

FILE COPY

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: 9/5/16

TIME: 3:00

RECEIVED BY: [Signature]

PET Case No. 005

For: Election Protest

Vice-President

COMMENT

Protestant **FERDINAND "BONGBONG" R. MARCOS, JR.** ("protestant Marcos"), through the undersigned counsels, unto this Honorable Presidential Electoral Tribunal ("PET"), most respectfully submits the foregoing Comment/Opposition to the Letter dated 10 August 2016 of the Commission on Elections ("COMELEC") and further states that:

1. On **24 August 2016**, protestant Marcos, through his lead counsel, received a copy of this Honorable Tribunal's *Resolution* dated 16 August 2016, which directed the parties in this case to comment on the Letter dated 10 August 2016 of Commissioner Christian Robert S. Lim ("Commissioner Lim"), Project Director, 2016-AES Project, COMELEC, relative to the Precautionary Protection Order ("PPO") dated 12 July 2016.

2. A copy of COMELEC's Letter dated 10 August 2016 was received by protestant Marcos, through his lead counsel, on **26 August 2016**. As such, protestant Marcos is given *ten (10)* days from 26 August 2016 or until **5 September 2016** to file his Comment thereon. This submission is therefore timely filed in compliance with the directive of this Honorable Tribunal.

3. In its 10 August 2016 letter, the COMELEC, through Commissioner Lim, sought clarification from this Honorable Tribunal regarding the extent and implication of the PPO issued on 12 July 2016 *"directing the preservation and safeguarding of all documents, paraphernalia, automated election equipment and records, and other data storage devices of all 92,509 clustered precincts in the May 2016 elections for the position of Vice-President."*

4. The PPO, which was issued by this Honorable Tribunal on 12 July 2016, covers *"all the ballot boxes and their contents, including the ballots, voter's receipts and election returns; the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and voters registration records (VRRs), and the books of voters; audit logs, transmission logs, and all log files; and all other documents or paraphernalia used in the May 2016 elections for the position of Vice-President of the Republic of the Philippines, 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 the other data storage devices in all of the ninety two thousand five hundred nine (92,509) clustered precincts used in the May 2016 elections."*

5. While it is clear that the PPO covers election materials and paraphernalia regardless of whether these items contain any election results data, protestant Marcos is willing to waive the coverage of the PPO with respect to the following items: *external back-up batteries, VCM electric power supply and adaptor, headphones, battery cable, marking pens, printer and toner*, since these materials and paraphernalia will **not** be included in the technical examination and forensic investigation requested by herein protestant.

6. As for the conduct of COMELEC's AES Project closure/stripping activities, protestant Marcos maintains his vehement **opposition** thereto insofar as the servers, routers, transmission mediums, Vote Counting Machines (VCM), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main, back up and such other Written Once Read Many (WORM) cards) and other automated election paraphernalia containing election results data are concerned. Protestant Marcos intends to request for the technical examination and forensic investigation of the above automated election equipment, devices and records, which contain evidence of the conduct and the results of the elections, in ALL of the **ninety**

two thousand five hundred nine (92,509) clustered precincts that functioned during the 9 May 2016 National and Local Elections.

7. The result of the technical examination and forensic investigation is **critical** because one of the issues in this election protest is whether the automated electoral system employed in the 2016 election was **credible, accurate and reflective of the genuine will of the people**. Clearly, it is vital for the COMELEC to preserve the integrity and safety of these automated election paraphernalia and to maintain their present condition during the pendency of this election protest.

8. It is instructive to note that in the last 3 months, protestant Marcos had written to COMELEC at least **5 times**¹, requesting them "to **preserve and secure** all the data and audit logs contained in all servers." Instead of **complying** with its Constitutional mandate to preserve the integrity of the elections, the COMELEC decided to **unilaterally** issue its highly questionable Resolution on 12 July 2016 – on the **very same day** that this Honorable Tribunal issued its PPO.

9. As regards the financial constraints in preserving the integrity and safety of these automated election equipment and paraphernalia, the same is not a valid and reasonable justification to excuse the COMELEC from complying with the PPO issued by this Honorable Tribunal.

10. The public interest involved in this election protest demands that the integrity and safety of ALL election materials and paraphernalia evidencing the conduct and the results of the elections in ALL of the **ninety two thousand five hundred nine (92,509)** clustered precincts that functioned during the 9 May 2016 National and Local Elections be preserved and maintained during the pendency of this proceedings.

11. With regard to the proposed manual backing-up activities to be undertaken by the Election Records and Statistics Department ("ERSD") of COMELEC, protestant Marcos will not interpose any objection thereto as long as ALL the files contained in the Secure

¹ Copies of protestant Marcos' letters dated 31 May 2016, 2 June 2016, 16 June 2016, 14 July 2016 and 11 August 2016 were received by the COMELEC on 31 May 2016, 6 June 2016, 16 June 2016, 14 July 2016 and 11 August 2016 respectively, and have been attached to his Manifestation dated 15 August 2016 under Annex "C - series".

Digital (SD) cards (main, back up and such other Written Once Read Many (WORM) cards) including the ballot images shall be included in the back-up copy of the COMELEC.

12. Finally, protestant Marcos joins the request of the COMELEC to conduct of a preliminary discussion between the COMELEC, parties and their counsels, watchers, technical teams and other representatives, and this Honorable Tribunal before proceeding with the proposed AES Project closure/stripping and backing-up activities for the purpose of setting the protocol for these undertakings.

PRAYER

ACCORDINGLY, it is respectfully prayed that this Honorable Tribunal :

- i. **DENY** the request of COMELEC relevant to the conduct of the 2016 Automated Election System Project closure/stripping activities insofar as the servers, routers, transmission mediums, Vote Counting Machines (VCM), Consolidation and Canvass System (CCS) units, Secure Digital (SD) cards (main, back up and such other Written Once Read Many (WORM) cards) and other automated election paraphernalia containing election results data are concerned in ALL of the **ninety two thousand five hundred nine (92,509)** clustered precincts that functioned during the 9 May 2016 National and Local Elections;
- ii. **DIRECT** the COMELEC to explain the closure/stripping activities of the BGANs undertaken by it supposedly **prior** to the receipt of the PPO;
- iii. **SCHEDULE** the conduct of a preliminary discussion between the COMELEC, parties and their counsels, watchers, technical teams and other representatives, and this Honorable Tribunal before proceeding with the proposed AES Project closure/stripping and backing-up activities for the purpose of setting the protocol for these undertakings; and
- iv. duly **NOTE** the foregoing submission.

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

City of Manila, Philippines, **4 September 2016.**

G.E. GARCIA LAW OFFICE
Lead Counsel for the Protestant
Ground Floor, LAIKO Building
Cabildo St., Intramuros, Manila 1002
Tele/Fax No. (02) 527-7261
Email: geglaw.office@gmail.com

By:



GEORGE ERWIN M. GARCIA
Roll of Attorneys No. 44950
PTR No. 4922435; 01-04-2016; Manila
IBP Lifetime No.02652; Cavite Chapter
MCLE Compliance No. V- 0011708; 11-09-15



JOAN M. PADILLA
Roll of Attorneys No. 54079
PTR OR No. 2131617; 01-04-2016; Quezon City
IBP Lifetime Membership No. 07416; Makati Chapter
MCLE Compliance No. V-0012772; 12-15-2015
PTR No. 5330508; 01-07-16; Makati City

MOST LAW

(Formerly: Marcos Ochoa Serapio & Tan Law Firm)

Collaborating Counsel for the Protestee

30th Floor, Tycoon Centre, Pearl Drive

Ortigas Center, Pasig City 1605

Tel No. (02) 634-6678

(02) 638-20130 to 32

Fax No. (02) 638-4255

(02) 638-9151

Email: inquiry@mostlawfirm.net

By:



JOSE AMOR M. AMORADO

Roll of Attorney's No. 33887

IBP Lifetime Member No. 00054; Batangas

PTR No. 1216102; 01-05-16; Pasig City

MCLE Compliance No. V-0012314; 12-08-15

Copy furnished:

ATTY. ROMULO B. MACALINTAL *R.B. Macalintal*

Lead Counsel for Protestee Robredo

13 Cagayan Valley Street

Philamlife Village, Las Piñas City

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 *Comment* 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., Cabeldo St., Intramuros, City of Manila, after being duly sworn, do hereby depose and say:

That on September ^{SEP 05 2016}_____, 2016, I served a copy of the following pleading/paper.

NATURE OF PLEADING/PAPER

"COMMENT"

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:

R. R. No.

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

RD 660 711 622 22

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 ^{SEP 05 2016}_____, 2016, Manila, Philippines.

JERRY C. GUEVARRA
Affiant

SUBSCRIBED AND SWORN to before me this ^{SEP 05 2016}_____ at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

Doc. No. 333
Page No. 03
Book No. I
Series of 2016.

ATTY. RUILO P. MONTINO
Notary Public
LHR December 31, 2017
PTR No. 4007682 Manila 10718
ISP License No. 012080
SOL No. 17208
A2016 Compliance No. 14018704
Rm. 2802 580 Clark St.
408 A, Clark St., J. Ave.
Luzon Co., Manila

VERIFIED DECLARATION

I, **JERRY C. GUEVARRA**, 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 "**COMMENT**" 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 05, 2016

SUBSCRIBED AND SWORN to before me this SEP 05 2016 at Manila, Philippines, affiant exhibiting to me his Tax Identification No. 300-192-753-000. Issued by Bureau of Internal Revenue.

ATTY. **Abel R. MONTINO**
Notary Public
Until December 31, 2017
PTR No. 4007002 Manila 10549
Person Administering Oath
Roll No. 57289
MCLE Compliance No. V-0010794
Rm. 2100 Site Grande
409 A, Solano, J. Ave.
Intramuros, Manila

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