

Republic of the Philippines  
**PRESIDENTIAL ELECTORAL TRIBUNAL**  
 Manila

**FERDINAND "BONGBONG" R. MARCOS, JR.,**

*Protestant,*

-versus-

**MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,**

*Protestee.*

X- - - - - X

**PRESIDENTIAL ELECTORAL TRIBUNAL**

DATE FILED: 9/9/16

TIME: 3:30

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**PET Case No. 005**

For: Election Protest Vice-President

**MOTION TO STRIKE-OUT OR EXPUNGE PROTESTEE'S  
 VERIFIED ANSWER DATED 12 AUGUST 2016**

**with**

**MANIFESTATION and ANSWER AD CAUTELAM  
 TO THE COUNTER-PROTEST**

Protestant **FERDINAND "BONGBONG" R. MARCOS, JR.** ("protestant Marcos"), through the undersigned counsel, unto this Honorable Presidential Electoral Tribunal ("PET"), in response to the Verified Answer with Special and Affirmative Defenses and Counter-Protest dated 12 August 2016, most respectfully alleges the following:

**MOTION TO STRIKE-OUT OR EXPUNGE PROTESTEE'S  
 VERIFIED ANSWER DATED 12 AUGUST 2016**

1. Under **Rule 22** and **23** of **A.M. No. 10-4-29-SC**, otherwise known as the "**2010 Rules of the Presidential Electoral Tribunal**" ("2010 PET Rules"), a verified Answer to the protest must be filed by the protestee within ten (10) days from receipt of the Summons, otherwise, a general denial shall be deemed to have been entered for the protestee under **Rule 27** of the **2010 PET Rules**.



2. However, if the protestee intends to incorporate a counter-protest in his or her Answer, the same must be filed within ten (10) day period from receipt of the Summons and Protest pursuant to **Rule 24** of the **2010 PET Rules**.

3. In this case, protestee Robredo categorically **admitted** in her Verified Answer with Special and Affirmative Defenses and Counter-Protest that she received the Summons and Protest on **02 August 2016**, thus:

<sup>1</sup> Copy of which was received on 02 August 2016. Under the Summons, protestee Robredo is directed to file her Answer within a period of ten (10) days from 02 August 2016 or until 13 August 2016. However, the last day falls on a Saturday. Hence, this Answer is being filed on the next working day.<sup>1</sup>

4. That being the case, protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest should have been filed by **12 August 2016**, which is the tenth (10<sup>th</sup>) day from her receipt of the Summons and Protest in accordance with **Rule 23** and **24** of the **2010 PET Rules**.

5. Unfortunately for protestee Robredo, per the date reflected on the receiving stamp of the Office of the Clerk of this Honorable Tribunal, it would appear that her Verified Answer with Special and Affirmative Defenses and Counter-Protest was belatedly filed on **15 August 2016** – or **3 days after** the 12 August 2016 deadline.

6. As a consequence of the abovementioned late filing, protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest should be stricken off and/or expunged from the records of this case for blatantly violating the mandate of **Rule 23** and **24** of the **2010 PET Rules**.

7. Protestant Marcos is thus constrained to formally request this Honorable Tribunal to strike out and/or expunge protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest dated 12 August 2016 from the records of this case for being filed out of time.

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<sup>1</sup> Footnote 1 of protestee's Verified Answer with Special and Affirmative Defenses and Counter-Protest dated 12 August 2016.



8. It is instructive to note that protestee Robredo had more than enough time to prepare for her Answer. As early as **12 July 2016**, this Honorable Tribunal had already **publicly announced** that it had given due course to protestant Marcos' election protest. Therefore, she already knew that this Honorable Tribunal would issue a Summons soon thereafter – even though she only received the same on 2 August 2016.

### **MANIFESTATION**

9. In the event, however, that the motion to strike out and/or expunge protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest is denied by this Honorable Tribunal, protestant Marcos would like to submit the foregoing manifestation in amplification of his election protest, thus:

10. In her Verified Answer with Special and Affirmative Defenses and Counter-Protest, protestee Robredo argued that the election protest is summarily dismissible based on the following grounds:

#### **I.**

**THE *ELECTION PROTEST* FAILED TO STATE, WITH DETAILED SPECIFICITY THE ACTS OR OMISSIONS COMPLAINED OF SHOWING THE ELECTORAL FRAUDS, ANOMALIES, OR IRREGULARITIES IN THE PROTESTED PRECINCTS, IN ACCORDANCE WITH RULE 17 OF THE 2010 RULES OF THE PRESIDENTIAL ELECTORAL TRIBUNAL.**

#### **II.**

**THE *ELECTION PROTEST*, WHICH IS IN THE NATURE OF A PRE-PROCLAMATION CASE, SHOULD HAVE BEEN INITIATED WITH THE NBOC, AND NOT WITH THE HONORABLE TRIBUNAL.**



### III.

#### THE ALLEGATIONS IN THE ELECTION PROTEST ARE NOT HINGED ON FACTS AND LAW.

11. Protestant Marcos begs to differ.

12. There is no factual or legal basis to ask for the dismissal of the election protest filed by protestant Marcos. Protestee Robredo's reliance on **Rule 21 of the 2010 PET Rules** is misplaced.

13. With all due respect, the sufficiency of the form, substance and content of the election protest filed by protestant Marcos was already AFFIRMED by this Honorable Tribunal when it resolved to issue the Summons against protestee Robredo.

14. **Rule 21** of the **2010 PET Rules** provides:

**Rule 21.** *Summary dismissal of election contest.* - An election protest or petition for *quo warranto* **may be summarily dismissed by the Tribunal without requiring the protestee or respondent to answer** if, inter alia:

(a) the protest or petition is insufficient in form and substance;

(b) the protest or petition is filed beyond the periods provided in Rules 15 and 16;

(c) the filing fee is not paid within the periods provided in Rules 15 and 16;

(d) the cash deposit or the first Two Hundred Thousand Pesos (P 200,000.00) is not paid within ten days after the filing of the protest; and

(e) the protest or petition or copies and their annexes filed with the Tribunal are not clearly legible. (R20a) [Emphasis and underscoring supplied.]

15. Since this Honorable Tribunal did **not** summarily dismiss the election protest filed by protestant Marcos and instead directed the protestee to file her answer thereto, the sufficiency of the election protest and its compliance with the required contents as prescribed by **Rule 17** of the **2010 PET Rules** is now beyond dispute.



16. In fact, this Honorable Tribunal categorically declared in the Summons it issued against protestee Robredo that the election protest filed by protestant Marcos was indeed sufficient in form and substance, thus:

### SUMMONS

**TO: HON. MARIA LEONOR G. ROBREDO (x)**

Office of the Vice-President  
Executive Home  
No. 100 11<sup>th</sup> Street  
New Manila, Quezon City

GREETINGS:

WHEREAS, protestant Ferdinand "Bongbong" R. Marcos, Jr. filed a verified election protest with the Presidential Electoral Tribunal (the Tribunal) on June 29, 2016, in relation to the May 9, 2016 results of the election for the position of Vice-President of the Republic of the Philippines;

**WHEREAS, the Tribunal finds the Protest dated June 29, 2016 of the protestant to be sufficient in form and substance;**

WHEREAS, considering the allegations contained, the issues raised and the arguments adduced in the aforesaid Protest, it is necessary and proper to require the protestee, Vice-President Maria Leonor G. Robredo, to file her answer thereto. xxx [Emphasis and underscoring supplied.]

17. Since protestee Robredo did not move for its reconsideration, this Honorable Tribunal's finding relevant to the **sufficiency** of the within election protest is now **FINAL**.

18. Consequently, it is now futile for the protestee to object to the sufficiency of the election protest filed against her. It is even more pointless for protestee Robredo to ask this Honorable Tribunal to conduct a preliminary hearing on her Special and Affirmative Defenses. To repeat, the ground for dismissal raised by the protestee was already rebuffed by this Honorable Tribunal, when it positively declared in the Summons dated 12 July 2016 that it found the protest filed by Marcos to be sufficient in form and substance.

19. The preliminary hearing prayed for by protestee Robredo is evidently a **dilatory tactic** employed by her to defer the



proceedings in this case. This should not be tolerated by this Honorable Tribunal, as this would contradict the PET's mandate to achieve a just, expeditious and inexpensive determination and disposition of every contest brought before it.

20. There can be no denying the fact that protestee Robredo's contentions regarding the alleged insufficiency of the election protest filed by protestant Marcos are erroneous, misleading and obviously distorted to suit her own interest.

21. Contrary to the assertions of the protestee, a review of the election protest filed by protestant Marcos would easily show that the same contained a **detailed** specification of the acts and omissions complained of by the protestant showing the electoral frauds, anomalies and irregularities in the protested precincts.

22. To be sure, protestant Marcos narrated in detail the electoral fraud, anomalies and irregularities which pervaded the conduct of elections in **thirty nine thousand two hundred twenty one (39,221)** protested clustered precincts that functioned in Lanao Del Sur, Maguindanao, Basilan, Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2<sup>nd</sup> District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City and Zamboanga City.

23. Protestee's reliance on the cases of ***Pena vs. HRET***<sup>2</sup> and ***Nila G. Aguillo, et al., v. Comelec, et al.***<sup>3</sup> is misplaced because the election protest of Marcos contained a detailed narration and specification of the electoral frauds, anomalies and irregularities which took place in the protested areas during the 09 May 2016 elections.

24. This Honorable Tribunal should not be deceived by the alleged applicability of the ruling in the case of ***Pena vs. HRET***,<sup>4</sup> since the subject election protest in that case merely contained a

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<sup>2</sup> 270 SCRA 340 [1997]

<sup>3</sup> G.R. No. 197975-76, 19 March 2013.

<sup>4</sup> Supra note 2.



one-paragraph recital of the alleged electoral frauds or irregularities. Thus:

The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during, and after the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were massive vote-buying and intimidation of voters, disenfranchisement of petitioner's known supporters through systematic deletion of names from the list of voters, allowing persons to vote in excess of the registered number of voters, misappreciation, misreading and non-reading of protestant's ballot and other irregularities.

25. The election protest filed by protestant Marcos is a far cry from the above-cited election protest of Pena. Here, protestant Marcos presented in detail the allegations of electoral frauds, anomalies and irregularities in support of his election protest. Therefore, the aforesaid case of ***Pena vs. HRET***,<sup>5</sup> does not find any application to this case. Accordingly, protestee's affirmative and special defenses must be denied for utter lack of merit and for being merely dilatory.

26. As for the case of ***Nila G. Aguillo, et al., v. Comelec, et al.***,<sup>6</sup> the conclusion reached by the Honorable Supreme Court therein cannot be applied in determining the sufficiency the election protest filed in this case. Unlike the ***Aguillo*** case, protestant Marcos positively identified that the electoral frauds, anomalies and irregularities complained of in this protest actually occurred in each of the protested precincts subject of this case. Moreover, protestant Marcos appended the available affidavits and relevant documents relied upon by him in support of his election protest. Protestant Marcos also made an express reservation in his protest to present additional documentary, object and testimonial evidence during the course of the proceeding.

27. In determining the sufficiency of this election protest, this Honorable Tribunal considered the jurisprudential doctrine enunciated in ***Jeremias F. Dayo v. COMELEC and Amadeo M. Gaasis***.<sup>7</sup> In the said case, the Honorable Supreme Court pointed out that allegations of fraud and irregularities are **sufficient grounds** for

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<sup>5</sup> *Id.*

<sup>6</sup> Supra note 3.

<sup>7</sup> G.R. No. 94681, 18 July 1991.



opening the ballot boxes and examining the questioned ballots **and that evidence of irregularities is not necessary to justify the revision of ballots**, thus:

When fraud and irregularities are alleged in the protest and the court believes the interest of justice so requires, it should order that the ballots be examined and the votes counted (Sec. 255 Omnibus Election Code). If the court is not satisfied that the allegations of the protest are sufficient, it should give the protestant an opportunity to prove his allegations, instead of dismissing the protest on the basis of interrogatories taken in another case involving other parties. **Allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots** (Moguis Jr. vs. CA & Bisnar, G.R. No. 66547, May 7, 1985). **Evidence of irregularities is not necessary to justify the revision of ballots** (Jaguros vs. Villamor, 134 SCRA 553). **To require parole and other evidence on the alleged irregularities before opening the ballot box, would only give the protestee time and opportunity to delay the settlement of the controversy through lengthy presentation of testimonial evidence and cross-examination** (Astorga vs. Fernandez, 19 SCRA 331). The trial court committed grave abuse of discretion when it declared, based only on the interrogatories in the companion case (Protest Case No. 06-88) that there is no evidence of fraud or irregularities committed. As wryly observed by the Solicitor General in his Comments on the petition: "there was precisely no evidence of fraud and irregularities on record because the trial court did not give private respondent (the protestant) a chance to substantiate his allegations."<sup>8</sup> [Emphasis supplied.]

28. This Honorable Tribunal should likewise take into account the ruling in the case of ***James Miguel v. COMELEC and Eladio M. Lapuz***,<sup>9</sup> where it was emphasized that when there is an **allegation in an election protest** that would require the perusal, examination or counting of ballots as evidence, **it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein**, to wit:

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that **when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of**

<sup>8</sup> *Id.*

<sup>9</sup> G.R. No.136966, 5 July 2000.



**ballots deposited therein.** (emphasis ours)

In *Astorga vs. Fernandez*, this Court inked the rationale behind the principle through the pen of Chief Justice Roberto Concepcion:

"xxx Obviously, the simplest, the most expeditious and the best means to determine the truth or falsity of this allegation is to open the ballot box and examine its contents. To require parol or other evidence on said alleged irregularity before opening said box, would have merely given the protestee ample opportunity to delay the settlement of the controversy, through lengthy cross-examination of the witnesses for the protestant and the presentation of testimonial evidence for the protestee to the contrary. As held in *Cecilio vs. Belmonte*, this would be to sanction an easy way to defeat a protest." (emphasis ours)

At this point, the provisions of Section 255 of the Omnibus Election Code (Batas Pambansa Blg. 881) is in order:

**"Section 255. Judicial counting of votes in election protest.**-Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted."

Further, Section 6, Rule 20 of the COMELEC Rules of Procedure reads:

"When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division, the interest of justice so demands, it shall immediately order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to be brought before the Commission, and shall order the revision of the ballots."

**While the abovementioned rule pertains to election protests falling within the exclusive original jurisdiction of the Commission, the same procedure is prescribed for election contests which are within the exclusive original jurisdiction of courts of general jurisdiction as well as election contests within the exclusive original jurisdiction of courts of limited jurisdiction.**

**In the case before us, the serious allegations embodied in the election protest mandates and necessitates the opening of the subject ballot boxes to the end of resolving the issue of fraud and irregularities in the election.** Precisely, the purpose of ordering the opening of the



ballot boxes is to ascertain, with the least amount of protracted delay, the veracity of the allegations of fraud and anomalies in the conduct of the electoral exercise. Thus, a preliminary hearing set for the same purpose is a mere superfluity that negates the essence of affording premium to the prompt resolution of election cases and incidents relating thereto.

Stated differently, the lower court clearly committed grave abuse of discretion in ordering the conduct of a preliminary hearing to achieve the abovementioned purpose; the court *a quo* acted outside its province and overshot the limits of its jurisdiction. Evidently, the twin orders of the lower court, dated 07 July 1998 and 11 August 1998, were issued in clear violation of the Rules and existing case law on the matter.

Moreover, petitioner's heavy reliance on the Narrative Report of Acting Election Officer Lourdes Barroga is misplaced. The law does not require *prima facie* showing other than the allegations in the protest of fraud or irregularities in order to authorize the opening of the ballot boxes. Applying this principle, the stand taken by the lower court was extremely technical and highly impractical, apart from tending to defeat one of the major objectives of the law.

For in this specie of controversies involving the determination of the true will of the electorate, time indeed is of paramount importance-second to none perhaps, except for the genuine will of the majority. To be sure, an election controversy which by its very nature touches upon the ascertainment of the people's choice, as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process.

To achieve this end, courts and tribunals should then endeavor to adopt only such means consistent with this general objective and be constantly reminded to refrain from such a needless exercise "which has spawned the protracted delay that the law and the principle underlying it precisely intend to forestall."<sup>10</sup> [Citations omitted; emphasis supplied.]

29. The application of the ***Miguel*** doctrine as the prevailing jurisprudence in determining the sufficiency of an election protest as opposed to the outdated ***Pena*** doctrine was reiterated in the case of ***Homer T. Saquilayan v. COMELEC and Oscar Jaro***,<sup>11</sup> wherein the Highest Tribunal stressed the following points:

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<sup>10</sup> *Id.*

<sup>11</sup> G.R. No. 157249, 28 November 2003.



The whole controversy revolves around the following averments contained in Jaros election protest:

**Grounds for the Protest**

6. Protestant hereby impugns the correctness of the results reflected in the election returns in ALL the 453 protested precincts of the Municipality of Imus, Cavite on the following grounds:

7.1. Votes in the ballots lawfully and validly cast in favor of protestant were deliberately misread and/or misappreciated by various chairmen of the different boards of election inspectors;

7.2. Valid votes of protestant were intentionally or erroneously counted or tallied in the election returns as votes of protestee;

7.3. Valid votes legally cast in favor of protestant were considered stray;

7.4. Ballots containing valid votes for protestant were intentionally and erroneously misappreciated or considered as marked and declared as null and void;

7.5. Ballots with blank spaces in the line for Mayor were just read and counted in favor of protestee;

7.6. Ballots prepared by persons other than the voters themselves, and fake or unofficial ballots wherein the name of protestee was written, were illegally read and counted in favor of protestee;

7.7. Groups of ballots prepared by one (1) person and/or individual ballots prepared by two (2) persons were purposely considered as valid ballots and counted in favor of protestee;

7.8. Votes that were void, because the ballots containing them were posted with stickers or because of pattern markings appearing in them or because of other frauds and election anomalies, were unlawfully read and counted in favor of protestee; and

7.9. Votes reported in some election returns were unlawfully increased in favor of protestee, such that protestee appeared to have obtained more votes than those actually cast in his favor.

The Second Division of the Comelec unanimously ruled that the above allegations failed to state a cause of action, citing as a basis the Courts ruling in Pena v. House of Representatives Electoral Tribunal.

In said case, petitioner Teodoro Pena, the losing party in the congressional elections, contested 700 out of 742 election precincts without specifying the precincts where the anomalies allegedly occurred. Furthermore, Pena made only general allegations, to wit:



7. The elections in the precincts of the Second District of Palawan were tainted with massive fraud, widespread vote-buying, intimidation and terrorism and other serious irregularities committed before, during and after the voting, and during the counting of votes and the preparation of election returns and certificates of canvass which affected the results of the election. Among the fraudulent acts committed were the massive vote-buying and intimidation of voters, disenfranchisement of petitioners known supporters through systematic deletion of names from the list of voters, allowing persons to vote in excess of the number of registered voters, misappreciation, misreading and non-reading of protestants ballots and other irregularities.

The Court in that case dismissed the election protest, holding that the failure to make specific mention of the precincts where wide-spread election fraud and irregularities occurred, and the bare allegations of massive fraud, widespread intimidation and terrorism, without specification and substantiation of where and how these occurrences took place, render the protest fatally defective. As explained by the Court:

The prescription that the petition must be sufficient in form and substance means that the petition must be more than merely rhetorical. If the allegations contained therein are unsupported by even the faintest whisper of authority in fact and law, then there is no other course than to dismiss the petition, otherwise, the assumption of an elected official may, and always [will,] be held up by petitions of this sort by a losing candidate.

However, the Comelec *en banc*, voting 4-3, ruled that what is applicable to the case is the ruling in *Miguel v. Comelec*. In the *Miguel* case, therein respondent Eladio Lapuz filed an election case against James Miguel who defeated the former in the mayoralty race in Rizal, Nueva Ecija. Lapuz questioned the results in all the precincts on the following grounds:

- a) Rampant switching of ballot boxes and stuffing of ballot boxes with fake ballots;
- b) Padding of votes in favor of petitioner;
- c) Misappreciation of ballots to the prejudice of private respondent;
- d) Counting of illegal and/or marked ballots and stray votes in favor of petitioner;
- e) Misreading and mis-tallying of ballots or votes;
- f) Massive vote-buying;
- g) Substitution of votes;
- h) Multiple voting by flying voters and harassment of voters;
- i) Massive disenfranchisement;
- j) Massive threats, coercion and intimidation of voters.

Therein petitioner Miguel argued that the general allegations of fraud and irregularities were not sufficient to order the opening



of ballot boxes and counting of ballots. The Court, however, found the allegations embodied in the election protest to be serious enough to necessitate the opening of the ballot boxes to resolve the issue of fraud and irregularities in the election.

**The facts of the present petition are similar to those in *Miguel* rather than to those in *Pena*. In *Miguel*, there was a controversy between two candidates for municipal mayor, while *Pena* dealt with candidates for a congressional district office. Also, one reason that led to the dismissal of the election protest in *Pena* was the protestants failure to specify the 700 out of the 743 precincts where the alleged anomalies occurred. In both *Miguel* and the present petition, the protestants questioned all the precincts in their respective municipalities.**

**Furthermore, the *Miguel* case, being the more recent decision, should prevail in case of a conflict, under the well-established doctrine that a later judgment supersedes a prior one in case of an inconsistency.**

In closing, the Court reiterates its pronouncement in *Carlos v. Angeles*:

Election contests involve public interest, and technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. In an election case, the court has an imperative duty to ascertain by all means within its command who is the real candidate elected by the electorate. The Supreme Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.

No doubt, allowing the election protest to proceed would be the best way of removing any doubt as to who was the real candidate chosen by the electorate. Barring the proceedings due to technicalities and procedures accomplishes nothing except possibly to suppress the will of the majority.<sup>12</sup> [Citations omitted; emphasis supplied.]

30. The above-cited pronouncements of the Honorable Supreme Court were echoed in the case of ***Eddie T. Panlilio v. COMELEC and Lilia G. Pineda***,<sup>13</sup> where the Highest Tribunal made the following pronouncements:

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<sup>12</sup> *Id.*

<sup>13</sup> G.R. No. 181478, 15 July 2009.



Petitioner likewise imputes grave abuse of discretion on the part of the COMELEC in giving due course to private respondents election protest. Petitioner insists that the election protest is a sham and is insufficient in form and substance.

In *Miguel v. COMELEC*, the Court belittled the petitioners argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, we have consistently ruled that **when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.**

In a kindred case, *Homer Saquilayan v. COMELEC*, the Court considered **the allegations in an election protest, similar to those in this case, as sufficient in form and substance.**

Again, in *Dayo v. COMELEC*, the Court declared that **allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots.** The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads:

Judicial counting of votes in election contest. Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

In an election case, the election tribunal has an imperative duty to ascertain, by all means within its command, who is the real candidate elected by the electorate. Indeed, the Court frowns upon any interpretation of the law or the rules that would hinder in any way not only the free and intelligent casting of votes in an election,



but also the correct ascertainment of the results.<sup>14</sup> [Citations omitted; emphasis supplied.]

31. More recently, in the case of ***Douglas R. Cagas v. COMELEC and Claude P. Bautista***,<sup>15</sup> the Honorable Supreme Court emphasized the following points in determining the sufficiency of the allegations contained in election protests, thus:

**The Court has upheld the COMELEC's determination of the sufficiency of allegations contained in election protests, conformably with its imperative duty to ascertain in an election protest, by all means within its command, who was the candidate elected by the electorate.** Indeed, in *Panlilio v. Commission on Elections*, we brushed aside the contention that the election protest was insufficient in form and substance and was a sham for having allegations couched in general terms, stating:

In *Miguel v. COMELEC*, the Court belittled the petitioners argument that the protestant had no cause of action, as the allegations of fraud and irregularities, which were couched in general terms, were not sufficient to order the opening of ballot boxes and counting of ballots. The Court states the rules in election protests cognizable by the COMELEC and courts of general jurisdiction, as follows:

The rule in this jurisdiction is clear and jurisprudence is even clearer. In a string of categorical pronouncements, **we have consistently ruled that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of ballots deposited therein.**

In a kindred case, *Homer Saquilayan v. COMELEC*, the Court considered the allegations in an election protest, similar to those in this case, as sufficient in form and substance.

Again, in *Dayo v. COMELEC*, **the Court declared that allegations of fraud and irregularities are sufficient grounds for opening the ballot boxes and examining the questioned ballots.** The pronouncement is in accordance with Section 255 of the Omnibus Election Code, which reads:

Judicial counting of votes in election contest. Where allegations in a protest or counter-protest so warrant, or whenever

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<sup>14</sup> *Id.*

<sup>15</sup> G.R. No. 194139, 24 January 2012.



in the opinion of the court in the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted.

In this case, the COMELEC Second Division found that the allegations in the protest and counter-protest warranted the opening of the contested ballot boxes and the examination of their contents to settle at once the conflicting claims of petitioner and private respondent.

The petitioner adds that with the Court having noted the reliability and accuracy of the PCOS machines and consolidation/canvassing system (CCS) computers in *Roque, Jr. v. Commission on Elections*,<sup>30</sup> Bautistas election protest assailing the system and procedure of counting and canvassing of votes cast in an automated system of elections should be immediately dismissed.

We are not persuaded.

***Roque, Jr. v. Commission on Elections* does not preclude the filing of an election protest to challenge the outcome of an election undertaken in an automated system of elections.** Instead, the Court only ruled there that the system and procedure implemented by the COMELEC in evaluating the PCOS machines and CCS computers met the minimum system requirements prescribed in Section 7 of Republic Act No. 8436. The Court did not guarantee the efficiency and integrity of the automated system of elections, as can be gleaned from the following pronouncement thereat:

The Court, however, will not indulge in the presumption that nothing would go wrong, that a successful automation election unmarred by fraud, violence, and like irregularities would be the order of the moment on May 10, 2010. Neither will it guarantee, as it cannot guarantee, the effectiveness of the voting machines and the integrity of the counting and consolidation software embedded in them. That task belongs at the first instance to Comelec, as part of its mandate to ensure clean and peaceful elections. This independent constitutional commission, it is true, possesses extraordinary powers and enjoys a considerable latitude in the discharge of its functions. The road, however, towards successful 2010 automation elections would certainly be rough and bumpy. The Comelec is laboring under very tight timelines. It would accordingly need the help of all advocates of orderly and honest elections, of all men and women of goodwill, to smoothen the way and assist Comelec personnel address the fears expressed about the integrity of the system. Like anyone else, the Court would



like and wish automated elections to succeed, credibly.<sup>16</sup>  
[Citations omitted; emphasis supplied.]

32. Guided by the foregoing jurisprudential teachings, an examination of the allegations of Marcos's election protest would easily reveal that the same contain a comprehensive and detailed narration of the specific acts or omissions constituting the electoral frauds, anomalies and irregularities in each of the clustered precincts subject of this protest.

33. The electoral frauds, anomalies and irregularities complained of by protestant Marcos in his election protest include terrorism, force, violence, threats and intimidation, which were rampant in the protested clustered precincts of Lanao Del Sur, Maguindanao, and Basilan on Election Day.

34. Protestant Marcos also complained of violence, intimidation, vote-buying, substitution of voters / presence of flying voters, misreading of ballots, malfunctioning and tampered VCM and CCS, pre-loaded SD cards, and an abnormally high turnout of unaccounted votes / undervotes for the position of Vice-President, which were prevalent in the protested clustered precincts of Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2<sup>nd</sup> District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City and Zamboanga City during the last elections.

35. Protestee Robredo denies the presence of these electoral frauds, anomalies and irregularities complained of in this election protest. She even attached copies of the Minutes of Testing and Sealing Voting and Counting of Votes ("Minutes") in her Verified Answer with Special and Affirmative Defenses and Counter-Protest to disprove the allegations of protestant Marcos.

36. Interestingly, an examination of the Minutes attached by protestee Robredo in her Verified Answer with Special and Affirmative Defenses and Counter-Protest would confirm the attendance of electoral irregularities during the last elections. Protestee Robredo

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<sup>16</sup> *Id.*



may have overlooked that several incidences of misread ballots, malfunctioning VCMs and CCS were recorded in the Minutes which she attached in her Verified Answer with Special and Affirmative Defenses and Counter-Protest.

37. In fact, according to the Minutes for Precinct Nos. IA, IB, 2A, 2B of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-A of Robredo's Answer, the VCM assigned thereat malfunctioned and the Contingency VCM was used.

38. While the Minutes for Precinct Nos. 0008A, 0008B, 0008C, 0009A, 0009B of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-C of Robredo's Answer, showed that the ballots were rejected by the VCM.

39. In the Minutes for Precinct Nos. 9C, 10A, 10B, 10C, 10D of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-D of Robredo's Answer, the SD card and the VCM assigned therein malfunctioned and the Contingency VCM was used.

40. According to the Minutes for Precinct Nos. 9C, 10A, 10B, 10C, 10D of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-D of Robredo's Answer, the SD card and the VCM assigned thereat malfunctioned.

41. While the Minutes for Precinct Nos. 9C, 10A, 10B, 10C, 10D of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-D of Robredo's Answer, revealed that the VCM assigned therein malfunctioned.

42. The VCM also malfunctioned and the Contingency VCM was used in Precinct Nos. 9C, 10A, 10B, 10C, 10D of Brgy. Poblacion, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, as per its Minutes attached as Annex 13-D of Robredo's Answer.

43. Now, according to the Minutes for Precinct Nos. 15B, 16A, 16B of Brgy. Batayan, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-G of Robredo's Answer, the VCM assigned therein malfunctioned and there was some discrepancy



between the votes reflected in the voter's receipt as against the actual votes of the concerned voter.

44. Meanwhile, in Precinct Nos. 15B, 16A, 16B of Brgy. Batayan, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, the Minutes attached as Annex 13-G of Robredo's Answer showed that the voter's receipts were not issued/printed by the VCM.

45. The Minutes for Precinct Nos. 0017A, 0017B, 0018A of Brgy. Botong, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-H of Robredo's Answer, on the other hand, revealed the following irregularities: ballots were rejected by the VCM, the VCM assigned therein malfunctioned and the Contingency VCM was used.

46. According to the Minutes for Precinct No. 72270009 of Brgy. Botong, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-I of Robredo's Answer, the ballots were rejected by the VCM and there was no signal.

47. Now the Minutes for Precinct No. 72270013 of Brgy. Fatima, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-M of Robredo's Answer, revealed that the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.

48. While in Precinct Nos. 29A, 29B, 29C, 30A, 30B of Brgy. New Calamba, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, the VCM assigned therein malfunctioned and the Contingency VCM was used, as per the Minutes attached as Annex 13-P of Robredo's Answer.

49. In Precinct Nos. 38A, 39A, 40A, 40B of Brgy. Pianon, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-U of Robredo's Answer, the Minutes revealed that the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and the Contingency VCM was used.

50. According to the Minutes for Precinct Nos. 41A, 41 of Brgy. San Jose, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-V of Robredo's Answer, the ballots were



rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.

51. While the Minutes for Precinct Nos. 41A, 41 of Brgy. San Jose, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-V of Robredo's Answer, showed that the ballots were rejected by the VCM, the voter's receipts were not issued/printed by the VCM and the VCM assigned therein malfunctioned.

52. In the Minutes for Precinct Nos. 0041B, 0042B of Brgy. San Jose, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-W of Robredo's Answer, it was recorded that the ballots were rejected by the VCM.

53. According to the Minutes for Precinct Nos. 0041B, 0042B of Brgy. San Jose, Kalawit, 3<sup>rd</sup> District, Province of Zamboanga Del Norte, attached as Annex 13-W of Robredo's Answer, the VCM assigned therein malfunctioned and there was no signal.

54. As per the Minutes for Precinct Nos. 0002B, 0002C, 0002D, 0002E, 0002F of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-B of Robredo's Answer, the ballots were rejected by the VCM.

55. The ballots were also rejected by the VCM in Precinct Nos. 0002B, 0002C, 0002D, 0002E, 0002F of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, as per its Minutes attached as Annex 14-B of Robredo's Answer.

56. According to the Minutes for Precinct No. 10 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-J of Robredo's Answer, the ballots were rejected by the VCM.

57. The ballots were also rejected by the VCM in Precinct No. 12 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, as per its Minutes attached as Annex 14-L of Robredo's Answer.

58. According to the Minutes for Precinct No. 13 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as



Annex 14-M of Robredo's Answer, the VCM assigned therein malfunctioned.

59. On the other hand, the Minutes for Precinct No. 18 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-R of Robredo's Answer, showed that the ballots were rejected by the VCM.

60. While the Minutes for Precinct No. 19 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-S of Robredo's Answer, also revealed that the ballots were rejected by the VCM.

61. Now, as per the Minutes for Precinct No. 19 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-S of Robredo's Answer, the ballots were again rejected by the VCM.

62. As for the Minutes for Precinct No. 13210020 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-T of Robredo's Answer, it was revealed that the the VCM assigned therein malfunctioned and the Contingency VCM was used.

63. According to the Minutes for Precinct No. 22 of Brgy. Poblacion, Valencia, 1<sup>st</sup> District, Province of Bukidnon, attached as Annex 14-V of Robredo's Answer, the ballots were rejected by the VCM.

64. While the Minutes for Precinct No. 41 of Brgy. Cagbang, Oton, 1<sup>st</sup> District, Province of Iloilo, attached as Annex 15-C of Robredo's Answer, showed that the ballots were also rejected by the VCM.

65. According to the Minutes for Precinct No. 62 of Brgy. Sabang Uno, Kalauag, 4<sup>th</sup> District, Province of Quezon, attached as Annex 16-L of Robredo's Answer, the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.

66. The Minutes for Precinct No. 62 of Brgy. Sabang Uno, Kalauag, 4<sup>th</sup> District, Province of Quezon, attached as Annex 16-L of Robredo's Answer, indicated that the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.



67. According to the Minutes for Precinct Nos. 0003B, 0004B, 0005B, 0006A, 0006B of Brgy. Poblacion, Lemer, 1<sup>st</sup> District, Province of Batangas, attached as Annex 17-G of Robredo's Answer, the VCM assigned therein malfunctioned.

68. The VCM assigned in Precinct No. 10340013 of Brgy. Lumbangan, Tuy, 1<sup>st</sup> District, Province of Batangas, also malfunctioned as per its Minutes attached as Annex 17-N of Robredo's Answer.

69. According to the Minutes for Precinct No. 74 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-T of Robredo's Answer, the VCM assigned therein malfunctioned and there was no signal.

70. While the Minutes for Precinct No. 78 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-X of Robredo's Answer, showed that the VCM assigned therein malfunctioned.

71. Meanwhile, as per the Minutes for Precinct No. 79 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-Y of Robredo's Answer, the ballots were rejected by the VCM.

72. According to the Minutes for Precinct No. 81 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-AA of Robredo's Answer, the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.

73. The Minutes for Precinct No. 84 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-CC of Robredo's Answer, showed that the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.

74. As per the Minutes for Precinct No. 84 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-CC of Robredo's Answer, the ballots were rejected by the VCM and there was no signal.



75. Now the Minutes for Precinct No. 85 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-DD of Robredo's Answer, indicated that the ballots were rejected by the VCM.

76. While the Minutes for Precinct No. 85 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-DD of Robredo's Answer, revealed that the VCM assigned therein malfunctioned.

77. According to the Minutes for Precinct No. 87 of Brgy. Darasa, Tanauan, 3<sup>rd</sup> District, Province of Batangas, attached as Annex 17-EE of Robredo's Answer, the ballots were rejected by the VCM and there was no signal.

78. While according to the Minutes for Precinct No. 28 of Brgy. Pamiga, Agoncilio, Province of Batangas, attached as Annex 17-HH of Robredo's Answer, the ballots were rejected by the VCM, there was no signal and the VCM refused to shut down.

79. In Precinct No. 29 of Brgy. Pamiga, Agoncilio, Province of Batangas, the ballots were rejected by the VCM as per the Minutes attached as Annex 17-II of Robredo's Answer.

80. According to the Minutes for Precinct No. 21 of Brgy. Baclaran, Balayan, 1<sup>st</sup> District, Province of Batangas, attached as Annex 17-LL of Robredo's Answer, the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.

81. As per the Minutes for Precinct No. 22 of Brgy. Baclaran, Balayan, 1<sup>st</sup> District, Province of Batangas, attached as Annex 17-MM of Robredo's Answer, the ballots were rejected by the VCM and there was no signal.

82. While the Minutes for Precinct No. 288 of Brgy. Talumpok, Batangas, 5<sup>th</sup> District, Province of Batangas, attached as Annex 17-WW of Robredo's Answer, showed that the ballots were rejected by the VCM and there was no signal.



83. Now the Minutes for Precinct Nos. 0289A, 0289B, 0290A, 0290B of Brgy. Subukin, San Juan, 4<sup>th</sup> District, Province of Batangas, attached as Annex 17-YY of Robredo's Answer, revealed that the ballots were rejected by the VCM.

84. According to the Minutes for Precinct Nos. 0001A, 0002A, 0003A of Brgy. Csalug, Catbalogan, 2<sup>nd</sup> District, Province of Samar, attached as Annex 18-A of Robredo's Answer, the SD card and the VCM assigned therein malfunctioned.

85. Meanwhile, as per the Minutes for Precinct Nos. 0001A, 0002A, 0003A of Brgy. Csalug, Catbalogan, 2<sup>nd</sup> District, Province of Samar, attached as Annex 18-A of Robredo's Answer, the VCM assigned therein malfunctioned.

86. The Minutes for Precinct No. 14 of Brgy. Bolisong, El Salvador, 1<sup>st</sup> District, Province of Misamis Oriental, attached as Annex 19-A of Robredo's Answer, indicated that there was some discrepancy between the votes reflected in the voter's receipt as against the actual votes of the concerned voter.

87. According to the Minutes for Precinct No. 15 of Brgy. Bolisong, El Savador, 1<sup>st</sup> District, Province of Misamis Oriental, attached as Annex 19-B of Robredo's Answer, the VCM assigned therein malfunctioned.

88. The Minutes for Precinct No. 4310003 of Brgy. Poblacion, Initad, Province of Misamin Oriental, attached as Annex 19-I of Robredo's Answer, showed that the ballots were rejected by the VCM.

89. As per the Minutes for Precinct Nos. 16A, 16B, 17A, 17B, 18A, 18B of Brgy. Poblacion, Initad, Province of Misamin Oriental, attached as Annex 19-L of Robredo's Answer, the VCM assigned therein malfunctioned.

90. According to the Minutes for Precinct Nos. 009B, 0010A, 0010B, 0010C of Brgy. Burabod, Gamay, 2<sup>nd</sup> District Province of Nothern Samar, attached as Annex 21-B of Robredo's Answer, the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.



91. While the Minutes for Precinct Nos. 0218A, 0218B, 0219A, 0219B, 0222A of Brgy. Manalo, Puerto Prinsesa, 3<sup>rd</sup> District Province of Palawan, attached as Annex 22-T of Robredo's Answer, revealed that the ballots were rejected by the VCM and there was no signal.

92. As per the Minutes for Precinct Nos. 0258A, 0258B, 0259A, 0259B of Brgy. Maruyogon, Puerto Prinsesa, 3<sup>rd</sup> District, Province of Palawan, attached as Annex 22-V of Robredo's Answer, the ballots were rejected by the VCM.

93. According to the Minutes for Precinct Nos. 0258A, 0258B, 0259A, 0259B of Brgy. Maruyogon, Puerto Prinsesa, 3<sup>rd</sup> District, Province of Palawan, attached as Annex 22-V of Robredo's Answer, the ballots were rejected by the VCM.

94. In the Minutes for Precinct No. 55 of Brgy. San Isidro, Roxas, 1<sup>st</sup> District, Province of Palawan, attached as Annex 22-Y of Robredo's Answer, the VCM assigned therein malfunctioned and there was no signal.

95. According to the Minutes for Precinct Nos. 30A, 30B, 30C, 30D of Brgy. Palomoc, Titay, 2<sup>nd</sup> District, Province of Zamboanga Sibugay, attached as Annex 24-A of Robredo's Answer, the SD card and the VCM assigned therein malfunctioned.

96. The SD card also malfunctioned according to the Minutes for Precinct Nos. 30A, 30B, 30C, 30D of Brgy. Palomoc, Titay, 2<sup>nd</sup> District, Province of Zamboanga Sibugay, attached as Annex 24-A of Robredo's Answer.

97. As per the Minutes for Precinct Nos. 30E, 31B, 31C, 31E of Brgy. Palomoc, Titay, 2<sup>nd</sup> District, Province of Zamboanga Sibugay, attached as Annex 24-B of Robredo's Answer, the ballots were rejected by the VCM.

98. According to the Minutes for Precinct No. 40 of Brgy. Palomoc, Titay, 2<sup>nd</sup> District, Province of Zamboanga Sibugay, attached as Annex 24-A of Robredo's Answer, the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.



99. The Minutes for Precinct No. 11 of Brgy. Bued, Binalonan, 5<sup>th</sup> District, Province of Pangasinan, attached as Annex 26-B of Robredo's Answer, showed that the ballots were rejected by the VCM.

100. As per the Minutes for Precinct Nos. 29A, 30A, 31A, 32A of Brgy. Agno, Tayug, 6<sup>th</sup> District, Province of Pangasinan, attached as Annex 26-D Robredo's Answer, the ballots were rejected by the VCM.

101. According to the Minutes for Precinct Nos. 0001A, 0002A, 0003A of Brgy. Poblacion, San Quintin, 6<sup>th</sup> District, Province of Pangasinan, attached as Annex 26-F of Robredo's Answer, the VCM assigned therein malfunctioned and there was no signal.

102. While the Minutes for Precinct Nos. 0004A, 0005A, 0005B of Brgy. Poblacion, San Quintin, 6<sup>th</sup> District, Province of Pangasinan, attached as Annex 26-G of Robredo's Answer, showed that the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.

103. According to the Minutes for Precinct No. 17 of Brgy. Flores, San Manuel, 6<sup>th</sup> District, Province of Pangasinan, attached as Annex 26-L of Robredo's Answer, the ballots were rejected by the VCM.

104. While the Minutes for Precinct Nos. 0321A, 0322A, 0323A, 0324A, 0324B, 0324C, of Brgy. Sillawit, Cauayan, 3<sup>rd</sup> District, Province of Isabela, attached as Annex 27-B of Robredo's Answer, revealed that the ballots were rejected by the VCM.

105. As per the Minutes for Precinct Nos. 15A, 16H, 17H, 17B of Brgy. Magsaysay, Naguilian, 2<sup>nd</sup> District, Province of Isabela, attached as Annex 49-H of Robredo's Answer, the ballots were rejected by the VCM and the VCM assigned therein malfunctioned.

106. According to the Minutes for Precinct No. 122, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-A of Robredo's Answer, the VCM assigned therein malfunctioned.

107. While the Minutes for Precinct No. 123, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-B of



Robredo's Answer, showed that the ballots were rejected and the marking pen blotted the ballot.

108. According to the Minutes for Precinct No. 124, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-C of Robredo's Answer, the VCM assigned therein malfunctioned.

109. As per the Minutes for Precinct No. 125, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-D of Robredo's Answer, the ballots were rejected.

110. In Precinct No. 126, of Brgy. Hipodromo, Cebu, Province of Cebu, the Minutes attached as Annex 28-E of Robredo's Answer revealed that the Contingency VCM was used.

111. As per the Minutes for Precinct No. 127, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-F of Robredo's Answer, the Contingency VCM was used.

112. According to the Minutes for Precinct No. 128, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-G of Robredo's Answer, the ballots were rejected by the VCM, the VCM assigned therein malfunctioned and there was no signal.

113. While the Minutes for Precinct No. 129, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-H of Robredo's Answer, showed that the Contingency VCM was used.

114. And finally, according to the Minutes for Precinct No. 130, of Brgy. Hipodromo, Cebu, Province of Cebu, attached as Annex 28-I of Robredo's Answer, the ballots were rejected by the VCM.

115. As shown above, protestee Robredo's denial on the existence of misread ballots and malfunctioning VCMs is belied by her own documentary evidence, which she attached in her Verified Answer with Special and Affirmative Defenses and Counter-Protest. The presence of misread ballots and the rampant occurrence of malfunctioning VCMs during the last elections are proper grounds in an election protest. Actually, protestee Robredo raised misreading and misappreciation of votes due to malfunctioning VCMs to be among the grounds of her counter-protest.



116. The same is true with the abnormally high turnout of unaccounted votes / undervotes for the position of Vice-President. It is noteworthy to point out that even protestee Robredo cited the presence of unaccounted votes / undervotes for the position of Vice-President as a ground of her counter-protest. Hence, she is now estopped from disputing that the presence of unaccounted votes / undervotes for the position of Vice-President constitutes as a valid ground for an election protest.

117. As for the supposed inconsistencies and discrepancies in the affidavits of the witnesses for protestant Marcos, this Honorable Tribunal should not be easily swayed by misleading assertions of the protestee. The witnesses for protestant Marcos should be given a chance to personally testify before this Honorable Tribunal and clarify the statements contained in their respective affidavits. There is a proper time and place for this during the reception of evidence for the protestant pursuant to **Rule 55 to 62 of the 2010 PET Rules**.

118. Moreover, this Honorable Tribunal should take note of the Manifestation filed by protestant Marcos on 15 August 2016 relevant to the numerous reports, which he received, that harassment and intimidation were being employed upon his witnesses by supporters of protestee Robredo. Several witnesses of protestant Marcos complained that certain officials have been coercing and forcing them to recant their testimonies, in exchange for monetary consideration. Other witnesses were told that if they refused to recant their testimony, they would be reported to the authorities for investigation and prosecution for alleged falsification or perjury.

119. Based on the foregoing, it is evident that the election protest filed by protestant Marcos is indeed sufficient in form, substance and content. Hence, this Honorable Tribunal should now proceed, with all due respect, to the conduct of the preliminary conference in this case, the reception of evidence and the **re-opening** of the ballot boxes as well as the **manual recount, judicial revision, technical examination** and **forensic investigation** of the paper ballots and / or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List ("EDCVL") and voters registration records ("VRRs"), the books of voters and other pertinent election documents and / or paraphernalia used in the elections, as well as the automated election equipment



and records such as the VCM, the SD cards (main and back up), and the other data storage devices containing electronic data and ballot images in **each** of the **thirty-six thousand four hundred sixty five (36,465)** protested clustered precincts which functioned in the aforementioned protested areas.

120. The allegations of electoral fraud, anomalies and irregularities in this case are serious and should therefore be verified by this Honorable Tribunal to erase doubts on the authenticity, integrity and reliability of the election results for the vice-presidential position during the last elections. And the only way to determine the truthfulness of these allegations is to re-open and re-examine the protested ballot boxes for the purpose of manually recounting and judicial revision of the contested ballots subject of this protest. This is in line with the ruling of the Honorable Supreme Court in the case of ***Astroga v. Fernandez***.<sup>17</sup>

121. As for the alleged lack of supporting evidence to prove protestant's allegations of electoral frauds, anomalies and irregularities committed during the last elections, suffice it to say that there is no requirement under **Rule 17** of the **2010 PET Rules** to append ALL the evidence of the protestant in his election protest.

122. Protestant evidence shall be presented in due time in accordance with the procedure for the reception of evidence prescribed by **Rule 55 to 64** of the **2010 PET Rules**, thus:

#### **RECEPTION EVIDENCE**

**Rule 55. Hearings** - After the submission of all Revision/Correction Reports, the Tribunal may delegate the reception of evidence to a Hearing Commissioner who is a member of the Bar (R53)

**Rule 56. Preliminary conference.** - The Hearing Commissioner shall fix a date for the reception of evidence and submission of the affidavits of the witnesses of the parties, with the adverse parties being furnished copies. Reception of the evidence shall be done at the offices of the Tribunal unless Hearing Commissioner directs its reception in some other place (R54)

**Rule 57. Procedure of hearings.** - At the hearings, the affidavits of the witnesses submitted by the parties shall constitute

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<sup>17</sup> 19 SCRA 331 [1967]



their direct testimonies. Witnesses who testify may be subject to cross - examination, redirect or re-cross examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose. Except on rebuttal or surrebuttal, no witness shall be allowed to testify unless his affidavit was previously submitted to the Tribunal. However, should a party desire to present additional affidavits or counter-affidavits as part of his direct evidence, he shall manifest during the preliminary conference, stating their purpose. If allowed by the Tribunal, the additional affidavits of the protestee shall be submitted to the Tribunal and serve on the adverse p[arty] not later than five days after the termination of the preliminary conference. If the additional affidavits are presented by the protestant, the protestee may file his counter-affidavits and serve the same on the protestant within five days of such service. (R55a)

**Rule 58. *Cross-examination; effect of absence of a party.*** - In the reception of evidence of a party before a Hearing Commissioner, the other party has a right to be present and to cross-examine the witness presented.

The Hearing Commissioner may proceed *ex parte* in the absence of the other party provided he has been duly notified of the hearing.

If a party presenting evidence fails to appear at the time and place designated, the Hearing Commissioner may adjourn the proceedings to a future day, giving notice to the absent party of his attorney of the adjournment. The delay shall be charged to the party's period to present evidence. (R56)

**Rule 59. *Hearing Commissioner to rule on objections.*** - The Hearing Commissioner receiving the evidence shall rule on objections made in the course of cross-examination subject to review by the Tribunal.

An exception to a ruling of the Hearing Commissioner shall not suspend the reception of evidence. (R57)

**Rule 60. *Procedure after hearing by Commissioner.*** - The Hearing Commissioner shall submit the evidence presented, together with the transcripts of the proceedings held before him, to the Tribunal within five days. (R58)

**Rule 61. *Time limit for presentation of evidence.*** - Each party is given a period of thirty working days to complete the presentation of his evidence, including its format offer. This period shall begin from the first date set for the presentation of the party's evidence. Either before the Tribunal or a Hearing Commissioner.



The hearing for any particular day or days may be postponed or canceled upon the request of either party. The delay caused by such postponement shall be charged to the period for presenting evidence of the movant.

The following shall not be charged against the period allotted to either party:

(a) The period when presentation of the party's evidence is suspended by order of the Tribunal or the Hearing Commissioner by reason of the pendency of an issue in the nature of a prejudicial question which must first be resolved before the hearing can continue: and

(b) The time taken up in the cross-examination of his witnesses by the other party.

A party may present rebuttal or surrebuttal evidence during the remainder of the thirty-day period that he has not utilized for the presentation of his evidence-in-chief (R59)

**Rule 62.** *Evidence not formally offered, inadmissible* - Evidence not formally offered shall not be admitted and considered by the Tribunal in deciding the case (R60)

**Rule 63.** *When submitted; contents* - Within twenty days from receipt of the Tribunal's ruling on the last offer of evidence by the protestee, the parties shall simultaneously submit their respective memoranda setting forth briefly.

- (a) The facts of the case;
- (b) A complete statement of all the arguments submitted in support of their respective views of the case;
- (c) Objections to the ballots adjudicated to or claimed by the other party in the revision of ballots;
- (d) Refutation of the objections of the other party to the ballots adjudicated to or claimed in the revision of ballots
- (e) Objections to the tallying of election returns and certificates of canvass raised by the other party in the correction of manifest error; and
- (f) Refutation of the objections raised by the other party to the tallying of election returns and certificates of canvass in the correction of manifest error.

All evidence, as well as objections to evidence presented by the other party, shall be either referred to or contained in the memorandum or in an appendix thereto (R61)

**Rule 64.** *Supplemental or rebuttal memorandum.* - When required or allowed by the Tribunal, a party shall a supplemental or rebuttal memorandum (R62)



123. Guided by the foregoing rules, protestant Marcos shall present his supporting documentary, object and testimonial evidence in this case, along with the results of the revision proceedings, forensic investigation and technical examination, during the time allotted for him to present his evidence for this election protest in accordance with **Rule 55 to 64** of the **2010 PET Rules**.

124. As for the jurisdiction of this Honorable Tribunal to take cognizance of the first cause of action, the same is evidently covered by the constitutional mandate given to the PET as the "sole judge of all contests relating to the election, returns, and qualifications of the President and Vice-President."<sup>18</sup>

125. In the case of ***Vinzons-Chato v. COMELEC***,<sup>19</sup> citing ***Rasul v. COMELEC***,<sup>20</sup> which was affirmed in ***Wigberto R. Tanada, Jr. v. COMELEC***,<sup>21</sup> the phrase "election, returns and qualifications" refers to all matters affecting the validity of the contestee's title."

126. In particular, the term "election" refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; "returns" refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" refers to matters that could be raised in a quo warranto proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his CoC.<sup>22</sup>

### **ANSWER AD CAUTELAM TO THE COUNTER-PROTEST**

#### *Timeliness*

127. On **30 August 2016**, protestant Marcos, through his lead counsel, received a copy of protestee Maria Leonor "Leni Daang Matuwid" G. Robredo's ("protestee Robredo") Verified Answer with

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<sup>18</sup> Section 4, Article VII of the 1987 Philippine Constitution

<sup>19</sup> G.R. No. 172131, April 2, 2007, 520 SCRA 167, 178.

<sup>20</sup> 371 Phil. 760, 766 (1999)

<sup>21</sup> G.R. No. 207199-200, October 22, 2013.

<sup>22</sup> *Id.*, citing *Barbers v. COMELEC*, G.R. No. 165691, June 22, 2005, 460 SCRA 569, 582.



Special and Affirmative Defenses and Counter-Protest dated 12 August 2016.

128. Under **Rule 24** of the **2010 PET Rules**, the "counter-protestee shall answer the counter-protest within ten (10) days from receipt of a copy thereof."

129. Since the complete set of protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest was received by protestant Marcos on 30 August 2016, he has ten (10) days therefrom or until **9 September 2016** within which to submit his Answer to the Counter-Protest. This submission is therefore timely filed in accordance with the **2010 PET Rules**.

130. However, since protestant Marcos has also submitted a Motion to Strike-Out or Expunge protestee Robredo's Verified Answer with Special and Affirmative Defenses and Counter-Protest for being filed out of time, this Answer to the Counter-Protest is being filed *ad cautelam (as a precaution)* in case the Motion to Strike-Out or Expunge is denied by this Honorable Tribunal.

131. In her Verified Answer with Special and Affirmative Defenses and Counter-Protest, protestee Robredo manifested that she is counter-protesting **Seven Thousand Five Hundred Forty Seven (7,547)** clustered precincts, which functioned in the provinces of Apayao, Mountain Province, Abra, Kalinga, Bataan, Capiz, Aklan, Antique, Sarangani, Sulu, Sultan Kudarat, South Cotabato and North Cotabato.

132. As mentioned earlier, protestee Robredo raised the presence of unaccounted votes for the position of Vice-President, misreading and misappreciation of votes due to malfunctioning VCMs to be among the grounds of her counter-protest. Protestee Robredo also cited zero votes for the protestee, systematic reduction of votes credited to protestee Robredo and a corresponding increase in the votes credited to protestant Marcos, vote-buying and massive substitute voting as additional grounds in her counter-protest.

133. According to protestee Robredo, the foregoing grounds constitute her allegations of fraud in support of her counter-protest. And on the basis of her allegations of fraud, protestee Robredo candidly declared in her counter-protest that there is "a need for a



recount, revision and appreciation of the ballots from the counter-protested precincts.” Protestee Robredo also claimed that there is a need for a technical examination of the EDCVL in the counter-protested precincts.

### *Admissions*

134. Protestant Marcos admits the enumeration of the total clustered precincts per city/municipality subject of the counter-protest as listed in paragraph 964 of protestee Robredo’s Verified Answer with Special and Affirmative Defenses and Counter-Protest so long as the figures stated therein faithfully reflect the total clustered precincts stated in the relevant Project of Precincts attached thereto.

135. Protestant Marcos also admits the enumeration of the votes obtained by the parties in the counter-protested precincts as listed in paragraph 965 of protestee Robredo’s Verified Answer with Special and Affirmative Defenses and Counter-Protest so long as the figures stated therein faithfully reflect the votes of the parties in the relevant Statement of Votes By Precinct attached thereto.

136. The presence of unaccounted votes in his bailiwicks is likewise admitted by protestant Marcos. However, it must be emphasized that protestant Marcos has no control over the presence of these unaccounted votes as he is precisely contesting unprecedented turn-out of unaccounted votes for the position of Vice-President during the last elections. The fact that protestee Robredo is using the presence of unaccounted votes in the bailiwicks of protestant Marcos to be among the grounds of her counter-protest bolsters the need to re-open and re-examine the protested precincts to verify if there was indeed a manipulation of vote results during the last elections .

137. Protestant Marcos admits the votes of the parties as reflected in the Provincial Certificate of Canvass and City/Municipal Certificates of Canvass contained in paragraphs 967, 968, 982, 983, 997, 998, 1007, 1008, 1023, 1024, 1037, 1038, 1051, 1052, 1069, 1070, 1093, 1094, 1111, 1112, 1139, 1140, 1149, 1150, 1162 and 1163 of protestee Robredo’s Verified Answer with Special and Affirmative Defenses and Counter-Protest so long as the figures stated therein faithfully reflect the votes of the parties in the relevant election documents attached thereto.



138. Protestant Marcos admits the allegation in paragraph 969 of the counter-protest that protestee Robredo lost in all the seven (7) municipalities of the Province of Apayao.

### *Denials*

139. Protestant/Counter-Protestee Marcos vehemently denies the allegations of fraud complained of by protestee Robredo in her Verified Answer with Special and Affirmative Defenses and Counter-Protest. Protestant Marcos has no knowledge much less participation in any electoral frauds, anomalies and irregularities during the last elections.

140. Protestant Marcos denies any complicity in the alleged malfunctioning of the VCMs, misreading and misappreciation of votes, systematic reduction of votes credited to protestee Robredo and a corresponding increase in the votes credited to protestant Marcos, as well as massive substitute voting in the counter-protested clustered precincts in the Province of Apayao during the last elections. The accusations of protestee Robredo against protestant Marcos are baseless, false and fabricated.

141. Protestant Marcos rebuffs the accusation of protestee Robredo of any involvement in the alleged malfunctioning of the VCMs, misreading and misappreciation of votes, as well as substitute voting in the Province of Mountain Province. These feigned accusations of protestee Robredo deserve scant consideration by this Honorable Tribunal.

142. Protestee Robredo falsely accused protestant Marcos of massive vote-buying and substitute voting in the Province of Abra. To repeat, protestant Marcos strongly denies any knowledge much less participation in any of the electoral frauds, anomalies and irregularities complained of by protestee Robredo in her counter-protest.

143. There is no truth to the claim of protestee Robredo that protestant Marcos employed massive substitute voting in the Province of Kalinga. He has also no involvement in the alleged malfunctioning of the VCMs, misreading and misappreciation of votes thereat.



Protestee Robredo has no basis to accuse protestant Marcos for the said irregularities.

144. Protestant Marcos similarly denies knowledge or participation in the purported presence of rejected ballots, systematic reduction of votes credited to protestee Robredo and a corresponding increase in the votes credited to protestant Marcos, and massive substitute voting in the Province of Bataan. The accusations of protestee Robredo against protestant Marcos are sham, unsubstantiated and fictitious.

145. Protestee Robredo is misleading this Honorable Tribunal by claiming that protestant Marcos was involved in the alleged misreading and misappreciation of votes, massive vote-buying, and massive substitute voting in the Province of Capiz. There is no truth at all to these accusations.

146. Protestant Marcos vehemently refutes that he has any knowledge or participation in the alleged VCM malfunctioning, misreading and misappreciation of votes, rejection of valid ballots, massive substitute voting and other irregularities which supposedly occurred in Province of Aklan. The accusations of protestee Robredo are fictitious.

147. The claims of misreading and misappreciation of votes, rejection of valid ballots, massive substitute voting and other alleged electoral frauds in the Province of Antique had nothing to do with protestant Marcos. He has no knowledge much less participation in any electoral frauds, anomalies and irregularities during the last elections.

148. There is again no truth to the claim of protestee Robredo that protestant Marcos was involved in the misreading and misappreciation of votes, rejection of valid ballots, massive vote-buying and massive substitute voting in the Province of Sarangani. These accusations are unfounded and fallacious.

149. Protestant Marcos has no knowledge much less participation in the alleged massive substitute voting, massive vote-buying, threats, fear, intimidation and terrorism in the Province of Sulu. Protestee Robredo is misleading this Honorable Tribunal by involving protestant Marcos in the purported electoral fraud in the Province of Sulu.



150. Protestee Robredo deceptively accused protestant Marcos of misreading of ballots, massive vote-buying and massive substitute voting in the Province of Sultan Kudarat. This is false. To repeat, protestant Marcos has no knowledge much less participation in any electoral frauds, anomalies and irregularities during the last elections.

151. There is no truth to the alleged involvement of protestant Marcos in the misreading of ballots and massive substitute voting in the Province of South Cotabato. This is merely a figment of protestee Robredo's imagination.

152. The same is true with respect to the alleged systematic reduction of votes credited to protestee Robredo and massive substitute voting in the Province of North Cotabato. This accusation was fabricated by the protestee to lend credence to her baseless counter-protest.

153. But while protestant Marcos strongly denies any knowledge much less participation in any of the electoral frauds, anomalies and irregularities complained of by protestee Robredo in her Counter-Protest, in the interest of finding the truth and determining the accuracy and credibility of the election results for the position of vice-president during the last elections, protestant Marcos agrees that there is indeed a need for a recount, revision and re-appreciation of the contested ballots. However, the judicial recount, revision and re-appreciation of the contested ballots should be limited to the protested areas because there is ample basis to dismiss protestee Robredo's counter-protest.

#### *Special and Affirmative Defenses*

154. It is protestee Robredo's position that the instant Protest is in the nature of a pre-proclamation case that should have been initiated with the NBOC, and not with this Tribunal. To bolster this argument, protestee Robredo relies on Section 4, Article VII of the 1987 Constitution, and its implementing Rule:



#### SECTION 4. [...]

The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose. (Article VII, Constitution)

**RULE 13. Jurisdiction.** – The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines. (A.M. No. 10-4-29-SC THE 2010 RULES of the PRESIDENTIAL ELECTORAL TRIBUNAL)

155. Protestee in citing the above-quoted provisions, undermines her own argument, for she fails to note that, under the Constitution and its implementing rule, this Honorable Tribunal is the “**sole-judge**” of all **contests** relating to the election, returns, and qualifications of the President and Vice-President of the Philippines. In emphasizing the use of the constitutional term ‘sole’ judge with reference to Electoral Tribunals, the Supreme Court has ruled that --

“The word ‘sole’ in Section 17, Article VI of the 1987 Constitution and Section 250 of the Omnibus Election Code underscore the exclusivity of the Tribunal’s jurisdiction over election contests relating to its members. Inasmuch as petitioner contests the proclamation of herein respondent Teresa Aquino-Oreta as the 12th winning senatorial candidate, it is the Senate Electoral Tribunal which has exclusive jurisdiction to act on the complaint of petitioner.”<sup>23</sup>

156. Protestee, however, relies on the distinction between a pre-proclamation case and an election contest, citing the provision of Section 30 or R.A. No. 7166, as amended by R.A. No. 9369.

157. Assuming, only for the sake of argument, that R.A. 7166 now admits of exceptions, and that among those now excepted are those that question or assail the authenticity and due execution of COCs, this would **not** preclude the authority of the PRESIDENTIAL ELECTORAL TRIBUNAL to look into the irregularities which attended

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<sup>23</sup> *Rasul v. Comelec*, G.R. No. 134142, August 24, 1999, 313 SCRA 18 (1999).



the election of the President and the Vice President. As the Protestee admits, the Supreme Court, in the **Abayon** ruling, defined the phrase, "election, returns, and qualifications" in its totality as **"referring to all matters affecting the validity of the contestee's title"**<sup>24</sup>.

158. In that case, the Supreme Court pointed out the distinction between the power of the Comelec to declare failure of elections and that of the House of Electoral Tribunal to annul elections, stating:

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET the prerogative to annul elections would undermine its constitutional fiat to decide election contests. The phrase "election, returns and qualifications" should be interpreted in its totality **as referring to all matters affecting the validity of the contestee's title**.<sup>25</sup> Consequently, the annulment of election results is but a power concomitant to the HRET's constitutional mandate to determine the validity of the contestee's title.<sup>26</sup> (emphasis supplied)

159. Further, in the **Abayon** case, the Supreme Court, in pointing out the difference between the power of the Comelec and the authority of the Electoral Tribunal, also ruled on the legal effects of the adverse decision of each body, as follows:

Consequently, the difference between the annulment of elections by electoral tribunals and the declaration of failure of elections by the COMELEC cannot be gainsaid. *First*, the former is an incident of the judicial function of electoral tribunals while the latter is in the exercise of the COMELEC's administrative function.

<sup>24</sup> *Abayon v. HRET*, G.R. No. 222236, May 3, 2016.

<sup>25</sup> *Tagolino v. HRET*, 706 Phil. 534, 560 (2013).

<sup>26</sup> *Ibid.*



*Second*, electoral tribunals only annul the election results connected with the election contest before it whereas the declaration of failure of elections by the COMELEC relates to the entire election in the concerned precinct or political unit. As such, in annulling elections, the HRET does so only to determine who among the candidates garnered a majority of the legal votes cast. The COMELEC, on the other hand, declares a failure of elections with the objective of holding or continuing the elections, which were not held or were suspended, or if there was one, resulted in a failure to elect. When COMELEC declares a failure of elections, special elections will have to be conducted. 27

Hence, there is no overlap of jurisdiction because when the COMELEC declares a failure of elections on the ground of violence, intimidation, terrorism or other irregularities, it does so in its administrative capacity. In contrast, when electoral tribunals annul elections under the same grounds, they do so in the performance of their quasi-judicial functions.<sup>28</sup>

160. Protestee's reliance on **Pimentel v. Comelec**<sup>29</sup> is not of any help to her cause, for in that case, the high court merely held that "the law, nonetheless, recognizes an exception and allows the canvassing body **motu proprio** or an interested person to file a written for the correction of manifest errors in the election returns or certificates of canvass in elections for President, Vice-President, Senators and Members of the House of Representatives". The ruling does not render such function exclusive to the NBOC or to the Comelec. This holding does not deprive the PRESIDENTIAL ELECTORAL TRIBUNAL of its function as **sole** judge of "all matters affecting the validity of the contestee's title".

161. The same observation holds true for the decisions relied upon by Protester. In fact, there are many instances where courts and other adjudicative bodies have concurrent jurisdictions and/or overlapping functions. For instance, under the Rules of Court, the fact that a municipal trial court may be allowed to pass upon the authenticity and due execution of, say, a deed of sale or real property in an ejectment case does not preclude a regional trial court, in a

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<sup>27</sup> *Alauya, Jr. v. COMELEC*, 443 Phil. 893, 902-905 (2003).

<sup>28</sup> *Id.*

<sup>29</sup> G.R. No. 178413, March 13, 2008.



petition for certiorari involving the same ejectment case, from passing judgment on the authenticity and due execution of the same deed of sale.

162. In the case of the Presidential Electoral Tribunal, its constitutional **duty** to be the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice-President cannot be diminished or extinguished by statute or by **obiter** drawing hair-splitting distinctions between “pre-proclamation cases”, and “election contests”.

163. Finally, as discussed earlier, **Rule 24** of the **2010 PET Rules** provides that a verified answer to the protest may incorporate a counter-protest but the same must be filed within ten (10) days from receipt of the summons and protest.

164. In this case, protestee Robredo categorically **admitted** in her Verified Answer with Special and Affirmative Defenses and Counter-Protest that she received the summons and protest on **02 August 2016**, thus:

<sup>1</sup> Copy of which was received on 02 August 2016. Under the Summons, protestee Robredo is directed to file her Answer within a period of ten (10) days from 02 August 2016 or until 13 August 2016. However, the last day falls on a Saturday. Hence, this Answer is being filed on the next working day.<sup>30</sup>

165. Hence, protestee Robredo’s Verified Answer with Special and Affirmative Defenses and Counter-Protest should be filed by **12 August 2016**, which is the tenth (10<sup>th</sup>) day from her receipt of the summons and protest in accordance with **Rule 23** and **24** of the **2010 PET Rules**.

166. But since, the Verified Answer with Special and Affirmative Defenses and Counter-Protest was belatedly filed by protestee Robredo on **15 August 2016**, *i.e.*, beyond the ten-day period as mandated by **Rule 24** of the **PET Rules**, her counter-protest was clearly **FILED OUT OF TIME**.

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<sup>30</sup> *Supra* note 1.



167. Protestee Robredo's counter-protest should therefore be dismissed for late-filing.

### **PRAYER**

**ACCORDINGLY**, it is most respectfully prayed of this Honorable Tribunal to:

- (1) **GRANT** protestant's Motion to Strike-Out or Expunge protestee's Verified Answer with Special and Affirmative Defenses and Counter-Protest dated 12 August 2016 from the records of this case for being filed out of time;
- (2) duly **NOTE** and **ADMIT** the protestant's Manifestation;
- (3) **DISMISS** protestee's Counter-Protest for being belatedly filed;
- (4) **DIRECT** the immediate **COLLECTION, RETRIEVAL, TRANSPORT** and **DELIVERY** of **ALL** the (a) ballot boxes and their contents, including the ballots, voter's receipts and election returns; (b) the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and voters registration records (VRRs), and the books of voters; (c) the audit logs, transmission logs, and all log files; and (d) all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the Vote Counting Machines (VCM), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main and back up), and other data storage devices containing electronic and ballot images, evidencing the conduct and the results of the elections in **ALL** of the **thirty six thousand four hundred sixty five (36,465)** clustered precincts that functioned during the 9 May 2016 National and Local Elections, subject of the **MANUAL RECOUNT, JUDICIAL REVISION, TECHNICAL EXAMINATION** and **FORENSIC INVESTIGATION** prayed for in the election protest, pursuant to **Rule 37** of the **2010 PET Rules**; and



- (5) **PROCEED** with the conduct of the Preliminary Conference in accordance with **Rule 29** of the **2010 PET Rules**.

Other reliefs, just and equitable under the premises, are also prayed for.

City of Manila, Philippines, **6 September 2016**.

**G.E. GARCIA LAW OFFICE**

*Lead Counsel for the Protestant*

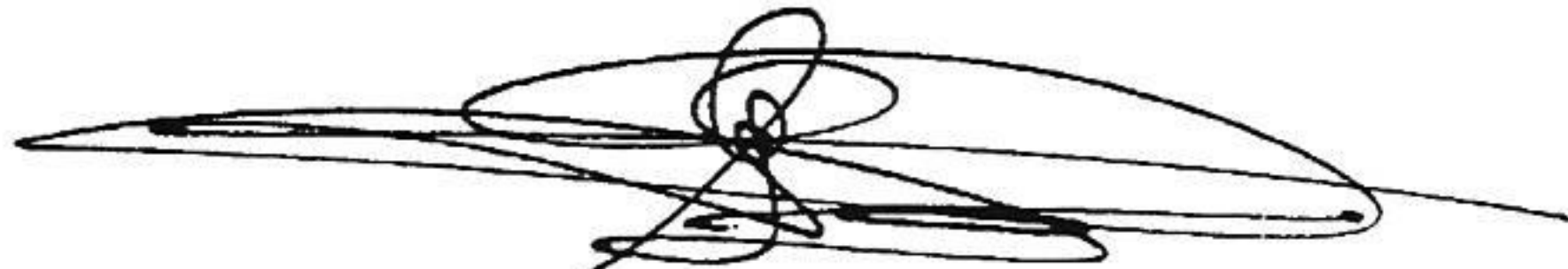
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## **NOTICE OF SUBMISSION**

### **THE CLERK OF THE TRIBUNAL**

Presidential Electoral Tribunal  
Padre Faura, Manila

### **ATTY. ROMULO B. MACALINTAL**

*Lead Counsel for Protestee Robredo*  
13 Cagayan Valley Street  
Philamlife Village, Las Piñas City

RR #: RD 660700514 ZZ

### ***GREETINGS:***

Please be advised that undersigned counsel for protestant Marcos is submitting the Motion to Strike-Out or Expunge protestee's Verified Answer with Special and Affirmative Defenses and Counter-Protest dated 12 August 2016 from the records of this case for the consideration and approval of this Honorable Tribunal immediately upon receipt thereof.



**GEORGE ERWIN M. GARCIA**

### **EXPLANATION**

[Pursuant to Rule 30 and 31 of the PET Rules in relation to Section 11, Rule 13 of the 1997 Rules of Civil Procedure]

Copy of the foregoing *Motion to Strike-Out or Expunge with Manifestation and Answer Ad Cautelam to Counter-Protest* was served to the counsel of the protestee by registered mail, personal service being impractical due to distance, time and manpower constraints.



**GEORGE ERWIN M. GARCIA**



## **AFFIDAVIT OF SERVICE**

(Revised as of April 1, 1994)

I, **Jerry C. Guevarra**, a clerk of the G.E. GARCIA Law Office with office address at Ground Floor, LAIKO Bldg., Cabildo St., Intramuros, City of Manila, after being duly sworn, do hereby depose and say:

That on September 9, 2016, I served a copy of the following pleading/paper.

NATURE OF PLEADING/PAPER

### **"MOTION TO STRIKE-OUT OR EXPUNGE PROTESTEE'S VERIFIED ANSWER DATED 12 AUGUST 2016 with MANIFESTATION and ANSWER AD CAUTELAM TO THE COUNTER-PROTEST"**

In **PET Case No. 005** entitled "**FERDINAND "BONGBONG" R. MARCOS, JR., Protestant, -versus- MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO, Protestee.**", pursuant to Sections 3, 4, 5 and 10, Rule 13 of the Rules of Court, as follows:

***By Registered Mail:***

**ATTY. ROMULO B. MACALINTAL**  
13 Cagayan Valley Street  
Philamlife Village, Las Piñas City 1740

***R. R. No.***

RD 660700514 12

By depositing a copy at the post office in Manila, as evidenced by Registry Receipt(s) No(s) and indicated after the name(s) of the addressee(s), and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered.

September 9, 2016, Manila, Philippines.

**JERRY C. GUEVARRA**  
*Affiant*

**SEP 09 2016**

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

Doc. No. 948  
Page No. 21  
Book No. 1  
Series of 2016.

**ATTY. RAUL R. MONTINO**  
Notary Public  
Until December 31, 2017  
PTR No. 4937659 Manila 1/5/16  
IBP Lifetime No. 012899  
Roll No. 57289  
MCLE Compliance No. V-0019704  
Rm. 210C Sitio Grande  
409 A. Soriano, Jr. Ave.  
Intramuros, Manila



## **VERIFIED DECLARATION**

I, **JERRY C. GUEVARRA**, a clerk of the G.E. GARCIA Law Office with office address at Ground Floor, LAIKO Bldg., Cabildo St., Intramuros, City of Manila, hereby declare that the document/s (and annexes thereof) hereto submitted electronically in accordance with the Efficient use of Paper Rule is/are complete and true copy/ies of the document/s "**MOTION TO STRIKE-OUT OR EXPUNGE PROTESTEE'S VERIFIED ANSWER DATED 12 AUGUST 2016 with MANIFESTATION and ANSWER AD CAUTELAM TO THE COUNTER-PROTEST**" in PET Case No. 005 entitled **FERDINAND "BONGBONG" R. MARCOS, JR., Protestant, - versus- MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO, Protestee,** filed with the Presidential Electoral Tribunal.

Signature: \_\_\_\_\_

Printed Name: **Jerry C. Guevarra**

Position: Staff

Date: September 9, 2016

**SUBSCRIBED AND SWORN** to before me this **SEP 09 2016** at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

ATTY. RAUL R. MONTINO

Notary Public

Until December 31, 2017

Person Administering Oath

IBP Lifetime No. 012899

Roll No. 57289

MCLE Compliance No. V-0019704

Rm. 210C Sitio Grande

409 A. Soriano, Jr. Ave.

Intramuros, Manila

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