eventually, the RTC-Branch 11 dismissed the case for lack of jurisdiction, ruling that only the Supreme Court could issue a TRO against COMELEC. The residents and officials of Barangay San Rafael then filed an appeal directly before the Court, docketed as G.R. No. 132603. Because the Court did not issue a TRO for G.R. No. 132603, COMELEC pushed through with the plebiscite, as scheduled, on February 28, 1998. Based on the said plebiscite, majority of the voters agreed with the abolition of Barangay San Rafael and its merger with Barangay Dacanlao.

However, shortly thereafter, or on March 10, 1998, the Court issued a Resolution in G.R. No. 132603, directing the parties to maintain the *status quo* prevailing at the time of the filing of the petition. And then, the Court subsequently rendered its Decision[2] in G.R. No. 132603 ruling that the RTC had jurisdiction over the case assailing the First Ordinance. As to COMELEC's actions, the Court ruled that COMELEC's actions were valid as it was its ministerial duty under the law to make preparations and eventually conduct the plebiscite. That said, the dispositive portion of the Decision read as follows:

> **WHEREFORE**, the petition for review is hereby *GRANTED,* and the assailed Order dated February 25, 1998, of the Regional Trial Court of Balayan, Batangas, Branch XI is hereby *SET ASIDE* and *ANNULLED.* **The Regional Trial Court of Balayan, Batangas, Branch XI is ordered to proceed with dispatch in resolving Civil Case No. 3442. The execution of the result of the plebiscite held on February 28, 1998 shall be deferred depending on the outcome of Civil Case No. 3442.**
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> **SO ORDERED.**[3] (Emphasis supplied)

Simply put, the Court suspended the implementation of the results of the plebiscite **and made its execution dependent upon the termination of the case where the question of the First Ordinance's validity was pending**.

In compliance with the Court's pronouncement, the RTC-Branch 9 continued to try the case. On November 15, 2006, the RTC issued a Decision upholding the validity and constitutionality of the First Ordinance. The RTC-

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2 *Salva v. Makalintal*, 394 Phil. 855 (2000) [Per J. Buena, *En Banc*].
3 *Id.* at 867–868.

Branch 9 Decision, however, was appealed to the Court of Appeals (CA), which was docketed as CA-G.R. CV No. 88994.

During the pendency of the appeal before the CA, or on August 6, 2009, the Sangguniang Panlalawigan of Batangas issued the Assailed Ordinance which, as mentioned in its title, aimed to repeal the First Ordinance.

It was here that the herein petitioners—residents and barangay officials of Barangay Dacanlao—began questioning the validity of the Assailed Ordinance. On September 8, 2009, petitioners filed a petition before the RTC-Branch 9 seeking to nullify the Assailed Ordinance.

Meanwhile, on March 9, 2010, the CA dismissed CA-G.R. CV No. 88994 for being moot and academic in light of the enactment of the Assailed Ordinance. **An important thing to note is that, during the pendency of all these cases, Barangay San Rafael maintained its corporate existence and always had a complete set of its own officers.**

As regards the case which the herein petitioners filed to nullify the Assailed Ordinance, the RTC-Branch 9 would later on render an Order dated October 14, 2013, dismissing the case on the ground that the First Ordinance was never implemented. It is this Order of the RTC-Branch 9 that was appealed before the CA, and now to this Court in the present case.

As previously mentioned, the *ponencia* grants the present Petition on the belief that the Sangguniang Panlalawigan of Batangas did not follow the statutory requirements for the "creation" of barangays. It views the Assailed Ordinance as one that "creates" an LGU, and therefore subject to the requirements of population, income, and land area under the LGC. Because Barangay San Rafael was not compliant with the population requirement at the time of the Assailed Ordinance's enactment, the *ponencia* concludes that the same is void.

The Assailed Ordinance need not follow the LGC's requirements on creation of barangays

However, as seen from the narration of facts above, the Assailed Ordinance did not "create" a barangay. There is no doubt that the First Ordinance was never implemented. The Court's Decision in G.R. No. 132603 explicitly stated that the execution of the results of the plebiscite was dependent upon the case assailing the validity of the First Ordinance. Though the RTC eventually ruled that the First Ordinance was valid, this ruling did not become final because it was subjected to an appeal with the CA. It was during the pendency of this appeal that the First Ordinance was then repealed by the Assailed Ordinance.

Under the Constitution and the LGC, the abolition of an LGU does not happen merely by the enactment of a law or ordinance (as the case may be)[4] decreeing its abolition. Section 10, Article X of the 1987 Constitution specifically mandates that "[n]o province, city, municipality, or ***barangay*** may be created, divided, ***merged, abolished, or its boundary substantially altered***, except in accordance with the criteria established in the Local Government Code and subject to ***approval by a majority of the votes cast in a plebiscite in the political units directly affected.***"[5]

Thus, it is not enough for a law or ordinance to be enacted—the concurrence of both the existence of a valid law mandating its abolition along with a favorable result in the plebiscite conducted therefor is what ultimately abolishes an LGU.

Here, there is no question that the first half of the equation exists. The First Ordinance enjoys a presumption of constitutionality, which was never overturned by a final judgment declaring its unconstitutionality. The portion on there being a plebiscite approving such abolition, however, is missing.

To stress, while the plebiscite pushed through and resulted in majority of the voters agreeing with the abolition of Barangay San Rafael, the Court's Decision in G.R. No. 132603 clearly made the termination of the court case (in the lower courts) a condition prerequisite to the execution of the result of the plebiscite. And even before the case was terminated—and thus, before the execution of the result of the plebiscite—the Sangguniang Panlalawigan of Batangas already exercised its prerogative to repeal the First Ordinance. The Assailed Ordinance is the expression of such prerogative, which was well within the powers of the Sangguniang Panlalawigan to exercise.

Legislative power is the power to make, ***alter***, and ***repeal*** laws.[6] To have legislative power, therefore, does not only mean that its holder can make laws—it also means that its holder can choose to alter and repeal earlier laws that already exist. It is for this reason that there is no such thing in our constitutional scheme as an irrepealable law. "It is a basic precept that among the implied substantive limitations on the legislative powers is the prohibition against the passage of irrepealable laws."[7] No legislative body can deprive a future composition of the same legislative body that portion of legislative power that enables it to alter or repeal existing laws.

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4 Ordinance in case of *barangays*; laws in case of other LGUs. *See* Section 6 of the LGC, which provides:

> SECTION 6. *Authority to Create Local Government Units.* — A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

5 Emphasis supplied.

6 *Occeña v. Commission on Elections*, 184 Phil. 591, 594 (1980) [Per J. Antonio, *En Banc*].

7 *The City of Davao v. The Regional Trial Court, Branch XII, Davao City*, 504 Phil. 543, 558 (2005) [Per J. Tinga, Second Division].

The First Ordinance is thus undoubtedly capable of being repealed, and the Sangguniang Panlalawigan of Batangas, being a possessor of legislative power, also undoubtedly has the prerogative to repeal the First Ordinance through the Assailed Ordinance. It is a different matter altogether if the First Ordinance had been fully implemented, because Barangay San Rafael would then have ceased to exist in the eyes of the law. In that situation, compliance with the requirements of the Constitution and the LGC for the creation of LGUs would indeed have been necessary for it to return into existence. But such is not the case here, as one of the two components necessary under the Constitution for the abolition of an LGU was absent.

The *ponencia* asserts that Barangay San Rafael was abolished because "the effectivity and validity of a law is not dependent on its actual implementation."[8] I do not agree with this formulation of the issue.

While it is true that defects in implementation do not have an effect on the validity of the law itself, the said truism is not determinative of the case at bar. To be sure, the First Ordinance is not invalid simply because it was not implemented. Unequivocally, it is a valid ordinance. It is, however, a valid ordinance that has been validly repealed before its full implementation, as discussed above.

On compliance with the LGC and the "will of the people"

During the deliberations of this case, it was raised that if the view espoused in this Dissenting Opinion were to be adopted by the majority, the Court would in effect be legitimizing the existence of a political subdivision that does not have a sufficient population. The said counterpoint, however, is inaccurate.

As a general rule, laws only have prospective application. Retroactivity is the exception, not the rule, and is only allowed generally when the law itself provides for it and no vested rights are affected. In *Spouses Curata v. Philippine Ports Authority*,[9] the Court unequivocally stated:

> Statutes are prospective and not retroactive in their operation, laws being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito* — the law provides for the future, the judge for the past — which is articulated in Art. 4 of the Civil Code thusly: "Laws shall have no retroactive effect, unless the contrary is provided". The legislative intent as to the retroactive application of a law is made manifest either by the express terms of the statute or by necessary implication. The reason for the rule is the tendency of retroactive legislation

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8 *Ponencia*, p. 20.

9 608 Phil. 9 (2009) [Per J. Velasco, Jr., *En Banc*].

> to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions.[10] (Citations omitted)

Here, there is no provision in the LGC which mandates its retroactive application. Moreover, the LGC was also explicit that requirements of income, land area, and population primarily apply to the "creation" and "conversion" of LGUs from one category to another. Section 7 of the LGC provides:

> SECTION 7. *Creation and Conversion.* — As a general rule, the **creation** of a local government unit or its **conversion** from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:
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> (a) *Income.* — It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
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> (b) *Population.* — It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and
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> (c) *Land Area.* — It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.
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> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). (Emphasis supplied)

From the foregoing, it is clear that the enactment of the LGC was meant to provide for requirements—moving forward—for what may constitute an LGU. Nothing in the provision, however, can be used to say that the requirements shall be applied to LGUs already existing at the time of the LGC's enactment. In this connection, Section 9 of the LGC only ***allows*** but does ***not require*** the abolition of existing LGUs should they fall below the thresholds found in Section 7. In fact, it even has an additional requirement that the failure to comply with the thresholds should be irreversible. It provides:

> SECTION 9. *Abolition of Local Government Units.* — A local government unit **may** be abolished when its income, population, or land area has been **irreversibly** reduced to less than the minimum standards prescribed for its creation under Book III of this Code, as certified by the

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[10] *Id.* at 91.

> national agencies mentioned in Section 7 hereof to Congress or to the *sanggunian* concerned, as the case may be.
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> The law or ordinance abolishing a local government unit shall specify the province, city, municipality, or barangay with which the local government unit sought to be abolished will be incorporated or merged. (Emphasis supplied)

Therefore, it is inaccurate to say that the views espoused in this Opinion legitimizes anything that is prohibited by the LGC. There is nothing in the Constitution or the laws which requires the Court to apply Section 7 of the LGC to Barangay San Rafael retroactively. Thus, to opine that it "continues to exist" would not violate any provision of law.

Apart from the supposed "legitimization" of Barangay San Rafael, the *ponencia* also takes an issue with the views espoused in this Opinion, as it supposedly ignores the will of the people. To quote the *ponencia*:

> With due respect to Justice Caguioa's view, the Court does not come to the same conclusion.
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> . . . .
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> To allow Ordinance No. 2 to simply repeal Ordinance No. 5 by reasoning that the latter lacked the requirement of a plebiscite, would be to turn a blind eye to the existence of the February 28, 1998 plebiscite – and by extension, ignoring the will of the people, which had already been made known through such plebiscite.[11]

With due respect to the *ponencia*, the role of this Court is to apply the law on the given set of facts, which is what this Opinion simply does. If there was an act, if any at all, that ignored the will of the people, it was the Sangguniang Panlalawigan's enactment of the Assailed Ordinance, knowing full well the results of the plebiscite and that it was just awaiting execution while the cases were pending. It was the Sanggunian Panlalawigan which decided to *validly* exercise its legislative power despite its knowledge of the "will of the people". It is not this Court's fault that they did, but neither is this Court in a position to say that they should not have.

In sum, both a valid ordinance **and** a favorable executory plebiscite must concur before an LGU is said to have been abolished. An ordinance, standing alone, cannot produce its intended effect of abolishing a barangay regardless of its validity. And prior to the concurrence of those two requirements, the relevant Sanggunian's legislative power—including its power to alter and repeal laws—remains intact, in the absence of a constitutional or statutory limitation to the contrary. For this reason, Barangay

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[11] *Ponencia,* pp. 23–24.

San Rafael was never abolished, and the Assailed Ordinance was not "creating" a new LGU.

ACCORDINGLY, I vote to **DISMISS** the instant Petition and **AFFIRM** the Decision dated October 26, 2016 and Resolution dated August 16, 2017 of the Court of Appeals in CA-G.R. CV No. 104369.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice