

**League of Cities of the Philippines (LCP), et al. vs. Commission on Elections, et al.
G.R. No. 176951, G.R. No. 177499 & G.R. No. 178056; 24 August 2010**

Facts: The 11th Congress enacted into law 33 bills converting 33 municipalities into cities. However, it did not act on bills converting 24 other municipalities into cities. Subsequently, the 12th Congress enacted Republic Act No. 9009 (RA 9009), which took effect on 20 June 2001, amending Section 450 of the Local Government Code by increasing the annual income requirement for conversion of a municipality into a city from ₱20million to ₱100million. Thereafter, 16 municipalities filed their individual cityhood bills. The 16 cityhood bills contained a common provision exempting all the 16 municipalities from the ₱100million income requirement of RA 9009. The cityhood bills were approved by the House of Representatives and the Senate, and lapsed into law without the President's signature. Said Cityhood Laws directed the Commission on Elections (COMELEC) to hold plebiscites to determine whether the voters in each municipality approved of the conversion. Petitioners sought to declare the 16 Cityhood Laws unconstitutional for violation of **Section 10, Article X of the Constitution** and the **equal protection clause**, lamenting that the wholesale conversion of municipalities into cities would reduce the share of existing cities in the Internal Revenue Allotment (IRA).

On **18 November 2008**, the Supreme Court *En Banc*, by a majority vote, declared the 16 Cityhood Laws to be in violation of Section 10, Article X of the 1987 Constitution, which provides that no city shall be created except in accordance with the criteria established in the local government code. The Supreme Court held that since respondent municipalities did not meet the ₱100million income requirement under Section 450 of the Local Government Code, as amended by RA 9009, the Cityhood Laws converting said municipalities into cities were unconstitutional. The Supreme Court also declared the 16 Cityhood Laws to be in violation of the equal protection clause since there was no valid classification between those entitled and those not entitled to exemption from the ₱100million income requirement: (1) there was no substantial distinction between municipalities with pending cityhood bills in the 11th Congress when RA 9009 was enacted and municipalities that did not have such pending bills; (2) the classification criterion – mere pendency of a cityhood bill in the 11th Congress – was not germane to the purpose of the law, which was to prevent fiscally non-viable municipalities from converting into cities; (3) the pendency of a cityhood bill in the 11th Congress limited the exemption to a specific condition existing at the time of passage of RA 9009 – a condition that would never happen again, violating the requirement that a valid classification must not be limited to existing conditions only; and (4) limiting the exemption only to the 16 respondent municipalities violated the requirement that the classification must apply to all similarly situated; municipalities with the same income as the 16 respondent municipalities could not convert into cities.

On **31 March 2009**, the Supreme Court *En Banc*, also by a majority vote, denied the respondent municipalities' first motion for reconsideration. On **28 April 2009**, the Supreme Court *En Banc*, by a *split* vote, denied the respondent municipalities' second motion for reconsideration. The 18 November 2008 Decision became final and executory and was recorded in the Book of Entries of Judgments on 21 May 2009.

However, on **21 December 2009**, the Supreme Court *En Banc* reversed the 18 November 2008 Decision and upheld the constitutionality of the Cityhood Laws. The Court reasoned that:

(1) When Section 10, Article X of the 1987 Constitution speaks of the local government code, the reference cannot be to any specific statute or codification of laws, let alone the Local Government

Code (LGC) of 1991. It would be noted that at the time of the adoption of the 1987 Constitution, Batas Pambansa Blg. (BP) 337, the then LGC, was still in effect. Had the framers of the 1987 Constitution intended to isolate the embodiment of the criteria only in the LGC, they would have referred to BP 337. Also, they would not have provided for the enactment by Congress of a new LGC, as they did in Section 3, Article X of the Constitution. Accordingly, the criteria for creation of cities need not be embodied in the LGC. Congress can impose such criteria in a consolidated set of laws or a single-subject enactment or through amendatory laws. The passage of amendatory laws, such as RA 9009, was no different from the enactment of the cityhood laws specifically exempting a particular political subdivision from the criteria earlier mentioned. Congress, in enacting the exempting laws, effectively decreased the already codified indicators.

(2) Deliberations on RA 9009, particularly the floor exchange between Senators Aquilino Pimentel and Franklin Drilon, indicated the following complementary legislative intentions: (a) the then pending cityhood bills would be outside the pale of the proposed ₱100million minimum income requirement; and (b) RA 9009 would not have any retroactive effect insofar as the pending cityhood bills were concerned. That said deliberations were undertaken in the 11th and/or 12th Congress (or before the cityhood laws were passed during the 13th Congress) and Congress was not a continuing legislative body, was immaterial. Debates, deliberations, and proceedings of Congress and the steps taken in the enactment of the law, in this case the cityhood laws in relation to RA 9009 or vice versa, were part of its legislative history and may be consulted, if appropriate, as aids in the interpretation of the law.

(3) Petitioners could not plausibly invoke the equal protection clause because no deprivation of property resulted by the enactment of the Cityhood Laws. It was presumptuous on the part of petitioner LCP member-cities to already stake a claim on the IRA, as if it were their property, as the IRA was yet to be allocated. Furthermore, the equal protection clause does not preclude reasonable classification which (a) rests on substantial distinctions; (b) is germane to the purpose of the law; (c) is not be limited to existing conditions only; and (d) applies equally to all members of the same class. All of these requisites had been met by the subject Cityhood Laws: (a) Respondent municipalities were substantially different from other municipalities desirous to be cities. They had pending cityhood bills before the passage of RA 9009, and years before the enactment of the amendatory RA 9009, respondent municipalities had already met the income criterion exacted for cityhood under the LGC of 1991. However, due to extraneous circumstances (the impeachment of then President Estrada, the related *jueteng* scandal investigations conducted before, and the EDSA events that followed the aborted impeachment), the bills for their conversion remained unacted upon by Congress. To impose on them the much higher income requirement after what they had gone through would appear to be unfair; (b) the exemption of respondent municipalities from the ₱100million income requirement was meant to reduce the inequality, occasioned by the passage of the amendatory RA 9009, between respondent municipalities and the 33 other municipalities whose cityhood bills were enacted during the 11th Congress; and (c) the uniform exemption clause would apply to municipalities that had pending cityhood bills before the passage of RA 9009 and were compliant with then Sec. 450 of the LGC of 1991, which prescribed an income requirement of ₱20 million.

(4) The existence of the cities consequent to the approval of the Cityhood Laws in the plebiscites held in the affected municipalities is now an operative fact. New cities appear to have been organized and are functioning accordingly, with new sets of officials and employees. Pursuant to the **operative fact doctrine**, the constitutionality of the Cityhood Laws in question should be upheld.

Petitioners moved for reconsideration (*ad cautelam*) and for the annulment of 21 December 2009 Decision. Some petitioners-in-intervention also moved for reconsideration (*ad cautelam*).

Issues: Whether or not the 16 Cityhood Laws violated Section 10, Article X of the 1987 Constitution and the equal protection clause.

Held: The 16 Cityhood Laws are unconstitutional.

(1) Section 10, Article X of the Constitution is clear – the creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code. The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws. The clear intent of the Constitution is to insure that the creation of cities and other political units follows **the same uniform, non-discriminatory criteria found solely in the Local Government Code**.

From the moment RA 9009 took effect (on 30 June 2001), the LGC required that any municipality desiring to become a city must satisfy the ₱100million income requirement. Section 450 of the LGC, as amended by RA 9009, does not contain any exemption from this income requirement, even for municipalities with pending cityhood bills in Congress when RA 9009 was passed. The uniform exemption clause in the Cityhood Laws, therefore, violated Section 10, Article X of the Constitution. **To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

RA 9009 is not a law different from the Local Government Code. **RA 9009, by amending Section 450 of the Local Government Code, embodies the new and prevailing Section 450 of the Local Government Code.** Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law. Moreover, where the law does not make an exemption, the Court should not create one.

(2) Under the **operative fact doctrine**, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional.

Respondent municipalities' theory that the implementation of the Cityhood Laws, which resulted in 16 municipalities functioning as new cities with new sets of officials and employees, **operated to constitutionalize the unconstitutional Cityhood Laws**, was a misapplication of the operative fact doctrine and would set a gravely dangerous precedent. This view would open the floodgates to the wanton enactment of unconstitutional laws and a mad rush for their immediate implementation before the Court could declare them unconstitutional.

The operative fact doctrine never validates or constitutionalizes an unconstitutional law. Under the operative fact doctrine, the unconstitutional law remains unconstitutional, but the **effects** of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play. Accordingly, the 16 Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the

Cityhood Laws **prior to the declaration of their nullity**, such as the payment of salaries and supplies by the “new cities” or their issuance of licenses or execution of contracts, may be recognized as valid and effective, as a matter of equity and fair play, to innocent people who may have relied on the presumed validity of the Cityhood Laws prior to the Court’s declaration of their unconstitutionality.

(3) There is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. **The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality. In short, the classification criterion – mere pendency of a cityhood bill in the 11th Congress – is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.** Moreover, the pendency of a cityhood bill in the 11th Congress, as a criterion, limits the exemption to a specific condition existing at the time of passage of RA 9009. **That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.** Furthermore, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated; municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can.

** Re: the split or tie-vote on the second motion for reconsideration of the 18 November 2008 Decision.*

The dissenting opinion stated that “a deadlocked vote of six is not a majority and a non-majority does not constitute a rule with precedential value.”

However, Section 7, Rule 56 of the Rules of Court provides that when, in appealed cases, the court *en banc* is equally divided in opinion, or the necessary majority cannot be had, the judgment or order appealed from shall stand affirmed and on all incidental matters, the petition or motion shall be denied.

The 6-6 tie-vote by the Court *en banc* on the second motion for reconsideration necessarily resulted in the denial of the second motion for reconsideration. Since the Court was evenly divided, there could be no reversal of the 18 November 2008 Decision, *for a tie-vote cannot result in any court order or directive*. The tie-vote plainly signifies that there is no majority to overturn the prior 18 November 2008 Decision and 31 March 2009 Resolution denying reconsideration, and thus the second motion for reconsideration must be denied. Hence, the 18 November 2008 judgment and the 31 March 2009 resolution stand in full force. These prior majority actions of the Court *en banc* can only be overruled by a new majority vote, not a tie-vote because a tie-vote cannot overrule a prior affirmative action.

The 18 November 2008 Decision, declaring the 16 Cityhood Laws unconstitutional, was reinstated.