



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**BANKERS ASSOCIATION OF
 THE PHILIPPINES and PERRY
 L. PE,**

Petitioners,

G.R. No. 206794

Present:

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

- versus -

**THE COMMISSION ON
 ELECTIONS,**

Respondent.

Promulgated:

NOVEMBER 26, 2013

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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. 9688¹** 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*

* On official leave.
¹ Rollo, pp. 82-85.

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*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 (₱100,000.00)** 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 (₱500,000.00)** or its equivalent in any foreign currency from May 8 to May 13, 2013. For this purpose, *all cash being transported and carried*

² In the *Whereas* clauses of the Money Ban Resolution, the Comelec justified the restrictions on the following provisions of law:

WHEREAS, under Article IX-C, Section 2.1 of the Constitution, one of the Commission on Election’s (COMELEC) powers and functions is to “*enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall*”;

WHEREAS, the COMELEC has the power under Article IX-C, Section 2.4 of the same Constitution to “[d]eputize, 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”;

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WHEREAS, under Article IX-C, Section 4, the COMELEC, during the election period, has the power to “*supervise or regulate ... 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*”, which supervisory and regulatory authority cover all banks and quasi-banking institutions operating under the authority granted by the *Bangko Sentral ng Pilipinas*;

WHEREAS, “*vote buying*” is a criminal offense defined by and penalized under the Omnibus Election Code, xxx.

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WHEREAS, COMELEC takes cognizance of the prevalence of vote-buying throughout the country. The Commission, in pursuit of its constitutional mandate to ensure honest and credible elections, finds it necessary to adopt a multi-tiered approach to prevent and apprehend vote-buyers, particularly the regulation and control of the flow of cash, which is the primary medium used in vote-buying[.] [Id. at 82-83; italics supplied.]

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 (₱500,000.00) 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 ₱500,000.00 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.

³ Id. at 83-84; citations omitted, emphases and italics ours.

⁴ Id. at 86-88.

⁵ Citing the Circular Letter of BSP Deputy Governor Alberto Reyes dated April 11, 2003; BSP Circular No. 706, series of 2011.

⁶ *Rollo*, pp. 53-54.

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 Constitution⁷ 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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⁷ Section 20, Article XII of the Constitutions grants the BSP "supervision over the operations of banks and exercise such regulatory powers xxx over the operations of finance companies and other institutions performing similar functions."

⁸ Section 5 of The General Banking Law of 2000 vests the Monetary Board power to "prescribe ratios, ceilings, limitations, or other forms of regulation on the different types of accounts and practices of banks[.]"

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 ₱500,000.00 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 [₱500,000.00] 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

⁹ CONSTITUTION, Article III, Section 1.

¹⁰ *Rollo*, p. 83.

possession and transportation of an amount in excess of ₱500,000.00 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

¹¹ Id. at 89.

¹² Id. at 72. The pertinent portion of which states:

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby concur with COMELEC Resolution No. 9589 deputizing law enforcement agencies and instrumentalities of the Government, including the AFP, to assist the COMELEC in ensuring the free, orderly, honest, peaceful, and credible conduct of the 13 May 2013 Automated National and Local Elections.

The foregoing law enforcement agencies and other concerned agencies are hereby directed to coordinate and cooperate with the COMELEC in the performance of their duties and functions.

This Memorandum Order shall take effect immediately.

DONE, in the City of Manila, this 9th of January, in the year of our Lord, Two Thousand and Thirteen.

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 instance.

If the Comelec deems the supervision and regulation of banks necessary to curb vote-buying, this is a political question that the Court may not inquire into. The choice of the measures that the Comelec may undertake to ensure the conduct of a free, orderly, honest, peaceful, and credible election is a policy question beyond the scope of judicial review.

The Comelec lastly defends the Money Ban Resolution as a reasonable measure that is not unduly oppressive on individuals. It merely limits transactions involving cash (withdrawal, encashment, possession, etc.), but does not affect other non-cash transactions such as those involving checks and credit cards. Hence, only the medium or instrument of the transaction is affected; the transaction may proceed using non-cash medium or instrument. There is, therefore, no impairment of rights and contracts that would invalidate the Money Ban Resolution.

THE COURT’S RULING

We resolve to dismiss the petition for being moot and academic.

By its express terms, the Money Ban Resolution was effective only for a specific and limited time during the May 13, 2013 elections, *i.e.*, from May 8 to 13, 2013. The Court issued a *Status Quo Ante* Order on May 10, 2013; thus, the Money Ban Resolution was not in force during the most critical period of the elections – from May 10, 2013 to actual election day. With the May 13, 2013 elections over, the Money Ban Resolution no longer finds any application so that the issues raised have become moot and academic.

The power of judicial review is limited to actual cases or controversies. The Court, as a rule, will decline to exercise jurisdiction over a case and proceed to dismiss it when the issues posed have been mooted by supervening events. Mootness intervenes when a ruling from the Court no longer has any practical value and, from this perspective, effectively ceases

to be a justiciable controversy.¹³ “[W]ithout a justiciable controversy, the [petition would] become a [plea] for declaratory relief, over which the Supreme Court has no *original* jurisdiction.”¹⁴

While the Court has recognized exceptions in applying the “moot and academic” principle, these exceptions relate only to situations where: (1) there is a grave violation of the Constitution; (2) the situation is of exceptional character and paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.¹⁵

In the present case, we find it unnecessary to consider the presence of the *first*, *second* and *third* requirements when nothing in the facts and surrounding circumstances indicate the presence of the *fourth* requirement, *i.e.*, the case is capable of repetition yet evading review.

We note that the Comelec did not make any parallel move on or about the May 13, 2013 elections to address the evil that its Money Ban Resolution sought to avoid and, in fact, it did not issue a similar resolution for the October 28, 2013 *barangay* elections. If the May 13, 2013 elections had come and gone without any need for the measures the assailed Resolution put in place and if no such measure was necessary in the elections that immediately followed (*i.e.*, the October 28, 2013 *barangay* elections), we believe that it is now premature for the Court to assume that a similar Money Ban Resolution would be issued in the succeeding elections such that we now have to consider the legality of the Comelec measure that is presently assailed.

We consider it significant that the BSP and the Monetary Board continue to possess full and sufficient authority to address the Comelec’s concerns and to limit banking transactions to legitimate purposes without need for any formal Comelec resolution if and when the need arises. Congress, too, at this point, should have taken note of this case and has the plenary authority, through its lawmaking powers, to address the circumstances and evils the Money Ban Resolution sought to address. In other words, Congress can very well act to consider the required measures

¹³ *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 356-357, citing *Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

¹⁴ Separate Opinion of Chief Justice A. V. Panganiban in *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 525 (2004).

¹⁵ *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).

for future elections, thus rendering unnecessary further action on the merits of the assailed Money Ban Resolution at this point.

WHEREFORE, we hereby **DISMISS** the petition for having become moot and academic. The *Status Quo Ante* Order issued by the Court on May 10, 2013, having been rendered *functus officio* by the May 13, 2013 elections, is hereby formally **LIFTED**.

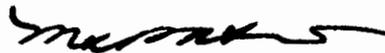
SO ORDERED.



ARTURO D. BRION

Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice



ANTONIO T. CARPIO

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice



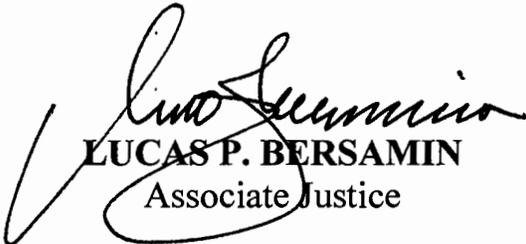
TERESITA J. LEONARDO-DE CASTRO

Associate Justice



DIOSDADO M. PERALTA

Associate Justice



LUCAS P. BERSAMIN

Associate Justice

(No Part)

MARIANO C. DEL CASTILLO

Associate Justice



ROBERTO A. ABAD

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

(On Leave)
BIENVENIDO L. REYES
Associate Justice

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(On Leave)
MARVIC MARIO VICTOR F. LEONEN
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.


MARIA LOURDES P. A. SERENO
Chief Justice