

A Most Unconstitutional Law: Constricting Local Autonomy Under Republic Act No.

11517

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I. INTRODUCTION

Republic Act No. 11517,¹ which was signed by President Rodrigo R. Duterte at the end of 2020,² is a serious assault on local autonomy. The Author opines

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1. An Act Authorizing the President to Expedite the Processing and Issuance of National and Local Permits, Licenses and Certifications in Times of National Emergency, Republic Act No. 11517 (2020).
2. Azer Parrocha, *Law Allowing President to Rush Permits in Nat'l Emergency OK'd*, PHIL. NEWS AGENCY, Jan. 5, 2021, available at <https://www.pna.gov.ph/articles/1126444> (last accessed May 11, 2021) [<https://perma.cc/Q6TQ-2RSK>].

that it is the shortest, most unconstitutional law ever passed by the Congress of the Philippines. The law, entitled “An Act Authorizing the President to Expedite the Processing and Issuance of National and Local Permits, Licenses[,] and Certifications in Times of National Emergency,” was hurriedly passed and peddled as both a cure for the economic effects triggered by emergencies and a way to curb “red tape.”³

President Duterte certified the necessity of the bill’s enactment “to facilitate economic activity, accelerate the socioeconomic recovery of the country[,] and ensure the prompt delivery of public services in times of a national emergency such as the present COVID-19 pandemic.”⁴

The Presidential Spokesperson explained the purpose behind the President’s action —

The President wants government agencies to be more responsive in the present COVID-19 pandemic[,] and one way to realize this is to improve the delivery of public services. The Chief Executive hopes [that] by simplifying processes and cutting red tape in the Executive branch[,] we will be able to facilitate our country’s economic activity and accelerate socioeconomic recovery, for the betterment of our people.⁵

The bill “went through the period of interpellation and amendment with absolutely no opposition,” making it, in the words of Senate Majority Leader Juan Miguel F. Zubiri, “the quickest bill [I have] ever passed.”⁶

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3. See Zubiri Sponsors Bill Authorizing President’s Anti-Red Tape Powers, PHIL. NEWS AGENCY, Oct. 8, 2020, available at <https://www.pna.gov.ph/articles/1117877> (last accessed May 11, 2021) [<https://perma.cc/9683-WF9H>].
 4. Charissa Luci-Atienza, *House Vows Passage of Bill Enabling President to Expedite Issuance of Permits, Licenses During National Emergencies*, MANILA BULL., Oct. 14, 2020, available at <https://mb.com.ph/2020/10/14/house-vows-passage-of-bill-enabling-president-to-expedite-issuance-of-permits-licenses-during-national-emergencies> (last accessed May 11, 2021) [<https://perma.cc/Q93K-H9WS>].
 5. Office of the Presidential Spokesperson, On Senate Bill No. 1844, available at <https://pcoo.gov.ph/OPS-content/on-senate-bill-no-1844> (last accessed May 11, 2021) [<https://perma.cc/X232-U2SW>].
 6. *Bill Granting Anti-Red Tape Powers to President Sails Through Senate 2nd Reading*, PHIL. DAILY INQ., Oct. 13, 2020, available at <https://newsinfo.inquirer.net/1347146/bill-granting-anti-red-tape-powers-to-president-sails-through-senate-2nd-reading> (last accessed May 11, 2021) [<https://perma.cc/G2T8-9WUW>].

A version of the law in the House of Representatives (House Bill No. 7884),⁷ which was a verbatim copy of the Senate bill, breezed through the House and was approved in two days.⁸

To be clear, there were voices raised against the enactment of this law, but they were few and far between. Representative Arlene D. Brosas of the Gabriela Women's Party issued a statement saying that "this presidential power will be wielded to clear the way for big businesses that are poised to expand and open new ventures in key economic sectors, or to be precise, Duterte's cronies like Dennis [A.] Uy's empire[.]"⁹ Representative France L. Castro of the ACT-Teachers Party-list believed that "the bill would waive the government's power to regulate projects and contracts and impose stringent measures in the approval of projects and contracts such as mining."¹⁰ He voted against the bill, "citing its possible detrimental effects to indigenous communities whose ancestral lands may be impacted by infrastructure projects."¹¹

Both sides of the debate highlight the motivations and concerns of the legislators. What is missing from the discussion, however, is how the law violates the Constitution.

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7. An Act Authorizing the President to Expedite the Processing and Issuance of National and Local Permits, Licenses and Certifications in Times of National Emergency, H.B. No. 7884, 18th Cong., 2d Reg. Sess. (2020).
 8. Mara Cepeda, *House Passes Bill Giving Duterte Powers vs Red Tape in National Emergencies*, RAPPLER, Oct. 16, 2020, available at <https://www.rappler.com/nation/house-soon-pass-bill-duterte-special-powers-vs-red-tape-national-emergencies-philippines> (last accessed May 11, 2021) [<https://perma.cc/UNH6-K6DG>].
 9. Divina Nova Joy Dela Cruz, *House OKs Anti-Red Tape Bill on 3rd Reading*, MANILA TIMES, Oct. 16, 2020, available at <https://www.manilatimes.net/2020/10/16/second-headline/house-oks-anti-red-tape-bill-on-3rd-reading/781510> (last accessed May 11, 2021) [<https://perma.cc/QY8S-JTNK>].
 10. *Id.*
 11. CNN Philippines Staff, *House OKs Bill Giving Duterte Special Anti-Red Tape Powers*, CNN PHIL., Oct. 16, 2020, available at <https://cnnphilippines.com/news/2020/10/16/house-passes-anti-red-tape-bill-duterte.html> (last accessed May 11, 2021) [<https://perma.cc/VC3D-BQW8>].

The law is unconstitutional for three reasons. First, it purports to be a grant of emergency powers, but it does not conform to any of the guidelines for emergency measures under the Constitution.¹² This is not a temporary measure, but one that can be invoked repeatedly and which can threaten local officials with removal from office. Second, it violates constitutional guarantees on local autonomy¹³ because it allows the government to overwrite local legislation. Third, it also grants the President control over local government officials, in violation of the Constitution.¹⁴

II. ANALYSIS OF THE LAW

Republic Act No. 11517 is a short statute, and yet it is unfortunately the most successful attempt to constrict local autonomy since the enactment of the Local Government Code of 1991.¹⁵ The law is less than 600 words in length.

REPUBLIC ACT NO. 11517

AN ACT AUTHORIZING THE PRESIDENT TO EXPEDITE THE PROCESSING AND ISSUANCE OF NATIONAL AND LOCAL PERMITS, LICENSES AND CERTIFICATIONS IN TIMES OF NATIONAL EMERGENCY

SECTION 1. *Coverage.* — This Act shall cover all agencies of the Executive branch, including departments, bureaus, offices, commissions, boards, councils; government instrumentalities, government-owned and -controlled corporations such as, but not limited to, the following: Department of Finance (DOF), Bureau of Internal Revenue (BIR), Bureau of Customs (BOC)[,] Department of Environment and Natural Resources (DENR), National Water Resources Board (NWRB), Environmental Management Bureau (EMB), Land Management Bureau[,] Department of Justice (DOJ), Land Registration Authority (LRA), Bureau of Immigration (BI)[,] Department of Transportation (DOTr), Land Transportation Franchising and Regulatory Board (LTFRB), Land Transportation Office (LTO), Civil Aviation Authority of the Philippines (CAAP), Philippine Ports Authority (PPA), Maritime Industry Authority (MARINA)[,] Department of Social Welfare and Development (DSWD), National Commission on Indigenous Peoples (NCIP)[,] Department of the Interior and Local Government (DILG), Bureau of Fire Protection (BFP)[,] Department of Health (DOH), Philippine Health Insurance Corporation (PhilHealth), Food and Drug

12. PHIL. CONST. art. VI, § 23 (2), art. VII, § 18, & art. XII, § 17.

13. PHIL. CONST. art. X, § 2.

14. PHIL. CONST. art. X, § 4.

15. PHIL. CONST. art. X, § 3.

Administration (FDA)[,] Department of Information and Communications Technology (DICT), National Telecommunications Commission (NTC)[,] Department of Agriculture (DA), Bureau of Fisheries and Aquatic Resources (BFAR)[,] Department of Energy (DOE)[,] Energy Regulatory Commission (ERC)[,] Department of Labor and Employment (DOLE)[,] Department of Human Settlements and Urban Development (DHSUD), Home Development Mutual Fund (HDMF/Pag-IBIG), Human Settlements Adjudication Commission (HSAC)[,] Social Security System (SSS)[,] Government Service Insurance System (GSIS)[,] and local government units.

SECTION 2. *Authority of the President to Suspend the Requirements for National and Local Permits, Licenses and Certifications, and to Streamline and Expedite the Process for the Issuance Thereof.* — Notwithstanding any law, decree, order or ordinance to the contrary, the President, in times of national emergency shall have the authority to:

- (a) accelerate and streamline regulatory processes and procedures for new and pending applications and renewals of permits, licenses, clearances, certifications or authorizations, including fixing or shortening the periods provided for under existing laws, regulations, issuances, and ordinances;
- (b) suspend or waive the requirements in securing such permits, licenses, clearances, certifications or authorizations; and
- (c) in consultation with or upon the recommendation of the affected government agencies, may prescribe to be permanent the streamlined regulatory processes and procedures, and the suspension or waiver of the requirements in securing permits, licenses, clearances, and certifications or authorizations:

Provided, That the authority herein granted under subparagraphs (a), (b), and (c) of this section shall not be used to undermine the existing procedures and processes, under applicable laws, rules and regulations, meant to protect the environment, especially those that aim to safeguard protected areas and its buffer zones, and environmentally critical areas.

SECTION 3. *Power to Suspend or Remove.* — Consistent with Article VII, Sections 1 and 17 of the Constitution, the Revised Administrative Code, other existing laws, and jurisprudence, the President shall have the authority to suspend or remove, any government official or employee performing acts contrary to the preceding section.

SECTION 4. *Separability Clause.* — If any provision of this Act is declared unconstitutional or invalid, the provisions not affected thereby shall continue to be in full force and effect.

SECTION 5. *Repealing Clause.* — All laws, decrees, orders, ordinances, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 6. *Effectivity.* — This Act shall take effect upon its publication in the *Official Gazette* or in a newspaper of general circulation.¹⁶

Easily the most dubious provision of the law is Section 2,¹⁷ which ignores constitutional provisions on the enactment of emergency powers, and it violates constitutional safeguards that ensure local autonomy. Section 3 seems to have rewritten local autonomy law by giving the President the power to suspend or remove local officials who act contrary to Section 2.¹⁸

A. *Emergency Legislation*

The Philippine Constitution has three separate provisions on emergencies. Congress did not invoke any of these provisions as a basis for enacting this measure. Even if Congress had done so, none of the constitutional provisions on emergencies could have justified the enactment of Republic Act No. 11517.

The first of these emergency powers is a delegation of legislative powers under Article VI, Section 23 of the Constitution —

SECTION 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.¹⁹

Republic Act No. 11517 does not conform with these guidelines. First of all, the law does not cite any emergency to justify its enactment. Instead, it provides an expedited system for licensing “in times of national emergency.”²⁰

16. Republic Act No. 11517, §§ 1-6.

17. *Id.* § 2.

18. *Id.* § 3.

19. PHIL. CONST. art. VI, § 23.

20. Republic Act No. 11517, § 2.

The aforementioned constitutional provision also envisions a temporary measure,²¹ which Republic Act No. 11517 is not.

There is even a provision that could make these temporary measures permanent. Section 2 (c) provides that “in consultation with or upon the recommendation of the affected government agencies, [the President] may prescribe to be permanent the streamlined regulatory processes and procedures, and the suspension or waiver of the requirements in securing permits, licenses, clearances, and certifications or authorizations[.]”²² This is an affront to local autonomy; in effect, it is the National Government that designs a permanent permitting system for local governments.

The second emergency power falls under Article VII of the Constitution on the Executive Department where a list of the President’s powers as Commander-in-Chief is laid down.²³ However, this power can only be used by the President “whenever it becomes necessary” and in which case “he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.”²⁴ It is doubtful that expediting licensing is a response to lawless violence, invasion, or rebellion.

21. *David v. Macapagal-Arroyo*, G.R. No. 171396, 489 SCRA 160, 251 (2006) (citing ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 94 (1998)).

22. Republic Act No. 11517, § 2 (c).

23. PHIL. CONST. art. VII, § 18.

24. Article VII, Section 18 of the Constitution provides —

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The third emergency power can be found under Article XII of the Constitution on the National Economy and Patrimony. Section 17 of the Article provides that “[i]n times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.”²⁵

Republic Act No. 11517 does not provide for the “take over or direct the operation of any privately owned public utility or business affected with public interest.”²⁶

In sum, Republic Act No. 11517 does not conform to any of the constitutional provisions on emergency measures. Thus, even if Congress claims that this law was never meant to be enacted as an emergency measure under the provisions of the Constitution, the law is still unconstitutional.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with the invasion.

During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

PHIL. CONST. art. VII, § 18.

25. PHIL. CONST. art. XII, § 17.

26. PHIL. CONST. art. XII, § 17.

B. Encroaching upon Local Legislation

The law authorizes the President to rewrite local legislation to the extent of suspending or waiving requirements imposed by local officials.²⁷ Republic Act No. 11517 gives the President the power to legislate for local governments.

The only exception or restriction on the President seems to be those procedures “meant to protect the environment, especially those that aim to safeguard protected areas and [their] buffer zones, and environmentally critical areas.”²⁸ This leaves out all other grounds for assessing applications for licenses.

Permitting processes take into consideration the sentiments of the local governments’ constituents. Communities, for example, may oppose national government projects, such as mining, for the social impacts of the project. These projects may be criticized by said local communities for disrupting their lives, or because they are perceived as a means of “providing wealth to [the] [] central governments and big companies, but providing little real local benefit.”²⁹ Opposition may also rise if operations are run by large multinational companies, giving rise to concerns that foreigners are taking a country’s natural resources.³⁰

It is also difficult to predict or compartmentalize the environmental impact of projects. In fact, “[t]he most devastating environmental damage from mining and the most socially disruptive impacts have often been those which have either not been predicted, or were perceived, by the communities, if not the scientists and anthropologists who did initial environmental or social impact studies, as unlikely.”³¹ Other issues include alcohol abuse that can come with mining operations.³² Crime rates have also been shown to soar in some post-industrial mining regimes.³³

27. Republic Act No. 11517, § 2 (b).

28. *Id.* § 2.

29. Andrew Symon, *Petroleum and Mining in Southeast Asia: Managing the Environmental and Social Impacts*, 2007 SOUTHEAST ASIAN AFF. 77, 77 (2007).

30. *Id.*

31. Martha Macintyre, *Informed Consent and Mining Projects: A View from Papua New Guinea*, 80 PAC. AFF. 49, 61 (2007).

32. Barbara L. Krause, *Drug and Alcohol Abuse in Mining: An Employer’s Dilemma*, 3 J. MINERAL L. & POL’Y 465, 466 (1988).

33. See generally Kerry Carrington, et al., *The Resource Boom’s Underbelly: Criminological Impacts of Mining Development*, 44 AUSTL. & N.Z. J. CRIMINOLOGY 335, 341 (2011) (citing Stewart Lockie, et al., *Coal Mining and the Resource Community Cycle*:

Yet if local governments and communities object to projects because of these social impacts, Republic Act No. 11517 can override these objections because they are not “meant to protect the environment.”³⁴

Republic Act No. 11517 also raises questions on whether provisions of the Local Government Code of 1991 can be suspended or waived by the President. Among the most effective provisions of the Code in protecting local interests are Sections 2 (c), 26, and 27 which provide —

SECTION 2. *Declaration of Policy.* —

...

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

SECTION 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* — It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SECTION 27. *Prior Consultations Required.* — No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the [*Sanggumian*] concerned is obtained: *Provided*, [t]hat occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.³⁵

A Longitudinal Assessment of the Social Impacts of the Coppabella Coal Mine, 29 ENVTL. IMPACT ASSESSMENT REV. 330, 336 (2009).

34. Republic Act No. 11517, § 2.

35. An Act Providing for a Local Government Code of 1991 [LOCAL GOV’T CODE], Republic Act No. 7160, tit. 1, ch. 1, § 2 (c) & tit. 1, ch. 3, art. 1, §§ 26 & 27.

Under case law, it may be argued that Sections 26 and 27 of the Local Government Code remain intact, but Section 2 (c), which is not specifically designed to protect the environment, is not.³⁶ In the spirit of streamlining procedures, the President can now disregard the statutory requirements for consultations with local stakeholders when they involve projects and programs implemented by government authorities.³⁷

C. Licensing at the Local Level

I. Local Governments Have Separate Considerations when Licensing

Even before the enactment of the Local Government Code of 1991, the Supreme Court had already explained the dynamics of licensing between the national and local governments. The most instructive case is *Gordon v. Veridiano II*,³⁸ where the Court held —

A study of the said laws will show that the authorization to operate issued by the FDA is a condition precedent to the grant of a mayor's permit to the drug store seeking to operate within the limits of the city. This requirement is imperative. The power to determine if the opening of the drug store is conformable to the national policy and the laws on the regulation of drug sales belongs to the FDA. Hence, a permit issued by the mayor to a drug

36. The Supreme Court continues to interpret these sections as applicable only “for the maintenance of a sound ecology and clean environment.” See *Republic v. Spouses Lazo*, G.R. No. 195594, 737 SCRA 1, 31 (2014) (citing *Bangus Fry Fisherfolk v. Lanzanas*, G.R. No. 131442, 405 SCRA 530, 543 (2003)). The Court has been incorrectly constricting the potential of these provisions since *Lina, Jr. v. Paño*, where the Court held that

the projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Sections 26 and 27, to wit, those that: (1) may cause pollution; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented.

Lina, Jr. v. Paño, G.R. No. 129093, 364 SCRA 76, 87 (2001). This interpretation is incorrect because Section 2 (c) is not limited to environmental concerns.

37. Republic Act No. 11517, § 2 (c).

38. *Gordon v. Veridiano II*, G.R. No. L-55230, 167 SCRA 51 (1988).

store not previously cleared with and licensed by the said agency will be a nullity.

This is not to say, however, that the issuance of the mayor's permit is mandatory once it is shown that the FDA has licensed the operation of the applicant drug store. This is not a necessary consequence. For while it may appear that the applicant has complied with the pertinent national laws and policies, this fact alone will not signify compliance with the particular conditions laid down by the local authorities like zoning, building, health, sanitation, and safety regulations, and other municipal ordinances enacted under the general welfare clause. This compliance still has to be ascertained by the mayor if the permit is to be issued by his office. Should he find that the local requirements have not been observed, the mayor must then, in the exercise of his own authority under the charter, refuse to grant the permit sought.³⁹

A local permit does not automatically follow simply because the national government sanctions the operation of a business. Local governments may set conditions for the issuance of a permit such as "zoning, building, health, sanitation, and safety regulations, and other municipal ordinances enacted under the general welfare clause."⁴⁰

Both the national and local governments have roles to play in licensing. Another case involving the protection of the environment, *Ruzol v. Sandiganbayan*,⁴¹ explains these complementary roles. In *Ruzol*, the Court held that

the DENR is not the sole government agency vested with the authority to issue permits relevant to the transportation of salvaged forest products, considering that, pursuant to the general welfare clause, LGUs may also exercise such authority. Also, as can be gleaned from the records, the *permits to transport were meant to complement and not to replace* the Wood Recovery Permit issued by the DENR. In effect, *Ruzol* required the issuance of the subject permits under his authority as municipal mayor and independently of the official functions granted to the DENR. The records are likewise bereft of any showing that *Ruzol* made representations or false pretenses that said permits could be used in lieu of, or at the least as an excuse not to obtain, the Wood Recovery Permit from the DENR.⁴²

39. *Id.* at 59.

40. *Id.*

41. *Ruzol v. Sandiganbayan*, G.R. No. 186739, 696 SCRA 742 (2013).

42. *Id.* at 789 (emphasis supplied).

Republic Act No. 11517 abolishes the role of local governments in licensing, and would allow the national government to monopolize licensing. This would enable the national government to license resource extraction, for example, over the objections of local governments and communities.

2. Licensing Is a Police Power Measure and Requires the Exercise of Discretion.

Licensing falls under the local government's "police power."⁴³ Through this power, local governments "may prescribe regulations to protect the lives, health, and property of their constituents and maintain peace and order within their respective territorial jurisdictions."⁴⁴ Furthermore, "[p]olice power is essentially regulatory in nature, and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power."⁴⁵

Specifically, on the police power exercised by local governments in relation to licensing, Section 444 (b) (3) (iv) of the Local Government Code provides that the power of the municipal mayor to issue licenses is pursuant to Section 16 of the same,⁴⁶ which declares —

SECTION 16. *General Welfare.* — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.⁴⁷

43. LOCAL GOV'T CODE, § 444 (b) (3) (iv).

44. *Batangas CATV, Inc. v. Court of Appeals*, G.R. No. 138810, 439 SCRA 326, 338 (2004).

45. *Pheschem Industrial Corporation v. Surigao*, A.C. No. 8269, 712 SCRA 99, 115 (2013) (citing *Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna*, G.R. No. L-24265, 94 SCRA 894, 902 (1979)).

46. LOCAL GOV'T CODE, § 444 (b) (3) (iv).

47. *Id.* § 16.

Section 16 “encapsulates the delegated police power to local governments.”⁴⁸ According to the Supreme Court in another case, *Roble Arrastre v. Villaflor*,⁴⁹ “the Local Government Code of 1991 is unequivocal that the municipal mayor has the power to issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance.”⁵⁰

The Court made two important points in *Roble Arrastre, Inc.*:

- (1) Section 16 of the Local Government Code of 1991 “can be utilized to determine the bounds of the exercise of the municipal mayor in issuing licenses and permits.”⁵¹ Police power can be exercised by a local government even without a law other than the Local Government Code.
- (2) Section 444 (b) (3) (iv) of the Local Government Code of 1991 is “a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. As to the question of whether the power is validly exercised, the matter is within the province of a writ of *certiorari*, but certainly, not of *mandamus*.”⁵²

The Court reiterated the second point in another case, saying that “a mayor cannot be compelled by *mandamus* to issue a business permit since the exercise of the same is a delegated police power hence, discretionary in nature.”⁵³

48. *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, 499 SCRA 434, 448 (2006).

49. *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, 499 SCRA 434 (2006).

50. *Id.* at 448-49.

51. *Id.* at 449.

52. *Id.* at 450.

53. *Rimando v. Naguilian Emission Testing Center, Inc.*, G.R. No. 198860, 677 SCRA 343, 349 (2012) (emphasis supplied). *See also* *Lacap v. Sandiganbayan* (Fourth Division), G.R. No. 198162, 828 SCRA 1 (2017). The case of *Lacap* instructs —

While a discretionary power or authority of Corazon, as the then Municipal Mayor of Masantol, Pampanga, is involved in this case, its exercise must be pursuant to law and ordinance. The mayor must act on the application for a business permit, and as correctly pointed out by the *Sandiganbayan*, the action expected of the mayor was either to approve or disapprove the same.

Students of law are familiar with this rule. “*Mandamus* lies only to compel an officer to perform a ministerial duty (one which is so clear and specific as to leave no room for the exercise of discretion in its performance) but not a discretionary function (one which by its nature requires the exercise of judgment).”⁵⁴

D. The Power of Control

The second point of *Roble Arrastre, Inc.* is crucial in the critique of Republic Act No. 11517. In the issuance of a license, the local government exercises discretion.⁵⁵ Republic Act No. 11517, in effect, usurps this power from local governments, as it overrides the local chief executives’ exercise of discretion.⁵⁶ This is the next constitutional violation found in Republic Act No. 11517.

In Article II of the Constitution, the State has expressly adopted as a policy that “[t]he State shall ensure the autonomy of local governments.”⁵⁷ Article X of the Constitution has been devoted to guaranteeing and promoting the autonomy of local government units.⁵⁸ Section 2 reiterates the State policy in this wise: “The territorial and political subdivisions shall enjoy local autonomy.”⁵⁹

Consistent with the principle of local autonomy, the Constitution confines the President’s power over the local government units to one of general supervision.⁶⁰ Article X, Section 4 of the Constitution provides that “[t]he President of the Philippines shall exercise general supervision over local governments.”⁶¹ This Supreme Court explains that “[t]his provision has been interpreted to exclude the power of control.”⁶² The Court differentiates control from supervision this way —

Id. at 26.

54. *San Juan v. Castro*, G.R. No. 174617, 541 SCRA 526, 533 (2007) (citing *Cariño v. Capulong*, G.R. No. 97203, 222 SCRA 593, 602 (1993)).

55. *Roble Arrastre, Inc.*, 499 SCRA at 450.

56. See Republic Act No. 11517, § 2 (b).

57. PHIL. CONST. art. II, § 25.

58. See PHIL. CONST. art. X.

59. PHIL. CONST. art. X, § 2.

60. PHIL. CONST. art. X, § 4.

61. PHIL. CONST. art. X, § 4.

62. *Province of Batangas v. Romulo*, G.R. No. 152774, 429 SCRA 736, 758 (2004).

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or redone by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for doing the act. He has no judgment on this matter except to see to it that the rules are followed.⁶³

Applying these definitions, the Court has held that

[u]nder our present system of government, executive power is vested in the President. The members of the Cabinet and other executive officials are merely alter egos. As such, they are subject to the power of control of the President, at whose will and behest they can be removed from office; or their actions and decisions changed, suspended[,] or reversed. In contrast, the heads of political subdivisions are elected by the people. Their sovereign powers emanate from the electorate, to whom they are directly accountable. By constitutional fiat, they are subject to the President's supervision only, not control, so long as their acts are exercised within the sphere of their legitimate powers.⁶⁴

Through the power of control over executive departments, bureaus, or offices, the President may "assume directly the functions thereof or [] interfere in the exercise of discretion by its officials."⁶⁵ The power of control

implies the right of the President to interfere in the exercise of such discretion as may be vested by law in the officers of the executive departments, bureaus, or offices of the national government, as well as to act in lieu of such officers. This power is denied by the Constitution to the Executive, insofar as local governments are concerned.⁶⁶

63. *Id.* at 758-59 (citing *Dylon v. Lim*, G.R. No. 112497, 235 SCRA 135, 142 (1994)).

64. *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, 336 SCRA 201, 215 (2000) (citing PHIL. CONST. art. VII, § 1 & JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 739 (1996)).

65. *Pelaez v. Auditor General*, G.R. No. L-23825, 15 SCRA 569, 583 (1965).

66. *Id.* at 582.

In another case, the Supreme Court explains that

the President can only interfere in the affairs and activities of a local government unit if he or she finds that the latter has acted contrary to law. This is the scope of the President's supervisory powers over local government units. Hence, the President or any of his or her *alter egos* cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive therefore by the President or any of his or her *alter egos* seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity because it violates the principle of local autonomy and separation of powers of the executive and legislative departments in governing municipal corporations.⁶⁷

As illustrated earlier, the issuance of permits requires the exercise of discretion on the part of the local chief executive.⁶⁸ When the national government assumes this function, it exercises control over local officials in violation of the Constitution.

III. REMOVAL OF LOCAL OFFICIALS

A. Repeal of Section 60 of the Local Government Code

The last issue with Republic Act No. 11517 is an apparent amendment of a provision of the Local Government Code that has protected local officials. Section 3 of the law provides —

SEC. 3. *Power to Suspend or Remove.* [—] Consistent with Article VII Sections 1 and 17 of the Constitution, the Revised Administrative Code, other existing laws, and jurisprudence, the President shall have the authority to suspend or remove, any government official or employee performing acts contrary to the preceding section.⁶⁹

This provision raises a problem of interpretation. Under the law, the President has the power to suspend or remove “any government official or employee” consistently with “other existing laws[] and jurisprudence.”⁷⁰

67. *Dadole v. Commission on Audit*, G.R. No. 125350, 393 SCRA 262, 271 (2002).

68. *Roble Arrastre, Inc.*, 499 SCRA at 450.

69. Republic Act No. 11517, § 3.

70. *Id.*

Until the enactment of Republic Act No. 11517, the President had no power to remove local officials. The last paragraph of Section 60 of the Local Government Code of 1991 provides that “[a]n elective local official may be removed from office on the grounds enumerated [] by order of the proper court.”⁷¹

Hence, “[i]t is clear from the last paragraph ... that the penalty of dismissal from service upon an erring elective local official may be decreed only by a court of law.”⁷² According to the Supreme Court —

Congress clearly meant that the removal of an elective local official be done only after a trial before the appropriate court, where court rules of procedure and evidence can ensure impartiality and fairness and protect against political maneuverings. Elevating the removal of an elective local official from office from an administrative case to a court case may be justified by the fact that such removal not only punishes the official concerned but also, in effect, deprives the electorate of the services of the official for whom they voted.⁷³

Under the Local Government Code of 1991, there is no doubt that the power to remove erring elective local officials from service is lodged exclusively with the courts.⁷⁴ The Supreme Court explained that

[t]he law on suspension or removal of elective public officials must be strictly construed and applied, and the authority in whom such power of suspension or removal is vested must exercise it with utmost good faith, for what is involved is not just an ordinary public official but one chosen by the people through the exercise of their constitutional right of suffrage. Their will must not be put to naught by the caprice or partisanship of the disciplining authority.⁷⁵

Does Section 3 of Republic Act No. 11517 repeal the last paragraph of Section 60 of the Local Government Code? This is unclear because Section 3 can be construed to mean that it should be applied consistently with existing laws. Under this theory, there can be no implied repeal of the Local Government Code. It may be argued that this removal covers any government official or employee other than a local official.

71. LOCAL GOV'T CODE, § 60.

72. *Pablico v. Villapando*, G.R. No. 147870, 385 SCRA 601, 604 (2002).

73. *Sangguniang Barangay of Don Mariano Marcos, Bayombong, Nueva Vizcaya v. Martinez*, G.R. No. 170626, 547 SCRA 416, 426 (2008).

74. *See* LOCAL GOV'T CODE, § 60, para. 2.

75. *Pablico*, 385 SCRA at 606.

B. Vagueness

There is another potential issue with Section 3. What does the phrase “acts contrary to the preceding section”⁷⁶ mean?

In discussing the enactment of the law, Senate Majority Leader Juan Miguel F. Zubiri claimed that “this is a good accompanying measure to the ease of doing business. I think a lot of good will come out of this and I believe that with this, the President will be emboldened to remove more people for their ineptitude and incompetence.”⁷⁷ Section 3 of the law arguably refers to a defiance of the thrust of Republic Act No. 11517. Senator Zubiri appears to be talking about incompetent local officials.

Ineptitude and incompetence do not necessarily mean that local officials act contrary to law. Local officials may in fact be applying a law but are doing so ineptly or incompetently. Section 3, arguably, suffers from vagueness.

The Author argues that an official who is charged under this statute may challenge the validity of Section 3 on the ground of vagueness. This challenge may rely on principles enunciated in cases involving penal statutes, in this wise

Due process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that ‘fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,’ or is so indefinite that ‘it encourages arbitrary and erratic arrests and convictions,’ is void for vagueness.⁷⁸

76. Republic Act No. 11517, § 3.

77. Butch Fernandez & Jovee Marie Dela Cruz, *Senate OKs Bill Allowing Fast-Tracking of Permits*, BUSINESSMIRROR, Oct. 14, 2020, available at <https://businessmirror.com.ph/2020/10/14/senate-oks-bill-allowing-fast-tracking-of-permits> (last accessed May 11, 2021) [<https://perma.cc/E7A7-AWH2>].

78. *People v. Dela Piedra*, G.R. No. 121777, 350 SCRA 163, 175 (2001) (citing *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) & *Colautti v. Franklin*, 439 U.S. 379, 390 (1979)).

A vague or indefinite statute is unjust because it places the accused on trial for an offense, “the nature of which he is given no fair warning.”⁷⁹ Furthermore,

[i]n an ‘as applied’ challenge, [a person] who claims a violation of his constitutional right can raise any constitutional ground — absence of due process, lack of fair notice, lack of ascertainable standards, overbreadth, or vagueness. ... [O]ne can challenge the constitutionality of a statute only if he asserts a violation of his own rights.⁸⁰

IV. CONCLUSION

The Local Government Code of 1991 is “one of the most radical pieces of legislation passed in the nation’s history”⁸¹ and a “revolutionary” solution to the highly centralized character of Philippine government.⁸² Republic Act No. 11517 unconstitutionally cripples the Code.

Even if Congress had good intentions, even if it truly meant to address “red tape” and to address the economic impacts of the COVID-19 pandemic, the fact is that this effort is unconstitutional.

Streamlining licensing processes or suspending or waiving the requirements in securing such permits or licenses will remove local government regulation of businesses. It will allow the national government to override local government concerns about national projects. Worse, local officials who may have their constituents’ interests at heart are now subject to disciplinary actions and possible removal if they “act contrary” to Section 2 of Republic Act No. 11517.⁸³

79. *Dela Piedra*, 350 SCRA at 176 (citing *American Communications Assn. v. Douds*, 339 U.S. 382, 413 (1950)).

80. *Disini, Jr. v. Secretary of Justice*, G.R. No. 203335 (2014), available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/56650> (last accessed May 11, 2021).

81. Alex B. Brillantes, Jr., *Doing Things Differently: Innovations in Local Governance in the Philippines*, 45 PHIL. J. PUB. ADMINISTRATION 84, 84 (2001).

82. AQUILINO Q. PIMENTEL, JR., *THE LOCAL GOVERNMENT CODE OF 1991: THE KEY TO NATIONAL DEVELOPMENT* 2 (1993).

83. PHIL. CONST. art. X, § 3.

Local officials should challenge Republic Act No. 11517 for all the reasons stated in this Article. It is the most successful attempt at constricting local autonomy since the adoption of the 1987 Constitution.