

REPUBLIC OF THE PHILIPPINES  
**PRESIDENTIAL ELECTORAL TRIBUNAL**  
Manila

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

*Protestant,*

- versus -

PET Case No. 005  
FOR: Election Protest  
Vice President

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

*Protestee.*

X - - - - - X

**MANIFESTATION WITH URGENT EX-PARTE MOTION TO  
RESOLVE THE OMNIBUS MOTION  
(1) FOR CLARIFICATION; AND  
(2) TO BE FURNISHED COPY OF THE ANNEXES  
ATTACHED TO THE MANIFESTATION/COMPLIANCE  
DATED 25 MAY 2017**

PROTESTEE **MARIA LEONOR G. ROBREDO**, by the undersigned counsel, to the Honorable Tribunal, respectfully states:

1. Protestant Ferdinand R. Marcos, Jr. (hereafter "Marcos" for brevity), on 29 June 2016, asked the Honorable Tribunal, among others, to:

"(1) Upon filing of this Election Protest, to immediately **ISSUE a PRECAUTIONARY PROTECTION ORDER** directing the Commission on Elections, the Election Officers, City/Municipal Treasurers, the Bangko Sentral ng Pilipinas (BSP), Smartmatic-Total Information Management (TIM) Corporation, IP Converge Data Services, Inc. and all data centers, Smart

Communications, Inc., Globe Telecom, Inc., PLDT Inc., Digital Mobile Philippines, Inc. (Suncellular), and all telecommunications, Broadband Global Area Network (BGAN) and Very Small Aperture Terminal (VSAT) providers during the 9 May 2016 National and Local Elections (i) to take precautionary measures to preserve the integrity and safety of the following: (a) all the 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 voter's 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 the other data storage devices containing electronic data and ballot images, 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; and (ii) to ensure that the said documents and paraphernalia will not be tampered with pursuant to **Rule 36 of the PET Rules;**

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(4) To **DIRECT** the **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 Canvass System (CCS) units, Secure Digital (SD) cards (main and back up), and the other data storage devices containing electronic data 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 this election protest;

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6. To **CONDUCT** a **MANUAL RECOUNT** and **JUDICIAL REVISION** of the paper ballots and/or the ballot images as well as an **EXAMINATION, VERIFICATION** and **ANALYSIS** of the 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 Vote Counting Machines (VCM), Consolidation and Canvass System (CCS) units, Secure

Digital (SD) cards (main and back up), and the other data storage devices containing electronic data and ballot images in **ALL** of the **thirty six thousand four hundred sixty five (36,465)** protested clustered precincts pursuant to **Rule 38 to 45** of the **PET Rules;**

(7) To **CONDUCT** a **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 voter's 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 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 data and ballot images in **ALL** of the **thirty-nine thousand four hundred sixty five (39,221) clustered precincts** pursuant to **Rule 46 to 51** of the **PET Rules;"**

2. On the basis thereof, the Honorable Tribunal issued a Precautionary Protection Order (PPO) on 12 July 2016 which directed the Commission on Elections (COMELEC) to:

**"PRESERVE** and **SAFEGUARD** the integrity of 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 (EDCV), and

voters registration records (VRRs), and the books of voters; the 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 Cards (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 effective immediately and continuing until further orders from this Tribunal.”

3. Thereafter, on 15 August 2016, due to his alleged perceived irregularities in the proposed stripping activities, protestant Marcos filed a Manifestation before the Honorable Tribunal.
4. In his Manifestation, protestant Marcos questioned and assailed the proposed closure/stripping activities of COMELEC.
5. Subsequently, in his Comment dated 04 September 2016, protestant Marcos maintained his vehement opposition to the conduct of closure and stripping activities of COMELEC:

“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.”

6. Recently, or in his Preliminary Conference Brief, protestant Marcos once more reiterated his intention to seek the technical examination, forensic investigation, verification and analysis of the VCMs:

“VI.3. It is also respectfully submitted by protestant Marcos that there is a need to create at least *One Hundred (100)* recount/revision committees for purposes of conducting the **MANUAL RECOUNT** and **JUDICIAL REVISION** of the paper ballots and/or the ballot images as well as the **TECHNICAL EXAMINATION, FORENSIC INVESTIGATION, VERIFICATION and ANALYSIS** of the voter’s receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter’s List (EDCVL), and voter’s registration records (VRRs), the books of voters and other election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the Vote Counting Machines (VCM), Consolidation and Canvass System (CCS) units, Secured Digital (SD) cards (main and back up), the other data storage devices containing electronic data and ballot images in **ALL** of the protested clustered precincts of the pilot provinces

of **CAMARINES SUR, ILOILO and NEGROS ORIENTAL** relevant to the 09 May 2016 National and Local Elections.”  
[Underscoring supplied.]

7. Noteworthy is that protestant Marcos has remained consistent in his objections to the turnover of the VCMs by COMELEC to Smartmatic-TIM.

8. This, notwithstanding being aware as early as 10 August 2016 of the costs under the AES Contract:

“C. Pursuant to the AES Contract, “all goods still in the possession of COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase, and the COMELEC shall pay the corresponding price [...] **without prejudice to COMELEC requiring the protestant to shoulder such costs.**” Moreover, the lease contract for the Commission’s warehouse in Sta. Rosa, Laguna where the AES equipment are stored, will expire on November 2016; hence, the need to undertake the project closure activities as early as possible to avoid incurring additional costs on the part of the Commission, as well as the protestant.”  
[Emphasis supplied.]

9. Meanwhile, prior thereto, or on 07 April 2017, protestee Maria Leonor G. Robredo (hereafter “Robredo” for brevity) filed a Manifestation seeking clarification on how much was being spent by the Commission on Elections on the rent of the warehouse in Sta. Rosa, Laguna which is still being used for purposes of the closure activities.

10. Thereafter, on 12 April 2017, protestee Robredo filed a Manifestation with Urgent Ex-Parte Omnibus Motion (1) For Clarification; and (2) Reconsideration of the Resolution dated 21 March 2017.

11. Among the reliefs prayed for by protestee Robredo in her Omnibus Motion is that COMELEC be DIRECTED to submit an itemized cost of fees due to be paid to Smartmatic for the delay in the return of the Ninety Two Thousand Five Hundred Nine (92,509) VCMs used in the 09 May 2016 National and Local Elections which are subject of the Election Protest and PPO.

12. In the Resolution dated 25 April 2017, the Honorable Tribunal directed the Commission on Elections (COMELEC) to comply with the Tribunal's Resolution dated November 8, 2016 on the itemized cost it may be required to pay under the Automated Election System (AES) Contract, and whether Smartmatic-TIM, Inc. (Smartmatic) has made any communication to it in enforcing Article 6.9 of the AES Contract.

13. On 08 June 2017, protestee Robredo received the Manifestation and Compliance dated 25 May 2017 filed by COMELEC.

13.1. In its Manifestation, COMELEC informed the Honorable Tribunal that Smartmatic, in its Letter dated 05 December 2016 noted that Section 6.9 of the AES Contract requires actual physical possession of the 97,366 OMR machines.

13.2. Further, COMELEC informed the Honorable Tribunal that it may be required to pay a total of **PHP 2,078,304,225.76** on account of the instant election protest.

14. Thus, on 20 June 2017, protestee Robredo filed a Manifestation with Omnibus Motion (1) For Clarification; and (2) To Be Furnished Copy of the Annexes Attached to the Manifestation/Compliance dated 25 May 2017.

15. In her Omnibus Motion, protestee Robredo asked for the following reliefs:



"1. CLARIFYING whether protestant Marcos will be held liable for the monthly expense incurred by the Commission on Elections in its Sta. Rosa, Laguna Warehouse;

2. DIRECTING the Commission on Elections to clarify whether protestant Marcos on account of this Election Protest will be held liable for the **PHP 2,078,304,225.76** under the AES Contracts;

3. DIRECTING the Commission on Elections to furnish protestee Maria Leonor G. Robredo with copies of the annexes attached to the Manifestation/Compliance dated 25 May 2017."

16. To date, it would appear that COMELEC was constrained to retain physical possession of the Ninety Two Thousand Five Hundred Nine (92,509) VCMs due to protestant Marcos and this Election Protest.

17. Meanwhile, the Senate Electoral Tribunal in the case entitled *Francis N. Tolentino v. Leila M. De Lima* docketed as SET Case No. 001-16 issued Resolution No. 16-49 dated 25 May 2017.

18. In its Resolution, the Senate Electoral Tribunal directed protestant therein (Francis Tolentino) to pay a deposit in the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two Pesos and Forty Centavos (PhP2,201,662.40) *representing the cost of the retention by the Commission on Election of the 106 Vote Counting Machines.*<sup>1</sup>

19. This was arrived at in order to avoid the use of public funds for the cost of the retention of the VCMs which

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<sup>1</sup> A copy of Resolution No. 16-49 is hereto attached as **Annex "1"** and made an integral part hereof.

will redound to the benefit of a private person – protestant Francis Tolentino.

20. In this case, protestant Marcos has taken the same position as protestant therein (Francis Tolentino) on the retention of the VCMS.

21. The amount involved in this case under the AES Contract is **PhP 2,078,304,225.76**.

22. Should COMELEC be required to pay Smartmatic under the AES Contracts for the VCMS that were not physically turned over in time, public funds will be spent for the benefit of protestant Marcos.

23. Thus, protestee Robredo is constrained to ask the Honorable Tribunal to immediately resolve this pressing issue.

24. This motion is not intended for delay but dictated solely by the foregoing exigencies.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed to the Honorable Tribunal that a Resolution be issued:

1. CLARIFYING whether protestant Ferdinand R. Marcos, Jr. will be held liable for the monthly expense incurred by the Commission on Elections in its Sta. Rosa, Laguna Warehouse;
2. DIRECTING the Commission on Elections to clarify whether protestant Marcos on account of this Election Protest will be held liable for the **PhP 2,078,304,255.76** under the AES Contracts and/or to DIRECT protestant Ferdinand R. Marcos, Jr. to DEPOSIT the said amount consistent with the ruling of the Senate Electoral Tribunal on a similar issue in the case of Tolentino vs De Lima as cited above representing the cost of the retention of the 92,509 VCMS; and

3. DIRECTING the Commission on Elections to furnish protestee Maria Leonor G. Robredo with copies of the annexes attached to the Manifestation/Compliance dated 25 May 2017.

Protestee Robredo prays for such other reliefs as may be just and equitable under the premises.

Pasig City for Manila. 04 September 2017.

**ATTY. ROMULO B. MACALINTAL**

*Lead Counsel for Protestee*

*Maria Leonor G. Robredo*

13 Cagayan Valley Street,  
Philamlife Village, Las Pinas City  
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Roll No. 29040

PTR No. 11214198J/12 January 2017/Las Pinas City  
IBP Lifetime No. 0724

MCLE Compliance No. V-0018139/13 April 2016  
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**SARDILLO SARDILLO SALOM LAW OFFICE**

*Collaborating Counsel for Protestee*

*Maria Leonor G. Robredo*

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By

  
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Roll No. 45897

PTR No. 2362138/03 January 2017/Pasig City  
IBP Lifetime No. 07133

MCLE Compliance No. V-0010907/30 September 2015  
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**REQUEST**

**THE SECRETARY OF THE TRIBUNAL  
PRESIDENTIAL ELECTORAL TRIBUNAL  
MANILA**

Please submit the foregoing "*Urgent Ex-Parte Motion to Resolve Omnibus Motion*" for the consideration and approval of the Honorable Tribunal immediately upon receipt hereof without need for oral arguments.

  
**MARIA BERNADETTE V. SARDILLO**

**NOTICE OF HEARING**

**ATTY. GEORGE ERWIN M. GARCIA  
ATTY. JOAN M. PADILLA  
G. E GARCIA LAW OFFICE**

*Lead Counsel for Protestant*  
Ground Floor Laiko Building  
372 Cabildo Street, Intramuros,  
1002 Manila

**OFFICE OF THE SOLICITOR GENERAL**

134 Amoroso Street  
Legaspi Village, 1229 Makati City

Please take note that undersigned counsel will submit the foregoing "*Urgent Ex-Parte Motion to Resolve Omnibus Motion*" for the consideration and approval of the Honorable Tribunal immediately upon receipt thereof without need for further oral arguments.

  
**MARIA BERNADETTE V. SARDILLO**

Copy furnished:

**ATTY. GEORGE ERWIN M. GARCIA**  
**ATTY. JOAN M. PADILLA**

**G. E GARCIA LAW OFFICE**

*Lead Counsel for Protestant*  
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1002 Manila

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Legaspi Village, 1229 Makati City

#### **EXPLANATION**

Due to unavailability of messengers and the distance of the parties, a copy of the herein "Motion" were sent to the above-named parties by registered mail.

  
**MARIA BERNADETTE V. SARDILLO**

Republic of the Philippines )

MAKATI CITY

**VERIFIED DECLARATION OF COMPLIANCE WITH THE  
EFFICIENT USE OF PAPER RULE**

I, **LINO B. MAPUTOL, JR.**, hereby declare that the Manifestation with Urgent Ex-Parte Motion to Resolve the Omnibus Motion (1) For Clarification; and (2) To Be Furnished Copy of the Annexes Attached to the Manifestation /Compliance dated 25 May 2017 and Annex hereof submitted electronically by use of compact disc in accordance with the Efficient Use of Paper Rule are complete and true copies of Manifestation with Urgent Ex-Parte Motion to Resolve the Omnibus Motion (1) For Clarification; and (2) To Be Furnished Copy of the Annexes Attached to the Manifestation /Compliance dated 25 May 2017 and Annex hereof filed with the Presidential Electoral Tribunal.

Pasig City. 04 September 2017.



**LINO B. MAPUTOL, JR.**

Secretary

Sardillo Sardillo Salom Law Office

**SUBSCRIBED AND SWORN TO BEFORE ME**, a notary public in and for ~~Pasig City~~ **Pasig City**, this 05 September 2017 by affiant LINO B. MAPUTOL, JR. who is personally known to me, and appeared with his Driver's License ID with No. N25-11-006996 issued by Land Transportation Office, known to me as the same person who personally signed the foregoing attestation before me and acknowledged that he executed the same.

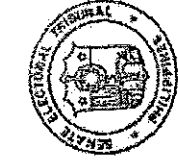
Doc. No. 287;  
Page No. 19;  
Book No. 616;  
Series of 2017.

**RUBEN T.M. RAMIREZ**

NOTARY PUBLIC

UNTIL DEC. 31, 2017

SP NO. 1052369 / 11-22-17 - Appointment# 10  
ROLL NO. 28947/MCLE-4 NO.0005224/6-19-17  
PTR NO. MKT. 800562/1-3-17 MAKATI CITY  
2734 MA. AURORA ST. MAKATI CITY



REPUBLIC OF THE PHILIPPINES  
SENATE ELECTORAL TRIBUNAL

COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,  
Protestant,

SET CASE No. 001-16

- versus -

LEILA M. DE LIMA,  
Protestee.  
x-----x

RESOLUTION NO. 16-49

Protestant Francis N. Tolentino seeks reconsideration and setting aside of Resolution No. 16-37 dated 02 March 2017, whereby the Tribunal resolved, among others, to:

"c. **REQUIRE** the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops; the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's *Manifestation* dated 18 November 2016 and the one hundred six (106) VCMs and their Secure Digital (SD) Cards enumerated in Protestant's Motion dated 18 November 2016; and

"d. **REQUIRE** Protestant Tolentino to deposit with the Tribunal within fifteen (15) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two and 40/100 Pesos (Php2,201,662.40), representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his *Motion* dated 18 November 2016. Any right, if any, of Protestant Tolentino arising from his payment of the said amount shall be threshed out between Protestant Tolentino and COMELEC."

Protestant Tolentino submits that he should not be held liable for the cost of the retained machines and equipment because: a) it was the Commission on Elections (COMELEC) which failed to faithfully follow the resolutory condition in Resolution No. 16-17 dated 22 November 2016; and b) he was not in bad faith considering that the Rules of the Tribunal allow him to serve his submissions by registered mail and he did not think that the COMELEC would retain the subject VCMs since the resolutory condition still had to be complied with.

The alleged resolutory condition adverted to by Protestant Tolentino in Resolution No. 16-17 reads:

"b) Without prejudice to the Tribunal's ruling on Protestant Tolentino's failure to seasonably submit his Preliminary Conference Brief, DIRECT the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops, the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's Manifestation and the one hundred six (106) Vote Counting Machines (VCMs) and their Secure Digital (SD) Cards enumerated in Protestant's Motion, SUBJECT to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment; and

"c) REQUIRE Protestant Tolentino to deposit with the Tribunal not later than 29 November 2016 the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eighty Five & 36/100 Pesos (P3,315,785.36), representing the cost of the aforesaid machines and equipment, computed as follows: x x x"

Protestant Tolentino posits the view that the above-quoted directive to the COMELEC imposed a resolutory condition which obligated the COMELEC to inquire and ascertain, before retaining the subject machines and equipment, whether or not Protestant had indeed paid the amount required of him not later than 29 November 2016. It appearing from its *Manifestation* dated 22 December 2016 that COMELEC failed to check with the Tribunal Cashier and/or Secretary regarding the payment, it would be unfair to find Protestant liable for the COMELEC's unilateral retention of the 106 VCMs.



Protestant Tolentino further argues that he cannot be said to have been in bad faith when he caused the service of a copy of his Manifestation and Motion by registered mail, instead of by personal service. Both the 2013 Rules of the Tribunal and the Rules of Court expressly allow the service of processes by a party through registered mail. In fact, the Manifestation and Motion was covered by the required affidavit of explanation why personal service was not possible.

Protestant Tolentino believed in good faith that the COMELEC would not unilaterally retain custody of the VCMs since the resolatory condition provided in Resolution No. 16-17 had still to be complied with. The COMELEC, at the time Protestant filed his Manifestation and Motion, was not yet authorized to retain custody of the subject VCMs. Protestant thus believed that he was not expected to serve an advance copy of his Manifestation and Motion upon the COMELEC on 29 November 2016, since there is nothing in the 2013 Rules of the Tribunal nor in the Rules of Court that requires the same.

Protestee de Lima, in her *Comment/Opposition (To: Protestant Tolentino's Motion for Reconsideration dated 15 March 2017)* dated 30 March 2017 and filed on 03 April 2017, "agrees with the position of the Commission on Elections and believes that SET Resolution No. 16-37 has remarkably explained why Tolentino should be made to pay the amount x x x representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016."

She emphasizes that the retention of the VCMs, although an unnecessary relief, was granted by the Tribunal upon Protestant Tolentino's urging and undertaking to take on the cost relative thereto. He therefore cannot renege on his obligation by invoking provisions of the Civil Code which are clearly inapplicable. The requirement for him to pay the corresponding cost of the VCMs is not a resolatory condition, as it is not one that constitutes a "future and uncertain event, upon the happening or fulfillment of which rights which are already acquired by virtue of the obligation are extinguished or lost."

Protestant Tolentino's interpretation of Resolution No. 16-17 is inaccurate. As quoted above, the subject resolution contains two (2) direct orders: 1) a directive addressed to the COMELEC to retain custody and possession of, and to safeguard and preserve the machines and equipment enumerated therein; and 2) a directive addressed to the Protestant to deposit the cost of the machines and equipment. The two (2) Orders are separate and distinct instructions. The phrase "SUBJECT to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment" simply refers to the obligation of Protestant Tolentino to settle all amounts due in favor of the Commission on Elections as a consequence of his *Motion* dated 18 November 2016.

The claim of Protestant that he was not in bad faith considering that the rules allow him to serve his submissions by registered mail, does not merit any consideration and the Tribunal maintains its earlier findings on the matter. As correctly pointed out by the COMELEC, the allegations in Protestant Tolentino's *Motion for Reconsideration* are mere rehash of the arguments set forth in his *Comment on Manifestation and Motion* dated 05 January 2017, which had already been passed and ruled upon by the Tribunal in Resolution No. 16-37 dated 02 March 2017. Other than the claim of *resolutory condition* which appears not to be applicable, Protestant Tolentino did not present any new evidence or strong argument that would convince the Tribunal to reconsider its findings in Resolution No. 16-37 dated 02 March 2017.

We further take note that by Protestant Tolentino's own admission, he received a copy of Resolution No. 16-37 on 06 March 2017, but filed his *Motion for Reconsideration* only on 21 March 2017 or fifteen (15) days from receipt of the Resolution sought to be reconsidered.

Rule 80 of the 2013 Rules of the Tribunal states in part:

"A party may file a motion for reconsideration of a decision under the evidence already of record within ten (10) days from service of a copy of the decision. Copies of the motion shall be served on the adverse parties, who may file a comment or opposition thereto within five (5) days from receipt thereof."

Although the aforequoted provision speaks of a decision, it applies with equal force to interlocutory orders of the Tribunal; in this case, Resolution No. 16-37 dated 02 March 2017. Any motion seeking its reconsideration should have been filed within ten (10) days from receipt of a copy thereof. Records show that while Protestant Tolentino's *Motion for Reconsideration* was dated 15 March 2017, the same was filed with the Tribunal on 21 March 2017 and copies thereof were served on the COMELEC and Protesfee de Lima on the same date. Clearly, Protestant Tolentino was five (5) days late, considering that he only had until 16 March 2017 within which to file his motion.

If Protestant Tolentino were bent on pursuing the instant protest to its logical conclusion and with dispatch, he must observe the periods prescribed by the Rules of the Tribunal.

**IN VIEW OF THE FOREGOING, the *Motion for Reconsideration* belatedly filed by Protestant Tolentino is DENIED for lack of merit.**

The Tribunal Resolves to **DIRECT** Protestant Francis N. Tolentino to deposit with the Tribunal within ten (10) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two and 40/100 Pesos (Php2,201,662.40), representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines (VCMs) enumerated in his Motion dated 18 November 2016.

Failure of Protestant Tolentino to seasonably comply with this Resolution shall cause the dismissal of the instant electoral protest and the Tribunal may likewise take such other action as it may deem equitable under the premises.

The Tribunal further resolves to **NOTE** the *Manifestation* of the Commission on Elections dated 04 April 2017, stating that Protestant Tolentino's *Motion for Reconsideration* was served on the Office of the Chairman instead of the Law Department and that there was no intention on the part of the COMELEC to

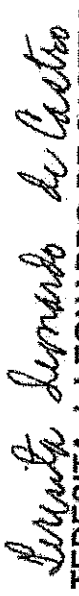
mislead the Tribunal or to delay the proceedings in filing the *Motion for Extension of Time to File Comment*.

SO ORDERED.

25 May 2017.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson



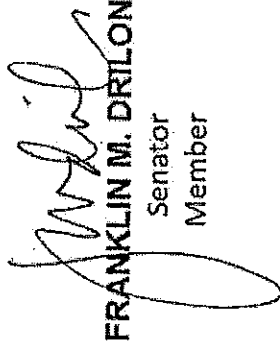
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Member



**CYNTHIA A. VILLAR**  
Senator  
Member

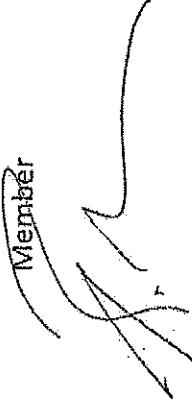


**MARIA LOURDES NANCY S. BINAY**  
Senator  
Member

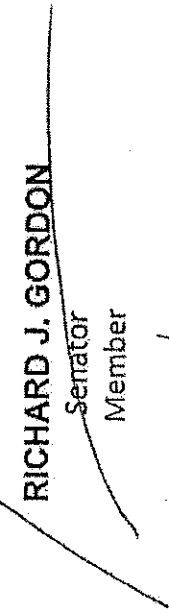


**FRANKLIN M. DRILON**  
Senator  
Member

**GRACE L. POE**  
Senator  
Member



**RICHARD J. GORDON**  
Senator  
Member



**ANTONIO "SONNY" F. TRILLANES IV**  
Senator  
Member

**LUCAS P. BERSAMIN**  
Associate Justice  
Member