NOTES AND COMMENTS

THE POWER OF RECALL

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INTRODUCTION

The 1987 Constitution, reproducing the principle found in the 1935 and 1973 Constitutions, establishes a republican form of government and affirms that the people are the final repositories of the sovereignty of the State.[1] This provision in the Declaration of Principles and State Policies adopts a representative government and declares the State's hostility against autocratic, oligarchic and authoritarian rule.[2] By proclaiming that ultimate power and authority rests in the citizenry, it prevents the untrammelled exercise of power by those entrusted by the people to govern in their stead and adopts "a government 'of the people, by the people and for the people,' — a representative government through which they have agreed to exercise the powers and discharge the duties of their sovereignty for the common good and the general welfare."[3]

In a republican government, the officers of the State are mere agents and not rulers of the people. They have no proprietary or contractual right to the office that they occupy but hold the position pursuant to the provisions of law and as a trust for the people they represent.[4] Thus the Constitution likewise provides that public office

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[1] CONST., art. II, sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

[2] I. CRUZ, PHILIPPINE POLITICAL LAW 49 (5th ed., 1996).

[3] Metropolitan Transportation Services v. Paredes, 79 Phil. 826 (1948).

[4] Cornejo v. Gabriel, 41 Phil. 194 (1920).

is a public trust and mandates that public officers and employees are accountable to the people at all times.[5]

The republican government, however, not only guarantees the people protection against the oppressiveness of authoritarian rule, but likewise shelters them from the impracticality of a direct democracy. The people rule indirectly. They make decisions through representatives that they choose by exercising their right to suffrage. As stated by Justice Isagani Cruz, "the essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of the principal."[6] In *Moya v. Del Fierro*,[7] the Supreme Court, through the eloquent pen of Justice Jose Laurel, held that,

> As long as popular government is an end to be achieved and safeguarded, suffrage, whatever be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.[8]

The theory of republicanism then is the implementation of decisions by elected officials in accordance with the will of the majority of the people who brought them to office. Both in the national and local levels, the people place on the shoulders of the elected government officials the responsibility of weighing the sentiments of their constituencies and deciding on certain contingencies accordingly. After their terms of office have elapsed, such elected public officials are judged by the people who then decide whether to keep them in

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[5] *See* CONST., art. XI, sec. 1.
[6] I. CRUZ, *op. cit.*, note 2 at 50.
[7] 69 Phil 199 (1939).
[8] *Id.* at 204.

power or replace them with others who can better serve their interests. The threat of non-reelection then becomes a stick poised to strike at government officers who stubbornly disobey the will of the people.

Such system of implementation of the will of the sovereign is mirrored in both the national and local levels. However, there may be times when the threat of non-reelection may prove ineffective or inefficient. In the local level for instance, there may arise conditions or contingencies which will require the people to exercise more immediate methods to have their will implemented. There may be times when waiting for the end of an official's term before replacing him would prove to be disastrous to the common good or general welfare. There may arise some situations when the people would rather not wait for an official's term to elapse before they strip him of his office. The 1987 Constitution has provided for such eventualities by mandating Congress, in Section 3, Article X, to enact a local government code which shall contain among others, provisions for the implementation of an effective system of recall, to wit:

> The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with *effective mechanisms of recall, initiative and referendum, allocate among the different local government units their powers, responsibilities, and resources and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and other matters relating to the organization and operation of local units.* (Emphasis supplied)

RECALL IN THE REPUBLIC OF THE PHILIPPINES

"Recall" may be defined as an instrument for effecting official accountability, "a device or procedure by which a public official's tenure may be terminated by a popular vote."[9] It has likewise been defined by the Supreme Court as "a mode of removal of a public officer

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[9] II J. BERNAS, SJ, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 378 (1988).

by the people before the end of his term of office."[10] It is necessarily included in the people's right to suffrage and is complementary to the right to elect or appoint. It is based on the nature of the public office as a public trust and the theory that government officials are mere agents of the people given definite powers and specific duties which they must perform to the satisfaction of the electorate, lest they lose their office. Through such, the electorate maintains a direct and elastic control over public functionaries.[11]

The right of recall has been characterized by the Supreme Court as a fundamental right of the people in a representative democracy. Such prerogative to remove a public officer is an incident of the people's sovereign power and, according to the Court, in the absence of constitutional restraint, is implied in all government operations.[12]

Although recognized as a fundamental right, recall is a relatively new development in Philippine law. Since its founding in 1946 until 1973, the Republic has had no experience with recall. It was the 1973 Constitution which introduced it as a manner of implementing the sovereign will of the people.[13] Said constitution mandated the Batasang Pambansa to enact a local government code which would provide, among others, the implementing provisions on the recall of local officials.

Political events, however, intervened after the passage of the 1973 Constitution and it was not until 1978 that a law providing for the mechanisms of recall of local officials was promulgated. It was, however, not part of a local government code. Neither was it passed by the Batasang Pambansa. It took the form of a Presidential Decree signed into law by President Marcos on June 11, 1978. Presidential

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[10] Garcia v. Commission on Elections, G.R. No. 111511, October 5, 1993, 227 SCRA 108 (1993).
[11] Paredes v. Executive Secretary, G.R. No. 55628, March 2, 1984, 128 SCRA 6 (1984).
[12] Garcia v. Commission on Elections, *supra* at 108.
[13] *See* CONST. (1973), art. XI sec. 2.

Decree No. 1577, which immediately took effect, prescribed the procedures and requirements for the calling of a plebiscite, referendum, and the recall of local elective officials.

This first law implementing the Constitutional directive gave specific grounds by which local elective officials may be subjected to recall proceedings by at least one-fifth or twenty percent of the total number of registered voters of a particular province, city or municipality. Though the law provided for several grounds that could justify a recall petition, it likewise contained a clause that allowed for the recall of an elected official on any ground that would move the electorates to initiate the recall process. Section 6 of P.D. No. 1577 provides:

> When one-fifth (1/5) of the registered voters of a particular province, city or municipality, for reasons of disloyalty to the Republic of the Philippines, dishonesty, oppression, misconduct in office, corruption, ignorance, negligence, incompetence, or *any other cause which the petitioners may deem sufficient*, file a petition for the recall of their respective local elective officials concerned, the President shall call for a vote or recall of the local elective officials concerned, either formally or informally, subject to the supervision of the Commission on Elections. (Emphasis supplied.)

It must be observed that the law was clear that the petition of the 20% of the total number of registered voters did not constitute the recall itself. It was only the manner of initiating the recall process and in effect forced the incumbent to submit himself to an election to be called by the President. The actual recall process was the exercise of the electorates of their right to suffrage. Unless the decision of the electorates was clearly expressed through this subsequent election, the public official concerned would continue in his office as if the confidence of the people had been restored. As provided for in Section 7 of the law:

> The recall of local elective officials shall be done by voting which shall be conducted in the province, city or municipality, as the case may be, to elect the successor from among the list of qualified candidates which shall include the name of the official sought to be recalled, subject to the following conditions:

> (a) That the recall shall be effective only upon the determination of a successor in the person of the candidate receiving the highest number of votes cast during the voting; and
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> (b) That should the highest number of votes belong to the official sought to be recalled, confidence in him shall have been deemed reposed.

The law promulgated by President Marcos omitted several crucial details necessary for the implementation of an effective recall mechanism. It can be described to be, at best, skeletal. It did not provide for the time frame to be followed — how soon the President should call an election and until when a petition to recall may be filed against an incumbent. Neither did it provide the source of funds for the elections. Such loopholes however were filled by Section 8 of the same law, which called upon the Commission on Elections to promulgate the rules and regulations necessary to implement the provisions of P.D. No. 1577.

However, it was only in 1983, or 10 years after the effectivity of the 1973 Constitution, when the Batasang Pambansa enacted Batas Pambansa Blg. 337 or the Local Government Code of 1983. Chapter 3 of such Code, encompassing sections 54 to 59, provided for a more detailed mechanism of recall than P.D. No. 1577.

B.P. 337 introduced several changes and refinements to P.D. No. 1577 such as the form of the recall petition, the venue, and the procedure of its exercise.[14] Most notable of the changes, however,

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[14] Batas Pambansa Blg. 337 (1983), sec. 56. **Form, Venue and Procedure of Recall** — (1) A written petition for recall duly signed before the election registrar or his representative, and in the presence of a representative of the petitioner and a representative of the official sought to be recalled and, in a public place in the province, city, municipality, or barangay, as the case may be, shall be filed with the Commission on Elections through its office in the local government unit concerned. The Commission on Elections or its duly authorized representative shall cause the publication of the petition in a public and conspicuous place for a period of not less than ten (10) days nor more than twenty (20) days, for the purpose of verifying the authenticity and genuineness of the petition and the

concerned the determination of the validity of the recall proceedings, specifically, on who may exercise the right and on the minimum number of voters that should participate. Like the previous law on recall, B.P. 337 provided that the power of recall shall be exercised by the registered voters of the unit where the local elective official belongs.[15] It however raised the minimum number of required petitioners to 25% of the total number of registered voters and based such percentage on the number of registered voters during the election in which the local official subject of the recall proceedings was elected.[16]

B.P. 337 simplified the grounds of recall. It did away with the enumeration in P.D. No. 1577 and simply stated that an elected official may be recalled for loss of confidence.[17] The relevance of this simplification can be seen in a subsequent case,[18] where the Supreme Court held that whether or not the electorates have lost confidence on an elected official is a political question which belongs to the realm of politics and where the people are the only judges.

The Batasang Pambansa imposed certain limitations on the right of recall. A public official can be the subject of recall proceedings only once during his term.[19] Moreover, the law prohibited a recall

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required percentage of voters.
(2) Upon the lapse of the aforesaid period, the Commission on Elections or its duly authorized representative shall announce the acceptance of candidates to the position and thereafter prepare the list of candidates which shall include the name of the official sought to be recalled.
(3) The Commission on Elections shall then set the date of the election on recall, which shall not be later than thirty (30) days after the announcement of the acceptance of candidates for the election on recall in the case of the city, municipal or barangay officials, and forty-five (45) days in the case of provincial officials. The elections shall then be held on the date set, after which the winner shall be certified and proclaimed by the Commission on Elections.

[15] Batas Pambansa Blg. 337 (1983), sec. 54, par. (1).
[16] Batas Pambansa Blg. 337 (1983), sec. 54, par. (2).
[17] Batas Pambansa Blg. 337 (1983), sec. 55, par. (1).
[18] Evardone v. Commission on Elections, G.R. No. 95063, December 2, 1991, 204 SCRA 464 (1991).
[19] Batas Pambansa Blg. 337 (1983), sec. 55, par. (1).

within two years upon the date of the official's assumption of office and within a year immediately preceding a local election.[20]

B.P. 337 retained the provisions of P.D. No. 1577 which dealt with the effectivity of the recall and the power of the COMELEC to promulgate further rules and regulations for its exercise.[21]

In 1987, the present Constitution was ratified which, like the 1973 Constitution, directed the national legislative body, this time, the Congress of the Philippines, to enact a local government code which will also provide for effective mechanisms of recall. Justice Reynato Puno, in penning the decision of the Court in *Garcia v. Commission on Elections*, observed that the successful overthrow of the highest official of the land by the people in 1986 led to the firm institutionalization of direct action of the people in the removal of public officials.[22] Thus, he quoted the Constitutional provision protecting the right of independent people's organizations in pursuing legitimate and collective interests through lawful means[23] as well as the provision which upholds the right of the people and people's organizations to participate in social, political and economic decision-making[24] as complementary to the right of the people to exercise the power of recall.

By 1990, the Congress had not yet been able to enact the new local government code as directed by the Constitution. This gave rise to the controversy raised in *Sanchez v. Commission on Election*[25] which questioned the validity of COMELEC Resolution No. 2272, promulgated on May 23, 1990, outlining the rules and regulations for the recall of elective local officials. According to petitioner Sanchez, since Congress had yet to enact the new local government code, the said COMELEC resolution was unconstitutional for having no legislative basis. The Supreme Court resolved the dispute in favor of

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[20] Batas Pambansa Blg. 337 (1983), sec. 55, par. (2).
[21] Batas Pambansa Blg. 337 (1983), sec. 57 - 58.
[22] Garcia v. COMELEC, *supra* at 109.
[23] CONST., art. XIII, sec. 15.
[24] CONST., art. XIII, sec. 16.
[25] G.R. No. 94459-60, January 24, 1991, 193 SCRA 317 (1991).

the validity of the resolution, stating that the Constitutional directive cannot be construed to infer the repeal of B.P. 337. It further stated that until the new local government code shall have been enacted, the COMELEC may promulgate such rules pursuant to Sec. 59 of B.P. 337.

On October 10, 1991, President Aquino signed the Local Government Code of 1991 into law, which was to take effect on January 1, 1992. In the interim, the case of *Evardone v. Commission on Elections*[26] was brought to the Supreme Court for decision. The petitioners in this case raised arguments identical to those in the *Sanchez v. Commission on Election case*, stating that in the absence of the new local government code, COMELEC Resolution No. 2272 was premature. The Supreme Court likewise ruled that until the New Local Government Code takes effect, the mechanisms for the exercise of the recall of local elective officials was still governed by B.P. 337.

THE 1991 LOCAL GOVERNMENT CODE AND THE PREPARATORY RECALL ASSEMBLY

The chapter on recall of the Local Government Code of 1991 retained, for the most part, the provisions set out in the 1983 Code. In R.A. No. 7160, like B.P. 337, the power of recall is exercised by the registered voters of the unit to which the local elective official subject to such recall belongs.

It still pegs the minimum number of signatories to the recall petition at 25% of the total number of registered voters in the local government unit concerned, with the percentage based on the number of registered voters during the elections in which the local official sought to be recalled was elected.[27] It likewise retains the procedure for the gathering of the signatures and the verification of the authenticity and genuineness of the petition and the verification of the

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[26] Evardone v. Commission on Elections, *supra*.
[27] Rep. Act. No. 7160 (1992), sec. 70, par (d).

required percentage of voters.[28] Loss of confidence remains as the ground for the recall of a local elective official.[29]

R.A. No. 7160, however, introduced a significant change in the initiation of the recall proceedings which makes the process faster, less cumbersome, and less expensive. This is the creation of the Preparatory Recall Assembly. Aside from the filing of a petition by the registered voters, R.A. No. 7160 allows the initiation of recall proceedings through the submission to the COMELEC of a resolution of the Preparatory Recall Assembly calling for the holding of a recall election.

Section 70, paragraph (b) of the Local Government Code creates a Preparatory Recall Assembly in every province, city, district, and municipality. In the provincial level, it is composed of all mayors, vice-mayors, and *sanggunian* members of the municipality and component cities. The assembly in the city level, meanwhile, is composed of all *punong barangay* and *sangguniang barangay* members of the city. In the municipal level, all *punong barangay* and *sangguniang barangay* members become *ex officio* members of the assembly. There are also Preparatory Recall Assemblies in the legislative district level. In cases where the *sangguniang panlalawigan* members are elected by district, all elective municipal officials of the district compose the assembly, while in cases where the *sangguniang panlungsod* members are created by district, the assembly is made up of all elective barangay officials of the district.

A majority of all the members of the Preparatory Recall Assembly is given the power to convene a session in a public place in order to initiate recall proceedings against any elective official in the local government unit concerned. The recall proceedings may then be initiated through a resolution adopted by a majority of all the members of the assembly during the session called for this purpose.[30] This shall then be filed with the proper office of the Commission on

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[28] Rep. Act. No. 7160 (1992), sec. 70, par (d), no. (1).
[29] Rep. Act. No. 7160 (1992), sec. 74.
[30] Rep. Act No. 7160 (1992), sec. 70, par. (c).

Elections and shall undergo the same process as a recall initiated directly by the electorate.[31]

While the Local Government Code of 1991 retains the limitations on recall provided for by B.P. 337, it allows a recall after only one year of the assumption to office of the official concerned instead of the two years provided for in the previous Code. It also prohibits the local official subject of the recall from resigning while the recall process is underway.[32]

R.A. No. 7160 also addressed the practical consideration of funding by requiring the COMELEC to bear all expenses for recall elections.[33] The additional funds shall be taken from a contingency fund to be included in the annual General Appropriations Act.

Another significant change introduced by Congress is that the election on recall is to be set not later than 30 days for barangay, city, or municipal officials, and 45 days for provincial officials after the filing of the resolution or petition for recall This is in contrast to the provisions of B.P. 337, which set the elections after the announcement of the acceptance of candidates.[34]

The changes instituted by Congress make the threat of recall even more manifest against erring local officials. It now lies suspended over the heads of the elective officials like the proverbial sword of Damocles with its thread gradually getting thinner with every incompetent or debased act perpetrated by the government officers against their constituencies. Indeed, in the case of *Garcia v. Commission on Elections,*[35] the Supreme Court examined the reasons behind the creation of the alternative mode of initiation and found that the legislature sought to diminish the difficulty of initiating recall through direct action as well as to lower its expenses. The legislators noted that at the time of the drafting of R.A. No. 7160, only once has a

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[31] Rep. Act No. 7160 (1992), sec. 71 - 72.
[32] Rep. Act No. 7160 (1992), sec. 73.
[33] Rep. Act No. 7160 (1992), sec. 75.
[34] Rep. Act No. 7160 (1992), sec. 71.
[35] Garcia v. Commission on Elections, *supra* at 112.

recall election been initiated under the mechanisms provide by B.P. 337 and that even this lone attempt did not succeed.[36]

CONSTITUTIONAL CHALLENGES TO THE PREPARATORY RECALL ASSEMBLY

The validity of the provisions of the 1991 Local Government Code on the Preparatory Recall Assembly has been challenged twice in the Supreme Court, both by petitioner Enrique Garcia, then incumbent governor of Bataan.[37] In the first case filed by a mayor, the Court avoided the constitutional challenge and ruled for the petitioner on the fundamental issue of whether the acts of the members of the Preparatory Recall Assembly violated the right of Garcia to due process.

Evidently, a majority of the Preparatory Recall Assembly convened surreptitiously and, in bad faith, hid the proceedings from the other members of the Preparatory Recall Assembly perceived to be supportive of Garcia as "a matter of political strategy and security." They insisted that the law did not specifically provide for the requirement of notice. But the Court reiterated that the Constitution is read into every law and that the due process provision which requires notice as an element of fairness must be complied with.

The members of the Preparatory Recall Assembly consequently reconvened and, after complying with the due process requirement of the Constitution, again passed a resolution calling for recall elections against Garcia. In once again challenging the constitutionality of the law, the petitioner alleged that "the right to recall does not extend merely to the prerogative of the electorate to reconfirm or withdraw their confidence on the official sought to be recalled at a special election. Such prerogative necessarily includes the sole and exclusive

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[36] *Ibid.*

[37] The first case (unreported) was decided by the Supreme Court on September 21, 1993 and was briefly discussed in the second case, Garcia v. Commission on Elections, *supra* at 106-107.

right of the people to decide on whether to initiate a recall proceeding or not."

The Court, this time conceding that the constitutional issue was unavoidable, considered Garcia's contention as without merit and upheld the validity of the process of initiation through the Preparatory Recall Assembly saying that, contrary to Garcia's position, there is no specific provision in the Constitution that can even remotely suggest that only the people, acting directly, may initiate recall proceedings. On the contrary, the Constitution did not provide any mode of initiating recall proceedings, but left such determination to the wisdom of Congress.

According to the Court, "Congress was not straightjacketed to one particular mechanism of initiating recall elections. What the Constitution simply required was that the mechanisms of recall whether one or many, to be chosen by Congress, should be effective. Using this Constitutionally granted discretion, the Congress deemed it wise to enact an alternative mode of initiating recall elections to supplement the former mode of initiation by direct action of the people."

The Court likewise clarified that the resolution of recall does not constitute the recall process itself but is merely a part of the whole process. A successful initiation of recall proceedings merely proposes to the electorate to subject the petitioner, in the words of the Supreme Court, to a "new test of faith." Therefore, the majority disregarded the contention of Garcia that the resolution of the members of the Preparatory Recall Assembly effectively subverted the will of the majority of the electorates which first elevated the petitioner to the office he held. The Supreme Court observed that the official subjected to recall elections retains his position until voted out of office by the electorates; therefore, it is not the resolution of the PRA which removes a duly elected official, but the will of the very people who previously put him in office.

Garcia, however, found an ally in the Court in the person of Justice Hilarion Davide. In his dissent, Justice Davide analyzed the

right of recall by tracing its origins and history through American jurisprudence. Quoting *Wallace v. Trip*[38] and *Bernzen v. City of Boulder*,[39] he argued that the right of recall is a fundamental right reserved to the people of the state and is akin to the power of initiative or referendum which are fundamental rights of citizens in a representative democracy.

Essentially agreeing with the main contention of the petitioner, Justice Davide further contended that, since recall is constitutionally mandated in our jurisdiction, such power is reserved to the people, to be exercised directly by the registered voters. Giving the Preparatory Recall Assembly the authority to initiate recall elections constitutes an undue delegation of the power of the electorate. According to him, the initiation and the election of recall are essential and indispensable components of the right and that "any such sharing would impair or negate the exclusive character of the power."[40] He further argued that the power to initiate includes the power not to initiate and such becomes mooted when another body is authorized to do it for the electorate.

This point was adequately tackled by the majority decision which dismissed it on the ground that "nothing less than the paramount task of drafting of the constitution is delegated by the people to their representatives."[41] It found no grounds to invalidate the delegation of the power to initiate recall elections, which is a relatively lesser act. Upholding principles of a republican democracy, the Court held that the initiation of the PRA is the initiation by the people, though indirectly achieved.

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[38] 358 Mich. 668, 101 N.W. 2d 312 (1960).
[39] 186 Colo. 81, 525 P. 2d 416 (1974).
[40] Garcia v. Commission on Elections, supra at 124.
[41] *Id.* at 114.

DUE PROCESS AND THE PREPARATORY RECALL ASSEMBLY

It is a well-settled doctrine in our jurisprudence that although public office is a public trust and therefore cannot be considered as property,[42] "due process may be relied upon by public officials to protect the security of tenure which in that limited sense is analogous to property."[43] In *Bince v. Commission on Election,*[44] the Supreme Court stated that, "[a]lthough public office is not property under Section 1 of the Bill of Rights of the Constitution, and one cannot acquire a vested right to public office, it is, nevertheless, a protected right."[45]

The addition of an alternative mode of initiating recall elections notwithstanding, the local elective officials concerned may still rely on this constitutionally-guaranteed right to due process. Such right is not diminished by the introduction of the Preparatory Recall Assembly.

Indeed, the law provides for a specific safeguard to protect the right of the officials to due process. Section 70, paragraph (c) of the Local Government Code of 1991 requires the members of the Preparatory Recall Assembly to hold its conventions in a public place.

As mentioned earlier, the Supreme Court elucidated on the due process requirement of the Constitution as applied to the PRA proceedings in voiding the surreptitious adoption of a resolution on recall by some members of the Preparatory Recall Assembly of Bataan Province. It held that all members of the Preparatory Recall Assembly must be notified of the convention and any recall resolution adopted behind the backs of the other members of the assembly is invalid for being a violation of the due process clause. Not only is this necessary

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[42] Cornejo v. Gabriel, *supra*; Libanan v. Sandiganbayan, G.R. No. 112386, June 14, 1994, 233 SCRA 167 (1994).

[43] Morfe v. Mutuc, G.R. No. 20387, January 31, 1968, 22 SCRA 439 (1968).

[44] G.R. No. 106291, February 9, 1993, 218 SCRA 7782 (1993).

[45] *Id.* at 792.

in order to afford the incumbent officials fairness, but is likewise indispensable if the Preparatory Recall Assembly is to remain faithful to the spirit of the law on recall. In its own words:

> The due process clause of the Constitution requiring notice as an element of fairness is inviolable and should always be considered as part and parcel of every law in case of its silence. The need for notice to all the members of the assembly is also imperative for these members represent the different sectors of the electorate of Bataan. To the extent that they are not notified of the meeting of the assembly, to that extent is the sovereign voice of the people they represent nullified. The resolution to recall should articulate the majority will of the members of the assembly but the majority will can be genuinely determined only after all the members of the assembly have been given a fair opportunity to express the will of their constituents.

In the recent case of *Malonzo v. Commission on Elections*,[46] the Court was tasked with determining what acts amount to proper notice to the members of the PRA. And it decided that there is proper notice when the requirements of Section 8, Rule 13 of the Rules of Court are complied with.[47] The Court also affirmed the power of the COMELEC to determine whether or not the service of notices were in accord with the stated rule. It further stated that in the absence of a showing of a serious error or glaring lack of support, the findings of the COMELEC are conclusive on the High Court. The Court held that:

> Needless to state, the issue of propriety of the notices sent to the PRA members is factual in nature, and the determination of the same is therefore a function of the COMELEC. In the absence of patent error, or serious inconsistencies in the findings, the Court should not disturb the same. The factual findings of the COMELEC, based on its own assessments and duly supported by gathered evidence, are conclusive upon the court, more so, in

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[46] G.R. No. 127066, March 11, 1997.

[47] Section 8. **Completeness of Service.** — Personal service is complete upon delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides; Service by registered mail is complete upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date off first notice of the postmaster, service shall take effect at the expiration of such time.

the absence of a substantiated attack on the validity of the same.

CONCLUSION

An effective recall mechanism is necessary for the proper functioning of our representative system of government. Public officials who violate the trust of the people in such magnitude as to lose the confidence previously reposed in them by the electorate must not be allowed to find security behind the stipulated term of office and to continue doing damage to the public interest.

If not for the impracticality of a direct democracy, it would be ideal that each and every citizen of the State be consulted in even the minutest detail of governance. Since this is not possible, the next best option is to elect individuals who will assuredly represent the interests of the majority. And the moment these individuals fail to do so, the people must be given the opportunity to elect another.

The framers of our Constitution realized this and adequately provided for the provision to assure that an effective mechanism of recall is put in place by Congress. Congress, in the performance of its duty, has promulgated a law making the recall of locally-elected officials more practical than ever. All that is left is for the people to use this power of recall that they now wield to make our elected officials legitimate servants of the public interest.