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[G.R. No. 176951, April 12, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; AND MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON, RESPONDENTS.

[G.R. NO. 177499]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; AND MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL, RESPONDENTS.

[G.R. NO. 178056]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), REPRESENTED BY LCP NATIONAL PRESIDENT JERRY P. TREÑAS; CITY OF CALBAYOG, REPRESENTED BY MAYOR MEL SENEN S. SARMIENTO; AND JERRY P. TREÑAS, IN HIS PERSONAL CAPACITY AS TAXPAYER, PETITIONERS, VS. COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE

OF CEBU; MUNICIPALITY OF EL SALVADOR, PROVINCE OF MISAMIS ORIENTAL; MUNICIPALITY OF NAGA, CEBU; AND DEPARTMENT OF BUDGET AND MANAGEMENT, RESPONDENTS.

R E S O L U T I O N

BERSAMIN, J.:

We consider and resolve the *Ad Cautelam Motion for Reconsideration* filed by the petitioners *vis-à-vis* the Resolution promulgated on February 15, 2011.

To recall, the Resolution promulgated on February 15, 2011 granted the *Motion for Reconsideration* of the respondents presented against the Resolution dated August 24, 2010, reversed the Resolution dated August 24, 2010, and declared the 16 Cityhood Laws -- Republic Acts Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 -- constitutional.

Now, the petitioners anchor their *Ad Cautelam Motion for Reconsideration* upon the primordial ground that the Court could no longer modify, alter, or amend its judgment declaring the Cityhood Laws unconstitutional due to such judgment having long become final and executory. They submit that the Cityhood Laws violated Section 6 and Section 10 of Article X of the Constitution, as well as the Equal Protection Clause.

The petitioners specifically ascribe to the Court the following errors in its promulgation of the assailed February 15, 2011 Resolution, to wit:

I. THE HONORABLE COURT HAS NO JURISDICTION TO PROMULGATE THE RESOLUTION OF 15 FEBRUARY 2011 BECAUSE THERE IS NO LONGER ANY ACTUAL CASE OR CONTROVERSY TO SETTLE.

II. THE RESOLUTION CONTRAVENES THE 1997 RULES OF CIVIL PROCEDURE AND RELEVANT SUPREME COURT ISSUANCES.

III. THE RESOLUTION UNDERMINES THE JUDICIAL SYSTEM IN ITS DISREGARD OF THE PRINCIPLES OF RES JUDICATA AND THE DOCTRINE OF IMMUTABILITY OF FINAL JUDGMENTS.

IV. THE RESOLUTION ERRONEOUSLY RULED THAT THE SIXTEEN (16) CITYHOOD BILLS DO NOT VIOLATE ARTICLE X, SECTIONS 6 AND 10 OF THE 1987 CONSTITUTION.

V. THE SIXTEEN (16) CITYHOOD LAWS VIOLATE THE EQUAL

PROTECTION CLAUSE OF THE CONSTITUTION AND THE RIGHT OF LOCAL GOVERNMENTS TO A JUST SHARE IN THE NATIONAL TAXES.

Ruling

Upon thorough consideration, we deny the *Ad Cautelam Motion for Reconsideration* for its lack of merit.

I.
Procedural Issues

With respect to the first, second, and third assignments of errors, *supra*, it appears that the petitioners assail the jurisdiction of the Court in promulgating the February 15, 2011 Resolution, claiming that the decision herein had long become final and executory. They state that the Court thereby violated rules of procedure, and the principles of *res judicata* and immutability of final judgments.

The petitioners posit that the controversy on the Cityhood Laws ended with the April 28, 2009 Resolution denying the respondents' second motion for reconsideration *vis-à-vis* the November 18, 2008 Decision for being a prohibited pleading, and in view of the issuance of the *entry of judgment* on May 21, 2009.

The Court disagrees with the petitioners.

In the April 28, 2009 Resolution, the Court ruled:

> By a vote of 6-6, the Motion for Reconsideration of the Resolution of 31 March 2009 is DENIED for lack of merit. The motion is denied since there is no majority that voted to overturn the Resolution of 31 March 2009.
>
> The Second Motion for Reconsideration of the Decision of 18 November 2008 is DENIED for being a prohibited pleading, and the Motion for Leave to Admit Attached Petition in Intervention dated 20 April 2009 and the Petition in Intervention dated 20 April 2009 filed by counsel for Ludivina T. Mas, et al. are also DENIED in view of the denial of the second motion for reconsideration. No further pleadings shall be entertained. Let entry of judgment be made in due course.
>
> Justice Presbitero J. Velasco, Jr. wrote a Dissenting Opinion, joined by Justices Consuelo Ynares-Santiago, Renato C. Corona, Minita Chico-Nazario, Teresita Leonardo-De Castro, and Lucas P. Bersamin. Chief Justice Reynato S. Puno and Justice Antonio Eduardo B. Nachura took no part. Justice Leonardo A.

Quisumbing is on leave.[1]

Within 15 days from receipt of the April 28, 2009 Resolution, the respondents filed a *Motion To Amend Resolution Of April 28, 2009 By Declaring Instead That Respondents' "Motion for Reconsideration Of the Resolution Of March 31, 2009" And "Motion For Leave To File, And To Admit Attached `Second Motion For Reconsideration Of The Decision Dated November 18, 2008' Remain Unresolved And To Conduct Further Proceedings Thereon*, arguing therein that a determination of the issue of constitutionality of the 16 Cityhood Laws upon a motion for reconsideration by an equally divided vote was not binding on the Court as a valid precedent, citing the separate opinion of then Chief Justice Reynato S. Puno in *Lambino v. Commission on Elections*.[2]

Thus, in its June 2, 2009 Resolution, the Court issued the following clarification of the April 28, 2009 Resolution, *viz*:

> As a rule, a second motion for reconsideration is a prohibited pleading pursuant to Section 2, Rule 52 of the Rules of Civil Procedure which provides that: "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Thus, a decision becomes final and executory after 15 days from receipt of the denial of the first motion for reconsideration.
>
> **However, when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading.**
>
> **In the present case, the Court voted on the second motion for reconsideration filed by respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus, the second motion for reconsideration was no longer a prohibited pleading. However, for lack of the required number of votes to overturn the 18 November 2008 Decision and 31 March 2009 Resolution, the Court denied the second motion for reconsideration in its 28 April 2009 Resolution**.[3]

As the result of the aforecited clarification, the Court resolved to expunge from the records several pleadings and documents, including respondents' *Motion To Amend Resolution Of April 28, 2009 etc*.

The respondents thus filed their *Motion for Reconsideration of the Resolution of June 2, 2009*, asseverating that their *Motion To Amend Resolution Of April 28, 2009 etc.* was *not* another motion for reconsideration of the November 18, 2008 Decision, because it assailed the April 28, 2009 Resolution with respect to the tie-vote on the respondents' *Second*

Motion For Reconsideration. They pointed out that the *Motion To Amend Resolution Of April 28, 2009 etc.* was filed on May 14, 2009, which was within the 15-day period from their receipt of the April 28, 2009 Resolution; thus, the *entry of judgment* had been prematurely made. They reiterated their arguments with respect to a tie-vote upon an issue of constitutionality.

In the September 29, 2009 Resolution,[4] the Court required the petitioners to comment on the *Motion for Reconsideration of the Resolution of June 2, 2009* within 10 days from receipt.

As directed, the petitioners filed their *Comment Ad Cautelam With Motion to Expunge*.

The respondents filed their *Motion for Leave to File and to Admit Attached "Reply to Petitioners' `Comment Ad Cautelam With Motion to Expunge"'*, together with the *Reply*.

On November 17, 2009, the Court resolved to note the petitioners' *Comment Ad Cautelam With Motion to Expunge*, to grant the respondents' *Motion for Leave to File and Admit Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*, and to note the respondents' *Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*.

On December 21, 2009, the Court, resolving the *Motion To Amend Resolution Of April 28, 2009 etc.* and voting anew on the *Second Motion For Reconsideration* in order to reach a concurrence of a majority, promulgated its Decision granting the motion and declaring the Cityhood Laws as constitutional,[5] disposing thus:

> WHEREFORE, respondent LGUs' Motion for Reconsideration dated June 2, 2009, their "Motion to Amend the Resolution of April 28, 2009 by Declaring Instead that Respondents' `Motion for Reconsideration of the Resolution of March 31, 2009' and `Motion for Leave to File and to Admit Attached Second Motion for Reconsideration of the Decision Dated November 18, 2008' Remain Unresolved and to Conduct Further Proceedings," dated May 14, 2009, and their second Motion for Reconsideration of the Decision dated November 18, 2008 are GRANTED. The June 2, 2009, the March 31, 2009, and April 31, 2009 Resolutions are REVERSED and SET ASIDE. The entry of judgment made on May 21, 2009 must accordingly be RECALLED.
>
> The instant consolidated petitions and petitions-in-intervention are DISMISSED. The cityhood laws, namely Republic Act Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 are declared VALID and CONSTITUTIONAL.
>
> SO ORDERED.

On January 5, 2010, the petitioners filed an *Ad Cautelam Motion for Reconsideration* against the December 21, 2009 Decision.[6] On the same date, the petitioners also filed a *Motion to Annul Decision of 21 December 2009*.[7]

On January 12, 2010, the Court directed the respondents to comment on the motions of the petitioners.[8]

On February 4, 2010, petitioner-intervenors City of Santiago, City of Legazpi, and City of Iriga filed their separate *Manifestations with Supplemental Ad Cautelam Motions for Reconsideration*.[9] Similar manifestations with supplemental motions for reconsideration were filed by other petitioner-intervenors, specifically: City of Cadiz on February 15, 2010; [10] City of Batangas on February 17, 2010;[11] and City of Oroquieta on February 24, 2010.[12] The Court required the adverse parties to comment on the motions.[13] As directed, the respondents complied.

On August 24, 2010, the Court issued its Resolution reinstating the November 18, 2008 Decision.[14]

On September 14, 2010, the respondents timely filed a *Motion for Reconsideration of the "Resolution" Dated August 24, 2010*.[15] They followed this by filing on September 20, 2010 a *Motion to Set "Motion for Reconsideration of the `Resolution' dated August 24, 2010" for Hearing*.[16] On November 19, 2010, the petitioners sent in their *Opposition [To the "Motion for Reconsideration of `Resolution' dated August 24, 2010"]*.[17] On November 30, 2010,[18] the Court noted, among others, the petitioners' *Opposition*.

On January 18, 2011,[19] the Court denied the respondents' *Motion to Set "Motion for Reconsideration of the `Resolution' dated August 24, 2010" for Hearing*.

Thereafter, on February 15, 2011, the Court issued the Resolution being now challenged.

It can be gleaned from the foregoing that, as the June 2, 2009 Resolution clarified, the respondents' *Second Motion For Reconsideration* was *not* a prohibited pleading in view of the Court's voting and acting on it having the effect of *allowing* the *Second Motion For Reconsideration*; and that when the respondents filed their *Motion for Reconsideration of the Resolution of June 2, 2009* questioning the expunging of their *Motion To Amend Resolution Of April 28, 2009 etc.* (which had been filed within the 15-day period from receipt of the April 28, 2009 Resolution), the Court opted to act on the *Motion for Reconsideration of the Resolution of June 2, 2009* by directing the adverse parties through its September 29, 2009 Resolution to comment. The same permitting effect occurred when the Court, by its November 17, 2009 Resolution, granted the respondents' *Motion for Leave to File and Admit Reply to Petitioners' Comment Ad Cautelam with Motion to Expunge*, and noted the attached *Reply*.

Moreover, by issuing the Resolutions dated September 29, 2009 and November 17, 2009, the Court: (*a*) rendered *ineffective* the tie-vote under the Resolution of April 28, 2009 and the ensuing denial of the *Motion for Reconsideration of the Resolution of March 31, 2009* for lack of a majority to overturn; (*b*), re-opened the Decision of November 18, 2008 for a second look under reconsideration; and (*c*) lifted the directive that no further pleadings would be entertained. The Court in fact entertained and acted on the respondents' *Motion for Reconsideration of the Resolution of June 2, 2009*. Thereafter, the Court proceeded to deliberate anew on the respondents' *Second Motion for Reconsideration* and ended up with the promulgation of the December 21, 2009 Decision (declaring the Cityhood Laws valid and constitutional).

It is also inaccurate for the petitioners to insist that the December 21, 2009 Decision overturned the November 18, 2008 Decision on the basis of the mere *Reflections* of the Members of the Court. To be sure, the *Reflections* were the legal opinions of the Members and formed part of the deliberations of the Court. The reference in the December 21, 2009 Decision to the *Reflections* pointed out that there was still a pending incident after the April 28, 2009 Resolution that had been timely filed within 15 days from its receipt,[20] pursuant to Section 10, Rule 51,[21] in relation to Section 1, Rule 52,[22] of the *Rules of Court*. Again, the Court did act and deliberate upon this pending incident, leading to the issuance of the December 21, 2009 Decision (declaring the Cityhood Laws free from constitutional infirmity). It was thereafter that the Court rendered its August 24, 2010 Resolution (reinstating the November 18, 2008 Decision), to correct which the respondents' *Motion for Reconsideration of the "Resolution" Dated August 24, 2010* was filed. And, finally, the Court issued its February 15, 2011 Resolution, reversing and setting aside the August 24, 2010 Resolution.

It is worth repeating that the actions taken herein were made by the Court *en banc* strictly in accordance with the *Rules of Court* and its internal procedures. There has been no irregularity attending or tainting the proceedings.

It also relevant to state that the Court has frequently disencumbered itself under extraordinary circumstances from the shackles of technicality in order to render just and equitable relief.[23]

On whether the principle of immutability of judgments and bar by *res judicata* apply herein, suffice it to state that the succession of the events recounted herein indicates that the controversy about the 16 Cityhood Laws has not yet been resolved with finality. As such, the operation of the principle of immutability of judgments did not yet come into play. For the same reason is an adherence to the doctrine of *res judicata* not yet warranted, especially considering that the precedential ruling for this case needed to be revisited and set with certainty and finality.

II.

Substantive Issues

The petitioners reiterate their position that the Cityhood Laws violate Section 6 and Section 10 of Article X of the Constitution, the Equal Protection Clause, and the right of local governments to a just share in the national taxes.

The Court differs.

Congress clearly intended that the local government units covered by the Cityhood Laws be exempted from the coverage of R.A. No. 9009. The apprehensions of the then Senate President with respect to the considerable disparity between the income requirement of P20 million under the Local Government Code (LGC) prior to its amendment, and the P100 million under the amendment introduced by R.A. No. 9009 were definitively articulated in his interpellation of Senator Pimentel during the deliberations on Senate Bill No. 2157. The then Senate President was cognizant of the fact that there were municipalities that then had pending conversion bills

during the 11th Congress prior to the adoption of Senate Bill No. 2157 as R.A. No. 9009, [24] including the municipalities covered by the Cityhood Laws. It is worthy of mention that the pertinent deliberations on Senate Bill No. 2157 occurred on October 5, 2000 while the 11th Congress was in session, and the conversion bills were then pending in the Senate. Thus, the responses of Senator Pimentel made it obvious that R.A. No. 9009 would not apply to the conversion bills then pending deliberation in the Senate during the 11th Congress.

R.A. No. 9009 took effect on June 30, 2001, when the 12th Congress was incipient. By reason of the clear legislative intent to exempt the municipalities covered by the conversion bills pending during the 11th

Congress, the House of Representatives adopted Joint Resolution No. 29, entitled *Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the coverage of Republic Act No. 9009*. However, the Senate failed to act on Joint Resolution No. 29. Even so, the House of Representatives readopted Joint Resolution No. 29 as

Joint Resolution No. 1 during the 12th Congress,[25] and forwarded Joint Resolution No. 1 to the Senate for approval. Again, the Senate failed to approve Joint Resolution No. 1.

At this juncture, it is worthwhile to consider the manifestation of Senator Pimentel with respect to Joint Resolution No. 1, to wit:

MANIFESTATION OF SENATOR PIMENTEL

House Joint Resolution No. 1 seeks to exempt certain municipalities seeking conversion into cities from the requirement that they must have at least P100 million in income of locally generated revenue, exclusive of the internal revenue share that they received from the central government as required under Republic Act No. 9009.

The procedure followed by the House is questionable, to say the least. The House wants the Senate to do away with the income requirement of P100 million so that, en masse, the municipalities they want exempted could now file bills specifically converting them into cities. The reason they want the Senate to do it first is that Cong. Dodo Macias, chair of the House Committee on Local Governments, I am told, will not entertain any bill for the conversion of municipalities into cities unless the issue of income requirement is first hurdled. The House leadership therefore wants to shift the burden of exempting certain municipalities from the income requirement to the Senate rather than do it itself.

That is most unusual because, in effect, the House wants the Senate to pass a blanket resolution that would qualify the municipalities concerned for conversion into cities on the matter of income alone. Then, at a later date, the House would pass specific bills converting the municipalities into cities. However, income is not only the requirement for municipalities to become cities. There are also the requirements on population and land area.

In effect, the House wants the Senate to tackle the qualification of the municipalities they want converted into cities piecemeal and separately, first is the income under the joint resolution, then the other requirements when the bills are file to convert specific municipalities into cities. To repeat, this is a most unusual manner of creating cities.

My respectful suggestion is for the Senate to request the House to do what they want to do regarding the applications of certain municipalities to become cities pursuant to the requirements of the Local Government Code. If the House wants to exempt certain municipalities from the requirements of the Local Government Code to become cities, by all means, let them do their thing. Specifically, they should act on specific bills to create cities and cite the reasons why the municipalities concerned are qualified to become cities. Only after the House shall have completed what they are expected to do under the law would it be proper for the Senate to act on specific bills creating cities.

In other words, the House should be requested to finish everything that needs to be done in the matter of converting municipalities into cities and not do it piecemeal as they are now trying to do under the joint resolution.

> In my long years in the Senate, this is the first time that a resort to this subterfuge is being undertaken to favor the creation of certain cities. **I am not saying that they are not qualified. All I am saying is, if the House wants to pass and create cities out of certain municipalities, by all means let them do that. But they should do it following the requirements of the Local Government Code and, if they want to make certain exceptions, they can also do that too. But they should not use the Senate as a ploy to get things done which they themselves should do.**
>
> Incidentally, I have recommended this mode of action verbally to some leaders of the House. Had they followed the recommendation, for all I know, the municipalities they had envisioned to be covered by House Joint Resolution No. 1 would, by now - if not all, at least some - have been converted into cities. House Joint Resolution No. 1, the House, in effect, caused the delay in the approval in the applications for cityhood of the municipalities concerned.
>
> Lastly, I do not have an amendment to House Joint Resolution No. 1. What I am suggesting is for the Senate to request the House to follow the procedure outlined in the Local Government Code which has been respected all through the years. By doing so, we uphold the rule of law and minimize the possibilities of power play in the approval of bills converting municipalities into cities.[26]

Thereafter, the conversion bills of the respondents were individually filed in the House of Representatives, and were all unanimously and

favorably voted upon by the Members of the House of Representatives.[27] The bills, when forwarded to the Senate, were likewise unanimously approved by the Senate.[28] The acts of both Chambers of Congress show that the exemption clauses ultimately incorporated in the Cityhood Laws are but the express articulations of the clear legislative intent to exempt the respondents, *without exception*, from the coverage of R.A. No. 9009. Thereby, R.A. No. 9009, and, by necessity, the LGC, were amended, not by repeal but by way of the express exemptions being embodied in the exemption clauses.

The petitioners further contend that the new income requirement of P100 million from locally generated sources is not arbitrary because it is not difficult to comply with; that there are several municipalities that have already complied with the requirement and have, in fact, been converted into cities, such as Sta. Rosa in Laguna (R.A. No 9264), Navotas (R.A. No. 9387) and San Juan (R.A. No. 9388) in Metro Manila, Dasmariñas in Cavite (R.A. No. 9723), and Biñan in Laguna (R.A. No. 9740); and that several other municipalities have supposedly reached the income of P100 million from locally generated sources, such as Bauan in Batangas, Mabalacat in Pampanga, and Bacoor in Cavite.

The contention of the petitioners does not persuade.

As indicated in the Resolution of February 15, 2011, fifty-nine (59) existing cities had failed as of 2006 to post an average annual income of P100 million based on the figures contained in the certification dated December 5, 2008 by the Bureau of Local Government. The large number of existing cities, virtually 50% of them, still unable to comply with the P100 million threshold income five years after R.A. No. 9009 took effect renders it fallacious and probably unwarranted for the petitioners to claim that the P100 million income requirement is not difficult to comply with.

In this regard, the deliberations on Senate Bill No. 2157 may prove enlightening, thus:

> **Senator Osmeña III.** And could the gentleman help clarify why a municipality would want to be converted into a city?
>
> **Senator Pimentel.** There is only one reason, Mr. President, and it is not hidden. It is the fact that once converted into a city, the municipality will have roughly more than three times the share that it would be receiving over the internal revenue allotment than it would have if it were to remain a municipality. So more or less three times or more.
>
> **Senator Osmeña III.** Is it the additional funding that they will be able to enjoy from a larger share from the internal revenue allocations?
>
> **Senator Pimentel.** Yes, Mr. President.
>
> **Senator Osmeña III.** Now, could the gentleman clarify, Mr. President, why in the original Republic Act No. 7160, known as the Local Government Code of 1991, such a wide gap was made between a municipality--what a municipality would earn--and a city? Because essentially, to a person's mind, even with this new requirement, if approved by Congress, if a municipality is earning P100 million and has a population of more than 150,000 inhabitants but has less than 100 square kilometers, it would not qualify as a city.
>
> **Senator Pimentel.** Yes.
>
> **Senator Osmeña III.** Now would that not be quite arbitrary on the part of the municipality?
>
> **Senator Pimentel.** In fact, Mr. President, the House version restores the "or". So, this is a matter that we can very well take up as a policy issue. The chair of the committee does not say that we should, as we know, not listen to arguments for the restoration of the word "or" in the population or territorial requirement.
>
> **Senator Osmeña III.** Mr. President, my point is that, I agree with the

gentleman's "and", but perhaps we should bring down the area. There are certainly very crowded places in this country that are less than 10,000 hectares--100 square kilometers is 10,000 hectares. There might only be 9,000 hectares or 8,000 hectares. And it would be unfair if these municipalities already earning P100,000,000 in locally generated funds and have a population of over 150,000 would not be qualified because of the simple fact that the physical area does not cover 10,000 hectares.

Senator Pimentel. Mr. President, in fact, in Metro Manila there are any number of municipalities. San Juan is a specific example which, if we apply the present requirements, would not qualify: 100 square kilometers and a population of not less than 150,000.

But my reply to that, Mr. President, is that they do not have to become a city?

Senator Osmeña III. Because of the income.

Senator Pimentel. But they are already earning a lot, as the gentleman said. **Otherwise, the danger here, if we become lax in the requirements, is the metropolis-located local governments would have more priority in terms of funding because they would have more qualifications to become a city compared to far-flung areas in Mindanao or in the Cordilleras, or whatever.**

Therefore, I think we should not probably ease up on the requirements. Maybe we can restore the word "or" so that if they do not have the 100 square kilometers of territory, then if they qualify in terms of population and income, that would be all right, Mr. President.

Senator Osmeña III. Mr. President, I will not belabor the point at this time. I know that the distinguished gentleman is considering several amendments to the Local Government Code. Perhaps this is something that could be further refined at a later time, with his permission.

So I would like to thank the gentleman for his graciousness in answering our questions.

Senator Pimentel. I also thank the gentleman, Mr. President.[29]

The Court takes note of the fact that the municipalities cited by the petitioners as having generated the threshold income of P100 million from local sources, including those already converted into cities, are either in Metro Manila or in provinces close to Metro Manila. In comparison, the municipalities covered by the Cityhood Laws are spread out in the different provinces of the Philippines, including the Cordillera and Mindanao regions, and

are considerably very distant from Metro Manila. This reality underscores the danger the enactment of R.A. No. 9009 sought to prevent, *i.e.*, that "the metropolis-located local governments would have more priority in terms of funding because they would have more qualifications to become a city compared to the far-flung areas in Mindanao or in the Cordilleras, or whatever," actually resulting from the abrupt increase in the income requirement. Verily, this result is antithetical to what the Constitution and LGC have nobly envisioned in favor of countryside development and national growth. Besides, this result should be arrested early, to avoid the unwanted divisive effect on the entire country due to the local government units closer to the National Capital Region being afforded easier access to the bigger share in the national coffers than other local government units.

There should also be no question that the local government units covered by the Cityhood Laws belong to a class of their own. They have proven themselves viable and capable to become component cities of their respective provinces. They are and have been centers of trade and commerce, points of convergence of transportation, rich havens of agricultural, mineral, and other natural resources, and flourishing tourism spots. In his speech delivered on the floor of the Senate to sponsor House Joint Resolution No. 1, Senator Lim recognized such unique traits,[30] *viz:*

> It must be noted that except for Tandag and Lamitan, which are both second-class municipalities in terms of income, all the rest are categorized by the Department of Finance as first-class municipalities with gross income of at least P70 million as per Commission of Audit Report for 2005. Moreover, Tandag and Lamitan, together with Borongan, Catbalogan, and Tabuk, are all provincial capitals.
>
> The more recent income figures of the 12 municipalities, which would have increased further by this time, indicate their readiness to take on the responsibilities of cityhood.
>
> Moreover, the municipalities under consideration are leading localities in their respective provinces. Borongan, Catbalogan, Tandag, Batac and Tabuk are ranked number one in terms of income among all the municipalities in their respective provinces; Baybay and Bayugan are number two; Bogo and Lamitan are number three; Carcar, number four; and Tayabas, number seven. Not only are they pacesetters in their respective provinces, they are also among the frontrunners in their regions - Baybay, Bayugan and Tabuk are number two income-earners in Regions VIII, XIII, and CAR, respectively; Catbalogan and Batac are number three in Regions VIII and I, respectively; Bogo, number five in Region VII; Borongan and Carcar are both number six in Regions VIII and VII, respectively. This simply shows that these municipalities are viable.

Petitioner League of Cities argues that there exists no issue with respect to the cityhood of

its member cities, considering that they became cities in full compliance with the criteria for conversion at the time of their creation.

The Court considers the argument too sweeping. What we pointed out was that the previous income requirement of P20 million was definitely not insufficient to provide the essential government facilities, services, and special functions *vis-à-vis* the population of a component city. We also stressed that the increased income requirement of P100 million was not the only conclusive indicator for any municipality to survive and remain viable as a component city. These observations were unerringly reflected in the respective incomes of the fifty-nine (59) members of the League of Cities that have still failed, remarkably enough, to be compliant with the new requirement of the P100 million threshold income five years after R.A. No. 9009 became law.

Undoubtedly, the imposition of the income requirement of P100 million from local sources under R.A. No. 9009 was arbitrary. When the sponsor of the law chose the specific figure of P100 million, no research or empirical data buttressed the figure. Nor was there proof that the proposal took into account the after-effects that were likely to arise. As already mentioned, even the danger the passage of R.A. No. 9009 sought to prevent might soon become a reality. While the Constitution mandates that the creation of local government units must comply with the criteria laid down in the LGC, it cannot be justified to insist that the Constitution must have to yield to every amendment to the LGC despite such amendment imminently producing effects contrary to the original thrusts of the LGC to promote autonomy, decentralization, countryside development, and the concomitant national growth.

Moreover, if we were now to adopt the stringent interpretation of the Constitution the petitioners are espousing, we may have to apply the same restrictive yardstick against the recently converted cities cited by the petitioners, and find two of them whose conversion laws have also to be struck down for being unconstitutional. The two laws are R.A. No. 9387[31] and R.A. No. 9388,[32] respectively converting the municipalities of San Juan and Navotas into highly urbanized cities. A cursory reading of the laws indicates that there is no indication of compliance with the requirements imposed by the LGC, for, although the two local government units concerned presumably complied with the income requirement of P50 million under Section 452 of the LGC and the income requirement of P100 million under the amended Section 450 of the LGC, they obviously did not meet the requirements set forth under Section 453 of the LGC, to wit:

> Section 453. *Duty to Declare Highly Urbanized Status.*--It shall be the duty of the President to declare a city as highly urbanized within thirty (30) days after it shall have met the minimum requirements prescribed in the immediately preceding Section, upon proper application therefor and ratification in a plebiscite by the qualified voters therein.

Indeed, R.A. No. 9387 and R.A. No. 9388 evidently show that the President had not classified San Juan and Navotas as highly urbanized cities upon proper application and ratification in a plebiscite by the qualified voters therein. A further perusal of R.A. No. 9387 reveals that San Juan did not qualify as a highly urbanized city because it had a population of only 125,558, contravening the required minimum population of 200,000 under Section 452 of the LGC. Such non-qualification as a component city was conceded even by Senator Pimentel during the deliberations on Senate Bill No. 2157.

The petitioners' contention that the Cityhood Laws violated their right to a just share in the national taxes is not acceptable.

In this regard, it suffices to state that the share of local government units is a matter of percentage under Section 285 of the LGC, not a specific amount. Specifically, the share of the cities is 23%, determined on the basis of population (50%), land area (25%), and equal sharing (25%). This share is also dependent on the number of existing cities, such that when the number of cities increases, then more will divide and share the allocation for cities. However, we have to note that the allocation by the National Government is not a constant, and can either increase or decrease. With every newly converted city becoming entitled to share the allocation for cities, the percentage of internal revenue allotment (IRA) entitlement of each city will decrease, although the actual amount received may be more than that received in the preceding year. That is a necessary consequence of Section 285 and Section 286 of the LGC.

As elaborated here and in the assailed February 15, 2011 Resolution, the Cityhood Laws were not violative of the Constitution and the LGC. The respondents are thus also entitled to their just share in the IRA allocation for cities. They have demonstrated their viability as component cities of their respective provinces and are developing continuously, albeit slowly, because they had previously to share the IRA with about 1,500 municipalities. With their conversion into component cities, they will have to share with only around 120 cities.

Local government units do not subsist only on locally generated income, but also depend on the IRA to support their development. They can spur their own developments and thereby realize their great potential of encouraging trade and commerce in the far-flung regions of the country. Yet their potential will effectively be stunted if those already earning more will still receive a bigger share from the national coffers, and if commercial activity will be more or less concentrated only in and near Metro Manila.

III.
Conclusion

We should not ever lose sight of the fact that the 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the LGC prescribed prior to its amendment by R.A. No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its *imprimatur* to the clear and

unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress.

WHEREFORE, the *Ad Cautelam* Motion for Reconsideration (of the Decision dated 15 February 2011) is denied with finality.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro, Perez, and *Mendoza, JJ.,* concur.
Carpio, J., see dissenting opinion.
Carpio Morales, J., I maintain my vote, hence I dissent.
Nachura and *Del Castillo, J.*, no part.
Brion, Peralta, and *Villarama, Jr., JJ.,* joins the dissent of J. Carpio.
Abad, J., please see my concurring opinion.
Sereno, J., I join the dissent of J. Carpio and reserve my right to file a disticnt dissenting opinion.

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[1] *Rollo* (G.R. No. 176951), Vol. 5, p. 4483.

[2] G.R. No. 174153, October 25, 2006, 505 SCRA 160, 290.

[3] *Rollo* (G.R. No. 176951), Vol. 5, pp. 4667-4668 (bold underscoring added for emphasis).

[4] *Id*., p. 4880.

[5] *Rollo* (G.R. No. 176951), Vol. 6, p. 5081.

[6] *Id*., pp. 5106-5238.

[7] *Id*., pp. 5139-5160.

[8] *Id*., p. 5161.

[9] *Id*., pp. 5196-5200, 5202-5210, & 5212-5217, respectively.

[10] *Id*., pp. 5346-5351.

[11] *Id*., pp. 5365-5369.

[12] *Id*., pp. 5420-5427.

[13] *Id*., p. 5342 (February 9, 2010 Resolution Re: Manifestations & Motions of the Cities of Santiago, Legazpi, & Iriga); p. 5353 (February 16, 2010 Resolution Re: Manifestation & Motion of Cadiz City); p. 5397 (February 23, 2010 Resolution Re: Manifestation & Motion of Batangas City); and p. 5536 (March 2, 2010 Resolution Re: Manifestation & Motion of Oroquieta City).

[14] *Id*., pp. 5846-5861.

[15] *Id*., pp. 5879-5849.

[16] *Id*., pp.6369-6379.

[17] *Id*., pp. 6388-6402.

[18] *Id*., p. 5998.

[19] *Id*., p. 6338.

[20] The incident was the *Motion To Amend Resolution Of April 28, 2009 By Declaring Instead That Respondents' "Motion for Reconsideration Of the Resolution Of March 31, 2009" And "Motion For Leave To File, And To Admit Attached `Second Motion For Reconsideration Of The Decision Dated November 18, 2008' Remain Unresolved And To Conduct Further Proceedings Thereon.*

[21] Section 10. *Entry of judgments and final resolutions.*--If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

[22] Section 1. *Period for filing.*--A party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party.

[23] See *Manotok IV v. Heirs of Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468; *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. Nos. 183591, 183752, 183893, 183951, and 183962, October 14, 2008, 568 SCRA 402; *Manalo v. Calderon,* G.R. No.

178920, October 15, 2007, 536 SCRA 290; *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160; and *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[24] June 1998-June 2001.

[25] June 2001-June 2004.

[26] Journal, Senate, 13th Congress, pp. 651-652 (November 7, 2006); see *rollo* (G.R. No. 176951), Vol. 5, pp. 3783-3784 (bold underscoring added for emphasis).

[27] Certification dated December 6, 2008, issued by the House of Representatives Plenary Affairs Bureau signed by Atty. Cesar S. Pareja, Executive Director of the House of Representatives Plenary Affairs Bureau and noted by Atty. Marilyn B. Barua-Yap, Secretary General of the House of Representatives; *rollo* (G.R. No. 176951), Vol. 5, pp. 3799-3801.

[28] "Legislative History" of House Bill No. (HBN) 5973 (Republic Act [R.A.] No. 9389); HBN-5997 (R.A. No. 9390); HBN-5998 (R.A. No. 9391); HBN-5999 (R.A. No. 9392); HBN-6001 (R.A. No. 9393); HBN-5990 (R.A. No. 9394); HBN-5930 (R.A. No. 9398); HBN-6005 (R.A. No. 9404); HBN-6023 (R.A. No. 9408); HBN-6024 (R.A. No. 9409); HBN-5992 (R.A. No. 9434); HBN-6003 (R.A. No. 9435); HBN-6002 (R.A. No. 9436); and HBN-6041 (R.A. No. 9491); Senate Legislative Information System, last accessed on March 25, 2011 at http://202.57.33.10/plis/Public/PB_leghist.asp.

[29] II Record, Senate, 13th Congress, p. 167 (October 5, 2000); *rollo* (G.R. No. 176951), Vol. 5, p. 3768.

[30] Journal, Senate, 13th Congress, p. 1240 (January 29, 2007); *rollo*, (G.R. No. 176951), Vol. 5, p. 3775.

[31] An Act Converting the Municipality of San Juan into a Highly Urbanized City to be Known as the City of San Juan.

[32] An Act Converting the Municipality of Navotas into a Highly Urbanized City to be Known as the City of Navotas.

CONCURRING OPINION

ABAD, *J.*:

I fully concur in the resolution that Justice Lucas Bersamin wrote for the majority. I would want, however, to reply briefly to the charge that the Court has been guilty of "flip-plopping" in this case. Since the Court is a collegial body, the implication is that the majority of its members have collectively flip-flopped in their decisions.

But the charge is unfair as it is baseless. The Court is not a living person whose decisions and actions are ruled by the whim of one mind. As a collegial body, the Court acts by consensus among its fifteen members. And total agreement is not always attainable. This is especially true where the political, social, or economic stakes involved are high or affect a great number of people and the views of the individual members are closely divided.

The ideal is to have an early consensus among the Court's members in any given dispute. But, given the variety of their learning and experiences as former judges, trial lawyers, government counsels, academicians, and administrators, that is hardly an easy objective. Justices look at cases through different lenses. Disagreements in their conclusions can and often happen. Thus, they are forced to take a vote and the will of the majority prevails.

It is when the votes among its members are closely divided as in this case that the decision of the Court could, on a motion for reconsideration, swing to the opposite side and, at times on a second motion for reconsideration, revert to the original side. The losers often malign this as flip-flopping by the Court.

This of course is a lie in the sense that it tends to picture the Court as a silly, blundering, idiot which cannot make up its mind. The fact is that the shifts in the Court's decisions in this case were not at all orchestrated as the circumstances will show. They were the product of honest disagreements.

Congress passed a number of laws converting sixteen municipalities into cities. The League of Cities assailed these laws as unconstitutional on the ground that the sixteen municipalities involved did not meet the P100 million minimum income requirement of the Local Government Code. For their part, the municipalities countered that their laws constituted valid legislative amendments of such requirement.

The Court was divided in its original decision of November 18, 2008 in the case. A majority of six Justices voted to annul the laws, five members dissented, and four took no part (6-5-4), as follows:

Majority (annul)	Minority (uphold)	No Part
1. J. Quisumbing	1. J. Corona	1. C.J. Puno
2. J. Carpio	2. J. Azcuna	2. J. Tinga
3. J. Martinez	3. J. Nazario	3. J. Nachura
4. J. Morales	4. J. Reyes	4. J. Santiago (on leave)

5. J. Velasco
6. J. Brion

5. J. De Castro

Notably, the majority won by just 1 vote. Their lead firmed up, however, with an increase of 2 votes when the Court took up the motion for reconsideration of the sixteen municipalities on March 31, 2009, thus:

Majority (annul)	Minority (uphold)	No Part
1. J. Quisumbing	1. J. Santiago	1. C.J. Puno
2. J. Carpio	2. J. Corona	2. J. Nachura
3. J. Martinez	3. J. Nazario	
4. J. Morales	4. J. Velasco	
5. J. Tinga	5. J. De Castro	
6. J. Brion		
7. J. Peralta		

In the above, Justice Velasco opted to leave the majority, but he was quickly replaced by J. Tinga, who decided to take part in the second voting, and Justice Peralta, a newcomer. The minority maintained its five votes because, although Justices Reyes and Azcuna retired, Justice Velasco who changed side and Justice Santiago who now took part replaced them. Chief Justice Puno and Justice Nachura stayed out of it. The vote was 7-5-2.

But when on April 28, 2009 the Court acted on the sixteen municipalities' second motion for reconsideration, the vote resulted on a tie. Thus:

Even votes (annul)	Even votes (uphold)	No Part
1. J. Carpio	1. J. Santiago	1. C.J. Puno
2. J. Martinez	2. J. Corona	2. J. Nachura
3. J. Morales	3. J. Nazario	3. J. Quisumbing
4. J. Tinga	4. J. Velasco	(on leave)
5. J. Brion	5. J. De Castro	
6. J. Peralta	6. J. Bersamin	

In the above, the majority lost 1 vote owing to Justice Quisumbing going on leave. On the other hand, the minority gained 1 vote from Justice Bersamin, a newcomer. Three took no part, resulting in a vote of 6-6-3. The Court was divided in its interpretation of this 6-6 result. One group argued that the failure of the minority to muster a majority vote had the effect of maintaining the Court's last ruling. Some argued, however, that since the Constitution required a majority vote for declaring laws passed by Congress unconstitutional, the new voting restored the constitutionality of the subject laws.

When a re-voting took place on December 21, 2009 to clear up the issue, the result shifted in favor of the sixteen municipalities, thus:

Majority (uphold)	Minority (annul)	No Part
1. J. Corona	1. J. Carpio	1. C.J. Puno
2. J. Velasco	2. J. Morales	2. J. Nachura
3. J. De Castro	3. J. Brion	3. J. Del Castillo
4. J. Bersamin	4. J. Peralta	
5. J. Abad		
6. J. Villarama		

In the above, two Justices, Tinga and Martinez, from the former majority retired, leaving their group just 4 votes. On the other hand, although two Justices, Santiago and Nazario, also retired from the former minority, two new members, Justices Abad and Villarama, joined their rank. Justice Del Castillo, a new member, did not take part like the rest. The new vote was 6-4-3 (2 vacancies), with the new majority voting to uphold the constitutionality of the laws that converted the sixteen municipalities into cities.

But their victory was short-lived. When the Court voted on the motion for reconsideration of the losing League of Cities on August 24, 2010, three new members, Justices Perez, Mendoza, and Sereno, joined the Court. The majority shifted anew, thus:

Majority (annul)	Minority (uphold)	No Part
1. J. Carpio	1. C.J. Corona	1. J. Nachura
2. J. Morales	2. J. Velasco	2. J. Del Castillo
3. J. Brion	3. J. De Castro	
4. J. Peralta	4. J. Bersamin	
5. J. Villarama	5. J. Abad	
6. J. Mendoza	6. J. Perez	
7. J. Sereno		

Notably, Justice Villarama changed his vote and joined the rank of those who opposed the conversion of the sixteen municipalities into cities. Two new Justices (Mendoza and Sereno) joined the new majority of seven that voted to annul the subject laws. On the other hand, although one of their members left for the other side, the 6 votes of the new minority remained because a new member, Justice Perez, joined it.

The sixteen municipalities filed a motion for reconsideration of the new decision and voting took place on February 15, 2011. Justice Mendoza changed side and voted to uphold the constitutionality of the laws of the sixteen municipalities, resulting in a shift in the majority as follows:

Majority (uphold)	Minority (annul)	No Part
1. J. Corona	1. J. Carpio	1. J. Nachura
2. J. Velasco	2. J. Morales	2. J. Del Castillo
3. J. De Castro	3. J. Brion	
4. J. Bersamin	4. J. Peralta	
5. J. Abad	5. J. Villarama	
6. J. Perez	6. J. Sereno	
7. J. Mendoza		

To recapitulate what took place in this case:

One. The Justices did not decide to change their minds on a mere whim. The two sides filed motions for reconsideration in the case and the Justices had no options, considering their divided views, but perform their duties and vote on the same on the dates the matters came up for resolution.

The Court is no orchestra with its members playing one tune under the baton of a maestro. They bring with them a diversity of views, which is what the Constitution prizes, for it is this diversity that filters out blind or dictated conformity.

Two. Of **twenty-three** Justices who voted in the case at any of its various stages, **twenty** Justices stood by their original positions. They never reconsidered their views. Only three did so and not on the same occasion, showing no wholesale change of votes at any time.

Three. To **flip-flop** means to vote for one proposition at first (**take a stand**), shift to the opposite proposition upon the second vote (**flip**), and revert to his first position upon the third (**flop**). Not one of the twenty-three Justices **flipped-flopped** in his vote.

Four. The three Justices who changed their votes did not do so in one direction. Justice Velasco changed his vote from a vote to annul to a vote to uphold; Justice Villarama from a vote to uphold to a vote to annul; and Justice Mendoza from a vote to annul to a vote to uphold. Not one of the three flipped-flopped since they never changed their votes again afterwards.

Notably, no one can dispute the right of a judge, acting on a motion for reconsideration, to change his mind regarding the case. The rules are cognizant of the fact that human judges could err and that it would merely be fair and right for them to correct their perceived errors upon a motion for reconsideration. The three Justices who changed their votes had the right to do so.

Five. Evidently, the voting was not a case of massive flip-flopping by the Justices of the Court. Rather, it was a case of tiny shifts in the votes, occasioned by the consistently slender margin that one view held over the other. This reflected the nearly even soundness of the opposing advocacies of the contending sides.

Six. It did not help that in one year alone in 2009, seven Justices retired and were replaced by an equal number. It is such that the resulting change in the combinations of minds produced multiple shifts in the outcomes of the voting. No law or rule requires succeeding Justices to adopt the views of their predecessors. Indeed, preordained conformity is anathema to a democratic system.

The charge of flip-flopping by the Court or its members is unfair.

DISSENTING OPINION

CARPIO, *J.*:

This Court has made history with its repeated flip-flopping[1] in this case.

On 18 November 2008, the Court rendered a decision declaring **unconstitutional** the 16 Cityhood Laws. The decision became *final* after the denial of two motions for reconsideration filed by the 16 municipalities. An ***Entry of Judgment*** was made on 21 May 2009. The decision was ***executed*** (1) when the Department of Budget and Management issued LBM (Local Budget Memorandum) No. 61 on 30 June 2009, providing for the final Internal Revenue Allotment for 2009 due to the reversion of 16 newly created cities to municipalities; and (2) when the Commission on Elections issued Resolution No. 8670 on 22 September 2009, directing that voters in the 16 municipalities shall vote not as cities but as municipalities in the 10 May 2010 elections. In addition, fourteen Congressmen, having jurisdiction over the 16 respondent municipalities, filed House Bill 6303 seeking to amend Section 450 of the Local Government Code, as amended by Republic Act No. 9009. The proposed amendment was intended to correct the infirmities in the Cityhood Laws as cited by this Court in its 18 November 2008 Decision. [2]

Subsequently, the Court rendered three more decisions: (1) 21 December 2009, declaring the Cityhood Laws **constitutional**; (2) 24 August 2010, declaring the Cityhood Laws **unconstitutional**; and (3) 15 February 2011 declaring the Cityhood Laws **constitutional**. Clearly, there were three reversals or flip-flops in this case.

In the Resolution of 15 February 2011, the majority upheld the constitutionality of the 16 Cityhood Laws, declaring that (1) the Cityhood Laws do not violate Section 10, Article X of the Constitution; and (2) the Cityhood Laws do not violate Section 6, Article X and the equal protection clause of the Constitution.

I reiterate my unwavering position from the start - that the 16 Cityhood Laws are

unconstitutional.

I.
The Cityhood Laws are laws other than the Local Government Code.

In sustaining the constitutionality of the 16 Cityhood Laws, the majority ruled in the Resolution of 15 February 2011 that "in effect, the Cityhood Laws amended RA No. 9009 through the exemption clauses found therein. Since the Cityhood Laws explicitly exempted the concerned municipalities from the amendatory RA No. 9009, **such Cityhood Laws are, therefore, also amendments to the LGC itself.**" In the Resolution denying petitioner's motion for reconsideration, the majority stated that "RA 9009, and, by necessity, the LGC, were amended, x x x by way of the express exemptions embodied in the exemption clauses."

This is egregious error.

Nowhere in the plain language of the Cityhood Laws can this interpretation be discerned. Neither the title nor the body of the Cityhood Laws sustains such conclusion. Simply put, there is absolutely nothing in the Cityhood Laws to support the majority decision that the Cityhood Laws **further amended** the Local Government Code, which exclusively embodies the essential requirements for the creation of cities, including the conversion of a municipality into a city.

An "amendment" refers to a change or modification to a previously adopted law.[3] An amendatory law merely modifies a specific provision or provisions of a previously adopted law.[4] **Indisputably, an amendatory law becomes an *integral part* of the law it seeks to amend**.

On the contrary, each Cityhood Law contains a uniformly worded Separability Clause which expressly states:

> Separability Clause. - **If, for any reason or reasons, any part or provision of this Charter shall be held** unconstitutional, invalid or **inconsistent with the Local Government Code of 1991**, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect. Moreover, in cases where this Charter is silent or unclear, the pertinent provisions of the Local Government Code shall govern, if so provided therein.[5] (Emphasis supplied)

Each Cityhood Law states that if any of its provisions is "**inconsistent with the Local Government Code**," the other consistent provisions "**shall continue to be in full force and effect.**" **The clear and inescapable implication is that any provision in each Cityhood Law that is "inconsistent with the Local Government Code" has no force**

and effect - in short, void and ineffective. Each Cityhood Law expressly and unequivocally acknowledges the superiority of the Local Government Code, and that **in case of conflict, the Local Government Code shall prevail over the Cityhood Law.** Clearly, the Cityhood Laws do not amend the Local Government Code, and the Legislature never intended the Cityhood Laws to amend the Local Government Code. The clear intent and express language of the Cityhood Laws is for these laws to conform to the Local Government Code and not the other way around.

To repeat, every Cityhood Law unmistakably provides that any provision in the Cityhood Law that is inconsistent with the Local Government Code is void. It follows that the Cityhood Laws cannot be construed to authorize the creation of cities that have not met the prevailing P100 million income requirement prescribed without exception in the Local Government Code.

Moreover, Congress, in providing in the Separability Clause that the Local Government Code shall prevail over the Cityhood Laws, treats the Cityhood Laws as separate and distinct from the Local Government Code. In other words, **the Cityhood Laws *do not form integral parts* of the Local Government Code but are separate and distinct laws**. There is therefore no question that the Cityhood Laws are laws ***other*** than the Local Government Code. As such, the Cityhood Laws cannot stipulate an exception from the requirements for the creation of cities, prescribed in the Local Government Code, without running afoul of the explicit mandate of Section 10, Article X of the 1987 Constitution.

This constitutional provision reads:

> No province, city, municipality, or barangay shall 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. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code itself** and not in any other law. There is only one Local Government Code.[6] To avoid discrimination and ensure uniformity and equality, the Constitution expressly requires Congress to stipulate in the Local Government Code itself 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.

II.
The increased income requirement of P100 million is neither arbitrary nor difficult to comply.

The majority resolution of 15 February 2011 states that "the imposition of the P100 million average annual income requirement for the creation of component cities was **arbitrarily** made." The majority resolution further declares: "x x x there was no evidence or empirical data, **such as inflation rates**, to support the choice of this amount. The imposition of a very high income requirement of P100 million, increased from P20 million, was **simply to make it extremely difficult for municipalities to become component cities**."

This is glaring error.

In stating that there is no evidence to support the increased income requirement, the majority is requiring the Legislature, the sole law-making body under the Constitution, to provide evidence justifying the economic rationale, like inflation rates, for the increase in income requirement. The Legislature, in enacting RA No. 9009, is not required by the Constitution to show the courts data like inflation figures to support the increased income requirement. Besides, even assuming the inflation rate is zero, this Court cannot invalidate the increase in income requirement on such ground. **A zero inflation rate does not bar the Legislature from increasing the income requirement to convert a municipality into a city, or increasing taxes or tax rates, or increasing capital requirements for businesses.** This Court should not venture into areas of analyses obviously beyond its competence.

As long as the increased income requirement is not impossible to comply, such increase is a policy determination involving the wisdom of the law, which exclusively lies within the province of the Legislature. When the Legislature enacts laws increasing taxes, tax rates, or capital requirements for businesses, the Court cannot refuse to apply such laws on the ground that there is no economic justification for such increases. Economic, political or social justifications for the enactment of laws go into the wisdom of the law, outside the purview of judicial review. This Court cannot refuse to apply the law unless the law violates a specific provision of the Constitution. There is plainly nothing unconstitutional in increasing the income requirement from P20 million to P100 million because such increase does not violate any express or implied provision of the Constitution.

The majority declares that the P100 million income requirement under RA No. 9009 was imposed **"simply to make it extremely difficult for the municipalities to become component cities."** In short, the majority is saying that the Legislature, out of sheer whim or spite at municipalities, increased the income requirement from P20 million to P100 million. Thus, the majority applied the P20 million income requirement under the repealed law, not the P100 million income requirement under the prevailing law. Yet, the majority does not state that the P100 million income requirement is unconstitutional. The majority simply refuses to apply the prevailing law, choosing instead to apply a repealed law. There is neither law nor logic in the majority decision.

The majority's conclusion that the Legislature increased the income requirement from P20 million to P100 million "**simply to make it difficult for the municipalities to become component cities**" is not only unfair to the Legislature, it is also grossly erroneous.

Contrary to the majority's baseless conclusion, the increased income requirement of P100 million is not at all difficult to comply. As pointed out by petitioner, the cities of San Juan[7] and Navotas,[8] which met the P100 million income requirement, were created at the same time as the enactment of the Cityhood Laws by the same 13[th] Congress.[9] Prior to this, the City of Sta. Rosa, which also met the P100 million income requirement, was created through Republic Act No. 9264.[10] Subsequently, the cities of Dasmariñas in Cavite[11] and Biñan in Laguna[12] were created in full compliance with the P100 million income criterion.

Further disproving the majority's erroneous conclusion, an additional twenty-one (21) municipalities have satisfied the P100 million income requirement for the creation of cities.[13] Accordingly, petitioner League of Cities has endorsed the cityhood application of these 21 municipalities.[14] These municipalities are:

- Cabuyao and San Pedro (Laguna)
- Cainta, Taytay, and Binangonan (Rizal)
- Bacoor, Gen. Trias, Imus, Carmona, and Silang (Cavite)
- San Pedro (Laguna)
- Pantabangan (Nueva Ecija)
- Calaca, Sto. Tomas, Bauan and Nasugbu (Batangas)
- Mauban in (Quezon)
- Marilao, Sta. Maria and Norzagaray (Bulacan)
- Limay (Bataan)

Compliance by these municipalities with the P100 million income requirement underscores the fact that the P100 million income requirement is not difficult to comply at all, contrary to the baseless and speculative conclusion in the majority decision. In short, the majority decision is based on patently and undeniably false and erroneous premises.

Indisputably, right after the enactment of RA No. 9009, Congress passed laws converting municipalities into cities using the new P100 million income requirement. Subsequently, Congress enacted the 16 Cityhood Laws using the old P20 million income requirement. Thereafter, Congress again passed laws converting additional municipalities into cities using the P100 million income requirement. The 16 Cityhood Laws stick out like a sore thumb, starkly showing an obvious violation of the equal protection clause. The Cityhood Laws create distinctly privileged cities with only P20 million annual income, discriminating against cities with P100 million annual income created ***before and after*** the enactment of the Cityhood Laws. This kind of discrimination is precisely what Section 10, Article X of the Constitution seeks to prohibit when it commands that "no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code."

The majority harp on the fact that 59 existing cities had failed as of 2006 to post an average annual income of P100 million.

Suffice it to state that there is no Constitutional or statutory requirement for the 59 ***existing*** cities to comply with the P100 million income requirement. **Obviously, these cities were already cities prior to the amendment of the Local Government Code providing for the increased income requirement of P100 million.** In other words, at the time of their creation, these cities have complied with the criteria prescribed under the old Local Government Code for the creation of cities, and thus are not required to comply with the P100 million income requirement of the prevailing Local Government Code. It is utterly misplaced and grossly erroneous to cite the "non-compliance" by the 59 existing cities with the increased income requirement of P100 million to conclude that the P100 million income requirement is arbitrary and difficult to comply.

Moreover, as stated, the majority do not find the increased income requirement of P100 million unconstitutional or unlawful. Unless the P100 million income requirement violates a provision of the Constitution or a law, such requirement for the creation of a city must be strictly complied with. Any local government unit applying for cityhood, whether located in or outside the metropolis and whether within the National Capital Region or not, must meet the P100 million income requirement prescribed by the prevailing Local Government Code. There is absolutely nothing unconstitutional or unlawful if the P100 million income requirement is easily complied with by local government units within or near the National Capital Region. The majority's groundless and unfair discrimination against these metropolis-located local government units must necessarily fail.

Further, that San Juan and Navotas had not allegedly been classified by the President as highly urbanized cities, pursuant to Section 453 of the Local Government Code, does not signify that these cities do not meet the P100 million income requirement. In fact, the majority concedes that it is presumed that San Juan and Navotas cities have complied with the P100 million income requirement. Besides, it is totally pointless to fault the cities of San Juan and Navotas for an unperformed duty of the President.

III.
The reduction of the share in the Internal Revenue Allotment will adversely affect the cities' economic situation.

In the Resolution of 15 February 2011, the majority declared that petitioner's protest against the reduction of their just share in the Internal Revenue Allotment "**all boils down to money**," criticizing petitioners for overlooking the alleged need of respondent municipalities to become channels of economic growth in the countryside.

The majority gravely loses sight of the fact that "the members of petitioner League of Cities are also in need of the same resources, and are responsible for development imperatives that need to be done for almost 40 million Filipinos, as compared to only 1.3 million Filipinos in the respondent municipalities." As pointed out by petitioner, "this is

just about equal to the population of Davao City, whose residents, on a per capita basis, receive less than half of what respondent municipalities' residents would receive if they become cities. **Stated otherwise, for every peso that each Davaoeño receives, his counterpart in the respondent municipality will receive more than two pesos.**"

In addition, the majority conveniently forgets that members of the LCP have more projects, more contractual obligations, and more employees than respondent municipalities. If their share in the Internal Revenue Allotment is unreasonably reduced, it is possible, even expected, that these cities may have to lay-off workers and abandon projects, greatly hampering, or worse paralyzing, the delivery of much needed public services in their respective territorial jurisdictions.

Obviously, petitioner's protest does not boil down to money. **It boils down to equity and fairness, rational allocation of scarce resources, and above all, faithful compliance with an express mandatory provision of the Constitution.** No one should put a monetary value to compliance with an express command of the Constitution. Neither should any one, least of all this Court, disregard a patent violation of the Constitution just because the issue also involves monetary recovery. To do so would expose the stability of the Constitution to the corrosive vagaries of the marketplace.

IV.
Not substantial compliance,
but outright violation of the Constitution.

In his Concurring Opinion to the Resolution of 15 February 2011, Justice Roberto A. Abad stated, "These new cities have not altogether been exempted from the operation of the Local Government Code covering income requirement. **They have been expressly made subject to the lower income requirement of the old code**. **There remains, therefore, substantial compliance with the provision of Section 10, Article X of the Constitution.**"

This is gross error.

There is a wide disparity - an P80 million difference - in the income requirement of P20 million under the old Local Government Code and the P100 million requirement under the prevailing Local Government Code. By any reasonable yardstick known to man since the dawn of civilization, compliance with the old income requirement, which is only 20% compliance with the new income requirement under the prevailing law, cannot be deemed "substantial compliance." It is like saying that those who obtain a general average of 20% in the Bar Examinations are in "substantial compliance" with the requirement for admission to the Bar where the highest possible score is 100%.

RA No. 9009 amended the Local Government Code precisely because the criteria in the old Local Government Code were no longer sufficient. In short, RA No. 9009 repealed the old income requirement of P20 million, a requirement that no longer exists in our statute

books. Compliance with the old income requirement is compliance with a repealed, dead, and non-existent law - a totally useless, futile, and empty act. Worse, compliance with the old requirement is an ***outright violation*** of the Constitution which expressly commands that "**no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code**." To repeat, applying what Justice Abad calls "the lower income requirement of the old code" is applying a repealed, dead, and non-existent law, which is exactly what the majority decision has done.

The invocation here of "substantial compliance" of the Constitution reminds us of what Justice Calixto Zaldivar wrote in his dissenting opinion in *Javellana v. Executive Secretary*:[15] "It would be indulging in sophistry to maintain that the voting in the citizens assemblies amounted to a substantial compliance with the requirements prescribed in Section 1 of Article XV of the 1935 Constitution." The same can be said in this case.

A final point. There must be strict compliance with the express command of the Constitution that "**no city x x x shall be created x x x except in accordance with the criteria established in the local government code.**" Substantial compliance is insufficient because it will discriminate against all other cities that were created **before and after the enactment** of the Cityhood Laws in strict compliance with the criteria in the Local Government Code, as amended by RA No. 9009. The conversion of municipalities into new cities means an increase in the Internal Revenue Allotment of the former municipalities and a **corresponding decrease** in the Internal Revenue Allotment of all other existing cities. There must be strict, not only substantial, compliance with the constitutional requirement because the economic lifeline of existing cities may be seriously affected. Thus, the invocation of "substantial compliance" with constitutional requirements is clearly misplaced in this case.

V.
Conclusion

To repeat, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. To avoid discrimination and ensure uniformity and equality, such criteria cannot be embodied in any other law except the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws ***other*** than the Local Government Code, provide an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA No. 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution.

Moreover, by express provision in the Separability Clause of each Cityhood Law, in case of inconsistency between the Cityhood Law and the Local Government Code, the latter shall prevail. Thus, the P100 million income requirement in the Local Government Code prevails over the P20 million income requirement under the Cityhood Laws.

Finally, this Court must be true to its sworn duty to uphold, defend, and protect the Constitution **fully and faithfully**, without "indulging in sophistry" or seeking refuge behind a patently dubious invocation of "substantial compliance" with the Constitution.

Accordingly, I vote to **GRANT** the motion for reconsideration of the League of Cities of the Philippines.

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[1]"Flip-flop" is defined as "an abrupt reversal of policy: the candidate flip-flopped on a number of issues" (The New Oxford Dictionary of English, 1998); "a sudden reversal (as of policy or strategy)" (Merriam-Webster Unabridged Dictionary Version 3.0, 2003); "A reversal, as of a stand or position; *a foreign policy flip-flop*" (American Heritage Talking Dictionary, 1997); "A decision to reverse an earlier decision" (WordWeb Pro Version 6.4, 2011); "an abrupt reversal of policy" (Oxford Dictionaries Online, accessed 4 April 2011).

[2] http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1162

[3] See *Commissioner of Customs v. Court of Tax Appeals*, G.R. Nos. 48886-88, 21 July 1993, where the Court stated that "The change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had."

[4] See Agpalo, Ruben E., Statutory Construction, Second Edition, 1990, pp. 278-279, citing *David v. Dancel*, G.R. No. 21485, 25 July 1966, 17 SCRA 696 (1966).

[5] Section 63, Republic Act No. 9389 (Baybay, Leyte); Section 61, Republic Act No. 9390 (Bogo, Cebu); Section 62, Republic Act No. 9391 (Catbalogan, Samar); Section 63, Republic Act No. 9392 (Tandag , Surigao del Sur); Section 63, Republic Act No. 9393 (Lamitan, Basilan); Section 61, Republic Act No. 9394 (Borongan, Samar); Section 63, Republic Act No. 9398 (Tayabas, Quezon); Section 57, Republic Act No. 9404 (Tabuk, Kalinga); Section 62, Republic Act No. 9405 (Bayugan, Agusan del Sur); Section 63, Republic Act No. 9407 (Batac, Ilocos Norte); Section 62, Republic Act No. 9408 (Mati, Davao Oriental); Section 62, Republic Act No. 9409 (Guihulngan, Negros Oriental); Section 61, Republic Act No. 9434 (Cabadbaran, Agusan del Norte); Section 64, Republic Act No. 9435 (El Salvador, Misamis Oriental); Section 63, Republic Act No. 9436 (Carcar, Cebu); and Section 65, Republic Act No. 9491 (Naga, Cebu).

[6] Republic Act No. 7160, as amended.

[7] Through Republic Act No. 9388. Approved on 11 March 2007.

[8] Through Republic Act No. 9387. Approved on 10 March 2007.

[9] Republic Act No. 9356, converting the municipality of Meycauayan, Bulacan into a city, was enacted on 2 October 2006 also during the 13[th] Congress.

[10] Enacted 10 March 2004.

[11] Through Republic Act No. 9723. Approved on 15 October 2009.

[12] Through Republic Act No. 9740. Approved on 30 October 2009.

[13] http://www.philstar.com/Article.aspx?articleId=666748&publicationSubCategoryId=200

[14] http://www.philstar.com/Article.aspx?articleId=666748&publicationSubCategoryId=200

[15] G.R. No. L-36142, 31 March 1973.
