

EN BANC

[G.R. No. 209185, October 25, 2013]

MARC DOUGLAS IV C. CAGAS, PETITIONER, VS. COMMISSION ON ELECTIONS, REPRESENTED BY ITS CHAIRMAN, ATTY. SIXTO BRILLANTES, JR., AND THE PROVINCIAL ELECTION OFFICER OF DAVAO DEL SUR, REPRESENTED BY ATTY. MA. FEBES BARLAAN, RESPONDENTS.

R E S O L U T I O N

CARPIO, J.:

This Resolution resolves the Petition for Prohibition,^[1] filed by Marc Douglas IV C. Cagas (Cagas), in his capacity as taxpayer, to prohibit the Commission on Elections (COMELEC) from conducting a plebiscite for the creation of the province of Davao Occidental simultaneously with the 28 October 2013 Barangay Elections within the whole province of Davao del Sur, except in Davao City.

Cagas, while he was representative of the first legislative district of Davao del Sur, filed with Hon. Franklin Bautista, then representative of the second legislative district of the same province, House Bill No. 4451 (H.B. No. 4451), a bill creating the province of Davao Occidental. H.B. No. 4451 was signed into law as Republic Act No. 10360 (R.A. No. 10360), the Charter of the Province of Davao Occidental.

Sections 2 and 7 of R.A. No. 10360 provide for the composition of the new provinces of Davao Occidental and Davao del Sur:

Sec. 2. Province of Davao Occidental. – There is hereby created a new province from the present Province of Davao del Sur to be known as the Province of Davao Occidental, consisting of the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani. The territorial jurisdiction of the Province of Davao Occidental shall be within the present metes and bounds of all the municipalities that comprise the Province of Davao Occidental.

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Sec. 7. Legislative District. – The Province of Davao Occidental shall have its own legislative district to commence in the next national and local elections after the effectivity of this Charter. Henceforth, the municipalities of Sta. Maria, Malita, Don Marcelino, Jose Abad Santos and Sarangani shall comprise the Lone Legislative District of the Province of Davao Occidental while the City of Digos and the municipalities of Malalag, Sulop, Kiblawan, Padada, Hagonoy, Sta. Cruz, Matanao, Bansalan and Magsaysay shall comprise the Lone Legislative District of

the Province of Davao del Sur.

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Section 46 of R.A. No. 10360 provides for the date of the holding of a plebiscite.

Sec. 46. *Plebiscite*. – The Province of Davao Occidental shall be created, as provided for in this Charter, upon approval by the majority of the votes cast by the voters of the affected areas in a plebiscite to be conducted and supervised by the Commission on Elections (COMELEC) within sixty (60) days from the date of the effectivity of this Charter.

The amount necessary for the conduct of the plebiscite shall be borne by the COMELEC.

R.A. No. 10360 was passed by the House of Representatives on 28 November 2012, and by the Senate on 5 December 2012. President Benigno S. Aquino III approved R.A. No. 10360 on 14 January 2013.² R.A. No. 10360 was published in the Philippine Star and the Manila Bulletin only on 21 January 2013. Considering that R.A. No. 10360 shall take effect 15 days after its publication in at least two newspapers of general and local circulation,^[3] COMELEC, therefore, only had until 6 April 2013 to conduct the plebiscite.^[4]

As early as 27 November 2012, prior to the effectivity of R.A. No. 10360, the COMELEC suspended the conduct of all plebiscites as a matter of policy and in view of the preparations for the 13 May 2013 National and Local Elections.^[5] On 9 July 2013, the COMELEC extended the policy on suspension of the holding of plebiscites by resolving to defer action on the holding of all plebiscites until after the 28 October 2013 Barangay Elections.^[6] During a meeting held on 31 July 2013, the COMELEC decided to hold the plebiscite for the creation of Davao Occidental simultaneously with the 28 October 2013 Barangay Elections to save on expenses^[7]. The COMELEC, in Minute Resolution No. 13-0926, approved the conduct of the Concept of Execution for the conduct of the plebiscite on 6 August 2013.^[8] On 14 August 2013, Bartolome J. Sinocruz, Jr., the Deputy Executive Director for Operations of the COMELEC, issued a memorandum furnishing a copy of Minute Resolution No. 13-0926 to Atty. Remlane M. Tambuang, Regional Election Director of Region XI; Atty. Ma. Febes M. Barlaan, Provincial Election Supervisor of Davao del Sur; and to all election officers of Davao del Sur. On 6 September 2013, the COMELEC promulgated Resolution Nos. 9771^[9] and 9772.^[10] Resolution No. 9771 provided for the following calendar of activities:

DATE/PERIOD	ACTIVITIES	PROHIBITED ACTS
SEPT. 09, 2013 (MON)	Last day to constitute the Plebiscite Board of Canvassers	
SEPT. 28, 2013 (SAT) – NOV. 12, 2013 (TUE) (30 DAYS BEFORE THE	PLEBISCITE PERIOD	Bearing, carrying or transporting firearms or other deadly weapons in

DATE OF PLEBISCITE AND 15 DAYS THEREAFTER		public places, including any building, street, park, private vehicle or public conveyance, or even if licensed to possess or carry the same, unless authorized in writing by the Commission (Sec. 261 (p) (q) OEC, as amended by Sec. 32, RA 7166);
		Suspension of local elective officials (Sec. 261 (x), OEC);
		Transfer of officers and employees in the civil service (Sec. 261 (h), OEC);
		Alteration of territory of a precinct or establishment of a new precinct (Sec. 5, R.A. 8189);
		Organizing or maintaining reaction/strike forces or similar forces (Sec. 261, (u), OEC);
		Illegal release of prisoners (Sec. 261 (n), OEC);
		Use of security personnel or bodyguards by candidates, whether or not such bodyguards are regular members or officers of the Philippine National Police or Armed Forces of the Philippines or other law enforcement agency (Sec. 261 (t), OEC, as amended by Sec. 33, RA 7166);
		Release, disbursement or expenditures of public funds (Sec. 261 (v), OEC); Construction of public works, delivery of materials for public works and issuance of

		treasury warrants or similar devices for a future undertaking chargeable against public funds (Sec. 261, (w) OEC).
SEPTEMBER 28, 2013 (SAT) to OCTOBER 26, 2013 (SAT)	INFORMATION CAMPAIGN PERIOD	Making any donation or gift in cash or in kind, etc. (Sec. 104, OEC); Use of armored/ land/ water/ air craft. (Sec. 261 (r), OEC); Appointing or using special policemen, special/ confidential agents or the like. (Sec. 261 (m), OEC);
SEPTEMBER 28, 2013 (SAT) to OCTOBER 28, 2013 (MON)		Issuance of appointments, promotions, creation of new positions, or giving of salary increases.
OCTOBER 27, 2013 (SUN)	EVE OF PLEBISCITE DAY	Campaigning (Sec. 3, OEC);
		Giving, accepting free transportation, foods, drinks, and things of value (Sec. 89, OEC);
		Selling, furnishing, offering, buying, serving or taking intoxicating liquor (Sec. 261 (dd), (1), OEC). (NOTE: Acts mentioned in the three (3) preceding paragraphs are prohibited until election day.)
OCTOBER 28, 2013 (MON)	PLEBISCITE DAY Casting of votes- (from 7:00 a.m. to 3:00 p.m. simultaneous with the voting for the Barangay and SK Elections) Counting of votes shall be after the counting of votes for Barangay and SK Elections) Convening of the City	Vote-buying and vote selling (Sec. 261 (a), OEC); Voting more than once or in substitution of another (Sec. 261 (z) (2) and (3), OEC); Campaigning (Sec. 3, OEC); Soliciting votes or undertaking any propaganda for or against any candidate or any political party within

	Plebiscite Board of Canvassers – (6:00 p.m.)	the polling place or within thirty (30) meters thereof (Sec. 261 (cc) (6), OEC); Selling, furnishing, offering, buying, serving or taking intoxicating liquor, etc. (Sec. 261 (dd) (1), OEC); Opening of booths or stalls for the sale, etc., of wares, merchandise or refreshments, within thirty (30) meters radius from the polling place. (Sec. 261 (dd) (2) OEC); Giving and/or accepting free transportation, food, drinks and things of value (Sec. 89, OEC); Holding of fairs, cockfights, boxing, horse races or similar sports. (Sec. 261 (dd) (3), OEC).
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Resolution No. 9772, on the other hand, provided that copies of R.A. No. 10360 be posted^[11] and that information campaigns be conducted prior to the plebiscite.^[12]

On 9 October 2013, Cagas filed the present petition for prohibition. Cagas cites three causes of action:

1. COMELEC is without authority or legal basis to AMEND or MODIFY Section 46 of Republic Act No. 10360 by mere MINUTE RESOLUTION because it is only CONGRESS who can validly amend, repeal [sic] or modify existing laws, thus COMELEC [sic] act in suspending the holding of a plebiscite is unconstitutional;^[13]
2. COMELEC is without authority or legal basis to hold a plebiscite this coming October 28, 2013 for the creation of the Province of Davao Occidental because Section 46 of Republic Act [No.] 10360 has already lapsed;^[14] and
3. Petitioner has no other adequate remedy to prevent the COMELEC from holding the Plebiscite on October 28, 2013 for the creation of the Province of Davao Occidental except through the issuance of Temporary Restraining Order and Preliminary Injunction because COMELEC had already commenced the preparation for holding of the Plebiscite for the creation of the Province of [Davao] Occidental synchronizing it with that of the Barangay and SK elections this coming October 28, 2013.^[15]