

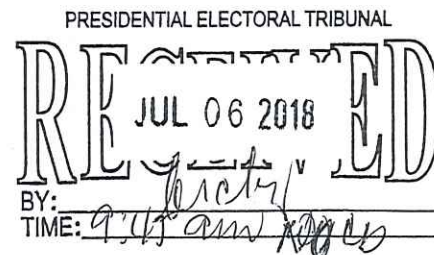
from: M. Becky

REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL ELECTORAL TRIBUNAL
MANILA

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

Protestant,

- versus -



PET Case No. 005

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

Protestee.

X-----X

MANIFESTATION AND MOTION
(In Lieu of Comment)

THE SOLICITOR GENERAL, as the People's Tribune,
respectfully states:

1. In her "Urgent Ex Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount, and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings" dated April 5, 2018, protestee Maria Leonor G. Robredo asked the Honorable Tribunal to direct "the Head Revisors to use the twenty-five percent (25%) threshold percentage used by the Commission on Elections for the 09 May 2016 National and Local Elections...."

2. On April 10, 2018, the Honorable Tribunal denied the protestee's Ex Parte Motion for lack of merit, as the tribunal has "no basis to impose a 25% threshold in determining whether a vote is valid."¹

3. The protestee subsequently filed an "Urgent Motion for Reconsideration (of the Resolution dated April 10, 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to use the Twenty Five (25%) Threshold Percentage

¹ Resolution dated April 10, 2018, p. 3.

in the Revision, Recount, and Appreciation of Ballots" dated April 18, 2018.

4. On April 24, 2018, the Honorable Tribunal issued a Resolution requiring the Commission on Elections to submit its comment on the protestee's motion for reconsideration within ten days from notice.²

5. The Office of the Solicitor General, as counsel of the COMELEC, filed motions for extension to submit the COMELEC's comment on the protestee's motion for reconsideration. The motions were filed, not to delay the proceedings in favor of one or the other party, but to study whether the Solicitor General should file a comment on behalf of the COMELEC, or act as the People's Tribune.

6. Significantly, under Paragraph 11, Section 35, Chapter 12, Title III of E.O. No. 292, the Revised Administrative Code of 1987, the Solicitor General has the authority to "[a]ct and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require."

7. In *Pimentel v. COMELEC*, the Supreme Court acknowledged that "the Solicitor General may, as it has in instances, take a position adverse and contrary to that of the Government on the reasoning that it is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position."³

8. In *Constantino-David v. Pangandaman-Gania*,⁴ citing *City Warden of the Manila City Jail v. Estrella*,⁵ the Supreme Court also recognized the authority of the Solicitor General to act as the "**People's Tribune**," an instance when the Solicitor General presents to the court what he considers

² Resolution dated April 24, 2018, p. 5.

³ G.R. No. 126394, April 24, 1998.

⁴ G.R. No. 156039, August 14, 2003.

⁵ G.R. No. 141211, August 31, 2001.

would legally uphold the government's best interest, although the position may run counter to a client's position.⁶

9. In *Orbos v. CSC*, the Supreme Court further pronounced that "[t]his Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well."⁷

10. As the People's Tribune, it is the Solicitor General's duty to present to the Honorable Tribunal the position he perceives to be in the best interest of the State, notwithstanding the stance of the COMELEC on the issue of whether the Honorable Tribunal correctly ruled that it has "no basis to impose a 25% threshold in determining whether a vote is valid." Accordingly, the OSG would like to inform the Honorable Tribunal of its position on the matter, which is anchored on the following grounds:

THE HONORABLE TRIBUNAL CORRECTLY RULED THAT IT HAS "NO BASIS TO IMPOSE A 25% THRESHOLD IN DETERMINING WHETHER A VOTE IS VALID."

I. THE HONORABLE TRIBUNAL HAS THE SOLE AUTHORITY TO JUDGE ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THE PRESIDENT OR VICE-PRESIDENT.

II. THE COMELEC HAS NO JURISDICTION OVER VICE-PRESIDENTIAL ELECTION CONTESTS.

⁶ See *CSC v. Almojuela*, G.R. No. 194368, April 2, 2013.

⁷ G.R. No. 92561, September 12, 1990.

III. THE 50% THRESHOLD IMPOSED BY THE HONORABLE TRIBUNAL IS NOT UNREASONABLE, INASMUCH AS THE RECOUNT OF BALLOTS IN ELECTION PROTESTS IS DONE MANUALLY.

IV. THE APPLICATION OF THE 50% THRESHOLD WILL NOT DISENFRANCHISE THE VOTERS.

DISCUSSION

The Honorable Tribunal correctly ruled that it has "no basis to impose a 25% threshold in determining whether a vote is valid."

I. The Honorable Tribunal has the sole authority to judge all contests relating to the election, returns, and qualifications of the President or Vice-President.

11. On the issue of the threshold that will be used to determine the validity of votes, it is the Presidential Electoral Tribunal (PET) which should determine the threshold, pursuant to its rule-making power under the Constitution.

12. The Constitution states that the PET has the sole authority to judge all contests relating to the election, returns, and qualifications of the President or Vice-President and may promulgate its rules for the purpose.⁸ The use of the word "sole" in Section 4, Article VII of the Constitution emphasizes the exclusivity of the PET's jurisdiction over election contests relating to the President or Vice-President.

⁸ 1987 Constitution, Article VII, "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."

13. The power of the PET as the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice-President, to promulgate rules and regulations relative to matters within its jurisdiction, including the determination of the threshold to be used in the recount, is beyond dispute. The PET's rule-making power necessarily flows from the general power granted it by the Constitution. In the case of *Angara v. Electoral Commission*,⁹ the Supreme Court held that:

[T]he creation of the Electoral Commission carried with it *ex necessitate rei* the power regulative in character to limit the time within which protests entrusted to its cognizance should be filed. It is a settled rule of construction that where a general power is conferred or duly enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred (Cooley, *Constitutional Limitations*, eighth ed., vol. 1, pp. 138, 139). **In the absence of any further constitutional provision relating to the procedure to be followed in filing protests before the Electoral Commission, therefore, the incidental power to promulgate such rules necessary for the proper exercise of its exclusive power to judge all contests relating to the election, returns and qualifications of members of the National Assembly, must be deemed by necessary implication to have been lodged also in the Electoral Commission.**¹⁰

14. The Supreme Court affirmed the grant of original jurisdiction to PET in the case of *Tecson v. COMELEC*,¹¹ thus:

Petitioners Tecson, *et al.*, in G.R. No. 161434, and Velez, in G.R. No. 161634, invoke the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution in assailing the jurisdiction of the COMELEC when it took cognizance of SPA No. 04-003 and in urging the Supreme Court to instead take on the petitions they directly instituted before it. The Constitutional provision cited reads:

⁹ 63 Phil. 139 (1936).

¹⁰ Emphasis supplied.

¹¹ 424 SCRA 277 (2004).

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.

The provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in *Lopez vs. Roxas*, as not (being) justiciable controversies or disputes involving contests on the elections, returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, "*An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same.*" Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal. Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.

15. Furthermore, the Supreme Court in the case of *Macalintal vs. PET*¹² stated that the overarching framework affirmed in *Tecson v. COMELEC* is that the Supreme Court has original jurisdiction to decide presidential and vice-presidential election protests while concurrently acting as an independent Electoral Tribunal.¹³ The Supreme Court stated:

Before we resort to the records of the Constitutional Commission, we discuss the framework of judicial power mapped out in the Constitution. Contrary to petitioners assertion, the Supreme Courts constitutional mandate to act as **sole judge** of election contests involving our countrys highest public officials, and its rule-making authority in connection therewith, is not restricted; it includes all necessary powers implicit in the exercise thereof.

¹² 635 SCRA 783 (2010).

¹³ 635 SCRA 783 (2010).

We recall the unprecedented and trailblazing case of *Marcos v. Manglapus*:

The 1987 Constitution has fully restored the separation of powers of the three great branches of government. To recall the words of Justice Laurel in *Angara v. Electoral Commission*, the Constitution has blocked but with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. Thus, the 1987 Constitution explicitly provides that [t]he legislative power shall be vested in the Congress of the Philippines [Art. VI, Sec. 1], [t]he executive power shall be vested in the President of the Philippines [Art. VII, Sec. 1], and [t]he judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law [Art. VIII, Sec. 1]. These provisions not only establish a separation of powers by actual division but also confer plenary legislative, executive and judicial powers subject only to limitations provided in the Constitution. **For as the Supreme Court in *Ocampo v. Cabangis* pointed out a grant of the legislative power means a grant of all legislative power; and a grant of the judicial power means a grant of all the judicial power which may be exercised under the government.**

The Court could not have been more explicit then on the plenary grant and exercise of judicial power. Plainly, the abstraction of the Supreme Court acting as a *Presidential Electoral Tribunal* from the unequivocal grant of jurisdiction in the last paragraph of Section 4, Article VII of the Constitution is sound and tenable.

The *mirabile dictu* of the grant of jurisdiction to this Court, albeit found in the Article on the executive branch of government, and the constitution of the PET, is evident in the discussions of the Constitutional Commission. On the exercise of this Courts judicial power as sole judge of presidential and vice-presidential election contests, and to promulgate its rules for this purpose, we find the proceedings in the Constitutional Commission most instructive:

MR. DAVIDE. On line 25, after the words Vice-President, I propose to add AND MAY PROMULGATE ITS RULES FOR THE PURPOSE. This refers to the Supreme Court sitting *en*

banc. This is also to confer on the Supreme Court exclusive authority to enact the necessary rules while acting as sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President.

MR. REGALADO. **My personal position is that the rule-making power of the Supreme Court with respect to its internal procedure is already implicit under the Article on the Judiciary; considering, however, that according to the Commissioner, the purpose of this is to indicate the sole power of the Supreme Court without intervention by the legislature in the promulgation of its rules on this particular point, I think I will personally recommend its acceptance to the Committee.**

....

MR. NOLLEDO.

With respect to Sections 10 and 11 on page 8, I understand that the Committee has also created an Electoral Tribunal in the Senate and a Commission on Appointments which may cover membership from both Houses. But my question is: It seems to me that the committee report does not indicate which body should promulgate the rules that shall govern the Electoral Tribunal and the Commission on Appointments. Who shall then promulgate the rules of these bodies?

MR. DAVIDE. **The Electoral Tribunal itself will establish and promulgate its rules because it is a body distinct and independent already from the House, and so with the Commission on Appointments also. It will have the authority to promulgate its own rules.**

On another point of discussion relative to the grant of judicial power, but equally cogent, we listen to former Chief Justice Roberto Concepcion:

MR. SUAREZ. Thank you.

Would the Commissioner not consider that violative of the doctrine of separation of powers?

MR. CONCEPCION. **I think Commissioner Bernas explained that this is a contest between two parties. This is a judicial power.**

MR. SUAREZ. We know, but practically the Committee is giving to the judiciary the right to declare who will be the President of our country, which to me is a political action.

MR. CONCEPCION. **There are legal rights which are enforceable under the law, and these are essentially justiciable questions.**

MR. SUAREZ. **If the election contest proved to be long, burdensome and tedious, practically all the time of the Supreme Court sitting *en banc* would be occupied with it considering that they will be going over millions and millions of ballots or election returns, Madam President.**

Echoing the same sentiment and affirming the grant of judicial power to the Supreme Court, Justice Florenz D. Regalado and Fr. Joaquin Bernas both opined:

MR. VILLACORTA. Thank you very much, Madam President.

I am not sure whether Commissioner Suarez has expressed his point. On page 2, the fourth paragraph of Section 4 provides:

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.

May I seek clarification as to whether or not the matter of determining the outcome of the contests relating to the election returns and qualifications of the President or Vice-President is purely a political matter and, therefore, should not

be left entirely to the judiciary. Will the above-quoted provision not impinge on the doctrine of separation of powers between the executive and the judicial departments of the government?

MR. REGALADO. **No, I really do not feel that would be a problem. This is a new provision incidentally. It was not in the 1935 Constitution nor in the 1973 Constitution.**

MR. VILLACORTA. That is right.

MR. REGALADO. **We feel that it will not be an intrusion into the separation of powers guaranteed to the judiciary because this is strictly an adversarial and judicial proceeding.**

MR. VILLACORTA. May I know the rationale of the Committee because this supersedes Republic Act 7950 which provides for the Presidential Electoral Tribunal?

FR. BERNAS. **Precisely, this is necessary. Election contests are, by their nature, judicial. Therefore, they are cognizable only by courts. If, for instance, we did not have a constitutional provision on an electoral tribunal for the Senate or an electoral tribunal for the House, normally, as composed, that cannot be given jurisdiction over contests.**

So, the background of this is really the case of *Roxas v. Lopez*. The Gentleman will remember that in that election, Lopez was declared winner. He filed a protest before the Supreme Court because there was a republic act which created the Supreme Court as the Presidential Electoral Tribunal. The question in this case was whether new powers could be given the Supreme Court by law. In effect, the conflict was actually whether there was an attempt to create two Supreme Courts and the answer of the Supreme Court was: No, this did not involve the creation of two Supreme Courts, but precisely we are giving new jurisdiction to the Supreme Court, as it is allowed by the Constitution. Congress may allocate various jurisdictions.

Before the passage of that republic act, in case there was any contest between two presidential candidates or two vice-presidential candidates, no one had jurisdiction over it. **So, it became necessary to create a Presidential Electoral Tribunal. What we have done is to constitutionalize what was statutory but it is not an infringement on the separation of powers because the power being given to the Supreme Court is a judicial power.**

Unmistakable from the foregoing is that the exercise of our power to judge presidential and vice-presidential election contests, as well as the rule-making power adjunct thereto, is plenary; it is not as restrictive as petitioner would interpret it. In fact, former Chief Justice Hilario G. Davide, Jr., who proposed the insertion of the phrase, intended the Supreme Court to exercise exclusive authority to promulgate its rules of procedure for that purpose. To this, Justice Regalado forthwith assented and then emphasized that the sole power ought to be without intervention by the legislative department. Evidently, even the legislature cannot limit the judicial power to resolve presidential and vice-presidential election contests and our rule-making power connected thereto.

To foreclose all arguments of petitioner, we reiterate that the establishment of the PET simply constitutionalized what was statutory before the 1987 Constitution. The experiential context of the PET in our country cannot be denied.¹⁴

16. Pursuant to the rule-making power provided under the Constitution, the Honorable Tribunal issued the 2010 Rules of the PET.¹⁵ On the issue of what threshold will be used in the consideration of votes, the PET has already made such determination. In Rule 43, Paragraph (I) of the 2010 Rules of the PET, it is stated that marks or shades that are less than 50% of the oval shall not be considered as valid votes.¹⁶

¹⁴ Emphases supplied.

¹⁵ A.M. No. 10-4-29-SC.

¹⁶ A.M. No. 10-4-29-SC, "RULE 43. *Conduct of the revision.* – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:...

(I) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination."

17. The determination of the 50% threshold is in the 2010 Rules of the PET, which has the legal authority under the Constitution to promulgate such rules. Thus, the decision to choose the 50% threshold cannot be questioned by the protestee.

II. The COMELEC has no jurisdiction over Vice-Presidential election contests.

18. Conversely, the protestee's position that the PET must use the threshold set in the Random Manual Audit Guidelines and Report is unavailing.

19. The COMELEC is empowered to prescribe the rules to govern the procedure and other matters relating to election contests under Section 254 of B.P. Blg. 881, the Omnibus Election Code. This jurisdiction, however, is limited by Section 249 of the same law to contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa and elective regional, provincial, and city officials only. Clearly, in election contests relating to the Vice-Presidential position, such as the present case, the COMELEC has no jurisdiction to impose its own rules.

20. At the same time, a Random Manual Audit is a completely different animal from an election protest.

21. R.A. No. 9369, amending R.A. No. 8436, defines a Random Manual Audit as follows:

SEC 29. *Random Manual Audit.* - Where the [Automated election system (AES)] is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error.

22. On the other hand, an election protest is an election contest wherein a candidate contests the election of a proclaimed winner. Being a different process from an audit, the rules of procedure of the Random Manual Audit do not apply to the PET election contest.

23. Ineluctably, the Honorable Tribunal is correct in stating that there is no rule regarding election contests that applies a 25% threshold.

III. The 50% threshold imposed by the Honorable Tribunal is not unreasonable, inasmuch as the recount of ballots in election protests is done manually.

24. The 50% threshold imposed by the Honorable Tribunal in the exercise of its rule-making power is reasonable, considering that the recount of ballots in election protests is done manually.

25. As stated by the Honorable Tribunal in its Resolution dated April 10, 2018, the imposition of the 50% threshold is based on the inability of the human eye to distinguish the 25% percent threshold. The Honorable Tribunal cited the Random Manual Audit Guidelines, viz:

One of the course of variance, therefore, is the difference between humans and machines in distinguishing if a partially shaded oval is a vote or not. To determine with machine exactitude if a mark covers 25 to 30 percent of a voting oval is impossible for a human eye; and to consistently interpret such judgment over a number of instances is another possibility. Presented with a situation wherein a mark borders between a vote and no-vote, the auditor is likely to decide in favor of the former.

26. Furthermore, even the letter of the COMELEC dated September 6, 2016 addressed to then Clerk of Court, Atty. Felipa B. Anama, which the protestee cited as the legal basis to impose a 25% threshold, referred to an optical scan counting system, and not to a manual counting:

The system adopted is designed to scan every oval on the ballot and count as vote those that contain appropriate marks based on pre-determined shading threshold.... In other words, when a mark covers at least 25 % of the oval, said mark is supposed to be considered a vote by the system. On the other hand, when the mark or shading covers less than 25% of the oval or when there is no mark at all, no vote is supposed to be counted.¹⁷

27. It follows that the protestee cannot insist on using the 25% percent threshold in the manual counting of the ballots.

IV. The application of the 50% threshold will not disenfranchise the voters.

28. The claim of the protestee that the application of the 50% percent threshold will disenfranchise the voters, inasmuch as valid votes will not be counted during the physical count even if these votes were validly counted by the vote counting machines, is bereft of merit.

29. For the 2016 National and Local Elections, the COMELEC consistently reminded the voters to shade the oval spaces in the ballots fully.¹⁸ This was iterated in COMELEC Resolution No. 10088, or the general instructions for the Boards of Election Inspectors on the testing and sealing of vote counting machines, and the voting, counting, and transmission of elections results in connection with the May 9, 2016 National and Local Elections. The Resolution provides:

¹⁷ Annex "1" of the Urgent Motion for Reconsideration (Letter dated September 6, 2016).

¹⁸ *Id.*

SEC. 40. Manner of Voting. –

a. The voter shall:

1. Using the ballot secrecy folder and marking pen provided by the Commission, accomplish the ballot by **fully shading the circle** beside the names of the candidates and the organization participating in the party-list system of representation;...¹⁹

30. Even the official ballot during the 2016 National and Local Elections instructed the voters to fully shade the oval beside the name of the chosen candidate:

PARAAN NG PAGBOTO

(1) Itiman and loob ng oval: ● sa tabi ng pangalan ng kandidatong napili.

(2) Gumamit lamang ng “marking pen” sa pagmarka.

(3) Huwag bumoto ng labis sa nakatalagang bilang ng napiling posisyon.²⁰

31. Differently stated, insofar as the voters were concerned, they knew that for their votes to be counted they should fully shade the oval space. Therefore, the supposed disenfranchisement that would result in the application of the 50% threshold has no basis.

32. All told, the Honorable Tribunal did not err in finding that it has “no basis to impose a 25% threshold in determining whether a vote is valid.”

¹⁹ Annex “A,” COMELEC Resolution No. 10088; Emphasis supplied.

²⁰ Annex “B,” Sample ballot obtained from https://www.comelec.gov.ph/php-tpls-attachments/Elections/2016natloc/BallotTemplates/REGION_IV-A/LAGUNA/PAGSANJAN.pdf. Accessed: July 4, 2018.

PRAYER

The Solicitor General, as the People's Tribune, consequently prays that the Honorable Tribunal:

(1) **AFFIRM** its Resolution dated April 10, 2018 declaring that it has "no basis to impose a 25% threshold in determining whether a vote is valid"; and

(2) **GRANT** the COMELEC a fresh period of ten days from notice to submit its own comment on the protestee's "Urgent Motion for Reconsideration (Of the Resolution dated April 10, 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to use the Twenty Five (25%) Threshold Percentage in the Revision, Recount, and Appreciation of Ballots" dated April 18, 2018.

Makati City, July 4, 2018.



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MCLE Exemption No. VI-000016, 9-28-16



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EXPLANATION

(Pursuant to Section 11, Rule 13 of the
1997 Rules of Civil Procedure)

Service on the other parties is being done by registered mail due to lack of personnel.


JOSEPH L. GUEVARRA
Assistant Solicitor General

VERIFIED DECLARATION

I, MA. TERESA ANA V. BERMEJO, hereby declares that the documents (and annexes thereof) hereto submitted in accordance with the Efficient Use of Paper Rule is/are complete and true copy/ies of the documents (and annexes) filed with the Supreme Court.



MA. TERESA ANA V. BERMEJO
State Solicitor I
July 6, 2018

SUBSCRIBED AND SWORN to before me on this 6th day of July, 2018, affiant exhibiting his/her competent evidence of identity, to wit: GSIS No. LP02003742888.



LENEY L. LAYUG-DELFIN
State Solicitor I

REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

ARTEMIO A. ESTOQUE, JR. SAC (Revised as of April 1992)
GSIS UMID # 006-0065-2137-P

I, JUL 06 2018, OFFICE OF THE SOLICITOR GENERAL,
with Office address at 134 Amorsolo St., Legaspi Village Makati City, after being sworn to depose and say:

That on 07/06/2018, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

Manifestation & Motion in Lieu of Comment

In case No. P.E.T. CASE NO. 005, entitled FERDINAND BONGBONG R. MARCOS, JR.,
VS. MARIA LEONOR LENI DAANG MATUWID G. ROBREDO

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

By Personal Service To:

() By depositing a copy to the party or his/her attorney
on _____ as shown on p _____.

() By leaving a copy in his/her clerk or with a person
having charge thereof on _____ as shown on p _____.

() By delivering a copy to the Court/Tribunal Office on
_____ as shown on p _____.

() By depositing copy on JUL 06 2018 in the Post
Office at _____ as evidenced by Registry
Receipt(s) No.(s) _____ hereto attached and
indicated after the name (s) of the addressee(s), and
with instruction to the postmaster to return the mail to
the sender after (10) days if undelivered.

By Registered Mail To:

ATTY. GEORGE ERWIN M. GARCIA and ATTY.
Counsel for Senator Ferdinand Marcos Jr.
G.E. GARCIA LAW OFFICE
Ground Floor Laiko Building
372 Cabildo Street
Intramuros, 1002, Manila, , Philippines
COMMISSION ON ELECTIONS HON. ANDRES
Intramuros, 1002 Manila, , Philippines

ATTY. ROMULO B. MACALINTAL
Sardillo Sardillo Salom Law Office
Unit 802, Taipan Place
F. Ortigas Avenue
Ortigas Center Pasig City, , Philippines

Makati, Metro Manila, Philippines

ARTEMIO A. ESTOQUE, JR. SAC
GSIS UMID # 006-0065-2137-P

JUL 06 2018

(Affiant)

ARTEMIO A. ESTOQUE, JR. SAC
GSIS UMID # 006-0065-2137-P

SUBSCRIBED AND SWORN to before me this JUL 06 2018 of _____ at Makati
City, Philippines. Affiant exhibiting to me his _____ issued at Pasay City.



16-020355-0222

James Lee Candelaria
Solicitor, Officer Administering the Oath
Office of the Solicitor General



REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila

AMENDING CERTAIN
PROVISIONS OF RESOLUTION
NO. 10057 DATED FEBRUARY 11,
2016 OR OTHERWISE KNOWN AS
THE GENERAL INSTRUCTIONS
FOR THE BOARDS OF ELECTION
INSPECTORS (BEI) ON THE
TESTING AND SEALING OF VOTE
COUNTING MACHINES (VCMs),
AND VOTING, COUNTING AND
TRANSMISSION OF ELECTION
RESULTS IN CONNECTION WITH
THE 09 MAY 2016 NATIONAL AND
LOCAL ELECTIONS.

BAUTISTA, J. A. D.,	Chairman
LIM, C. R. S.,	Commissioner
PARREÑO, A. A.,	Commissioner
GUIA, L. T. F.,	Commissioner
LIM, A. D.,	Commissioner
GUANZON, M. R.A. V.,	Commissioner
ABAS, S. M.	Commissioner

X-----X

Promulgated : April 12, 2016 *[Signature]*

RESOLUTION NO. 10088 *[Signature]*

WHEREAS, the Commission on Elections (COMELEC) has promulgated on 11 February 2016 Resolution No. 10057 or the "General Instructions for the Boards of Election Inspectors (BEI) on the Testing and Sealing of Vote Counting Machines (VCMs), and Voting, Counting and Transmission of Election Results in connection with the 09 May 2016 National and Local Elections";

WHEREAS, the Supreme Court through its ruling in Bagumbayan-VNP Movement, Inc., et al. vs. Commission on Elections (G.R. No. 222731) dated 08 March 2016, ordered COMELEC to issue vote receipts as a verification mechanism for the voter in the 09 May 2016 National and Local Elections;

NOW THEREFORE, pursuant to its authority under the Constitution, the Omnibus Election Code, Republic Act No. 9369, and other election laws, the

COMELEC RESOLVED, as it hereby RESOLVES, to promulgate the following amendments to the General Instructions.

SECTION 1. The first paragraph of Section 11 of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 11. Voting hours. - The casting of votes shall be from 6 a.m. until 5 p.m. of Election Day."

SECTION 2. Sections 20(a) and (f) of Resolution No. 10057 are hereby amended to read as follows:

"SEC. 20. Prohibitions on voting. - It shall be unlawful for a voter to:

- a) Bring the ballot, ballot secrecy folder, marking pen or voter's receipt outside of the polling place; xxx
- f) Use capturing devices, including, but not limited to, digital cameras or cellular phones for whatever purpose while inside the polling place;"

SECTION 3. Section 37 of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 37. VCMs to be opened on May 9, 2016. - The VCMs shall be opened on May 9, 2016, not earlier than five o'clock in the morning, and in the presence of watchers, if any."

SECTION 4. Section 38 (a) of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 38. Preliminaries to the voting. - The BEI shall:

- a) Meet at the polling place not later than five o'clock in the morning of Election Day."

SECTION 5. Section 39 (b) of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 39. Manner of obtaining ballots. -

"(b) The Poll Clerk or Support Staff shall;

SECTION 6. Section 40 of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 40. Manner of voting. -

a. The voter shall:

1. Using the ballot secrecy folder and marking pen provided by the Commission, accomplish the ballot by fully shading the circle beside the names of the candidates and the organization participating in the party-list system of representation; and

2. After accomplishing the ballot, insert his/her ballot in the VCM's ballot entry slot, after which the voter shall return the ballot secrecy folder and marking pen to the third member;

i. The VCM will display the message - "PROCESSING.../ PAKIHINTAY...KASALUKUYANG PINOPROSESO."

ii. The VCM will flash some of the names of candidates voted for. It will then display the message, - "THE VOTING EXPERIENCE TIMEOUT HAS EXPIRED/ANG NAKALAAAN NA ORAS PARA SA PAGBOBOTO AY NAKALIPAS NA."¹

iii. Thereafter the ballot shall automatically drop inside the ballot box. The VCM will then display the message - "YOUR VOTE HAS BEEN CAST/ ANG IYONG BOTO AY NAISAMA NA. YOUR VOTE RECEIPT IS BEING PRINTED/ ANG RESIBO NG IYONG BOTO AY PINI-PRINT" and a receipt will be printed;

b. The third member/support staff shall stand beside the VCM without being able to view the screen, but near enough to be able to perform the following:

1. Monitor the VCM screen to ensure that the ballot is successfully accepted and the receipt is printed. Every time the end-of-roll color indicator appears, the third member shall replace the thermal paper.

¹ The time out of the on-screen verification feature of the VCM has been reduced to one second.

2. Fold the receipt in such a way that its contents cannot be seen and then cut the end of the receipt using non-pointed scissors;
3. Apply indelible ink to the voter's right forefinger nail or any other nail if there be no forefinger nail, and hand the receipt to the voter;

The BEI shall ensure that only the voter can read the receipt and advise the voter that bringing the receipt outside the polling place is illegal. For this purpose, the black box containing the Official Ballots shall serve as the Voter's Receipt Receptacle which shall be placed in an area visible to the third member/support staff/citizens arm member and watchers. The BEI shall ensure that all Official Ballots are removed from the black box before the same is used as a Voter's Receipt Receptacle.

4. Instruct the voter to go near the Voter's Receipt Receptacle located beside the VCM to verify his or her votes as appearing on the receipt, drop the same in the Voter's Receipt Receptacle and leave the polling place.

In case an objection is raised by the voter on the way the VCM read his/her ballot:

- a. Instruct the voter to affix his signature at the back of the Voter's Receipt;
- b. Note the specific objection in the Minutes;
- c. Attach the Voter's Receipt to the Minutes (copy for the Ballot Box).

The filing of frivolous objections shall constitute an election offense punishable under the Omnibus Election Code. For this purpose, the BEIs are allowed to administer oaths solely for this purpose so that if the protest is frivolous, falsification or perjury charges may be filed.

- d. At the close of polls, the BEI shall seal the Voter's Receipt Receptacle with packaging tape. The BEI members shall affix names and signatures on the tape. The BEI shall also require the watchers present to affix their names and signatures.

The BEI shall then place the Voter's Receipt Receptacle inside the ballot box, if the latter can accommodate the receptacle.

The above procedures, except b (3) and (5) shall be applicable during Final Testing and Sealing. During FTS, the BEI shall instruct the voter to verify the votes as appearing on the receipt and place the receipt in the Envelope for Counted Ballots which shall be turned over to the Election Officer as provided in Section 36."

SECTION 7. Sections 35 (g) and 36 (a) of Resolution No. 10057 are hereby amended as to include the voter receipts in the Envelope for Counted Ballots for submission to the Election Officer.

SECTION 8. Section 8(B) of Resolution No. 10057 is hereby amended to read as follows:

"B. Election Day. - Unless otherwise authorized, the BEI shall get the forms, documents and supplies early in the morning of Election Day, as follows:

1. FROM THE CITY/MUNICIPAL TREASURER

x x x

SUPPLIES

x x x

Additional Marking Pens - 12 Pieces

2. FROM THE ELECTION OFFICER

a) x x x

d) A pair of scissors."

SECTION 9. Section 33 (f-5) of Resolution No. 10057 is hereby amended to read as follows:

f) Check whether the following are inside the VCM box:

1. xxx

5. Twenty (20) rolls of thermal paper inside the VCM box and one (1) thermal paper already installed the printer compartment;

xxx

SECTION 10. Section 29 (e) of Resolution No. 10057 is hereby amended to read as follows:

- e) Deliver the ballot box and the Voter's Receipt Receptacle, accompanied by watchers, to the city/municipal treasurer. xxx

SECTION 11. Section 41 of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 41. Voting hours for detainee voting and scanning of detainee voters' ballots from the special polling places. -

1. The casting of votes for detainee voting shall be from 6.00 a.m. until 2 p.m. on Election Day.
2. In scanning the detainee voters' ballots from the special polling places, the BEI shall:

xxx

- h) Drop all receipts in the Voter's Receipt Receptacle."

SECTION 12. Section 42 of Resolution No. 10057 is hereby amended to read as follows:

"SEC. 42. Rejected Ballots; Procedure. - In case ballots are rejected by the VCM during the scanning, the BEI shall allow the voter to re-feed the ballot four (4) times in four (4) different orientations.

If the ballot is still rejected, the voter shall return the ballot to the chairman who shall:

1. Distinctly mark the back thereof as REJECTED;
2. Require all members of the BEI to sign at the back thereof; and
3. Place the rejected ballot inside the Envelope for Rejected Ballots.

No replacement ballot shall be issued to a voter whose ballot is rejected by the VCM except if the rejection of the ballot is not due to the fault of the voter.


Any party objecting to the rejection of the ballot shall reduce his objection in writing, which the BEI shall attach to and note in the Minutes."

SECTION13. Election Offense. The voter's receipt is an official election document or election paraphernalia, as held in Bagumbayan-VNP Movement, Inc., et al. vs. Commission on Elections, G.R. No. 222731 (1-b), dated March 17, 2016. Hence, any person who takes away the voter's receipt commits an election offense punishable under Section 261 (z) (12) of the Omnibus Election Code.


SECTION14. Effectivity. - This Resolution shall take effect on the seventh (7th) day after its publication in two (2) daily newspapers of general circulation in the Philippines and in the COMELEC website.

SECTION 15. Publication and dissemination. - The Education and Information Department, this Commission, shall cause the publication of this Resolution in two (2) daily newspapers of general circulation in the Philippines and furnish copies thereof to all Regional Election Directors, Provincial Election Supervisors and Election Officers.

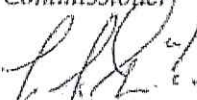
SO ORDERED.


w/reservation on
when the indelible ink
should be administered

J. ANDRES D. BAUTISTA
Chairman


On Official Business


CHRISTIAN ROBERT S. LIM
Commissioner


w/reservation
on same day

LUIE TITO F. GUIA
Commissioner


w/reservation
as to Sec 6.2
and

AL A. PARRENO
Commissioner



ARTHUR D. LIM
Commissioner



MA. ROWENA AMELIA V. GUANZON
Commissioner



SHERIFF M. ABAS
Commissioner

ANEX B B

OFFICIAL BALLOT
May 9, 2016 National and Local Elections
ANIBONG, PAGSANJAN, LAGUNA

Ballot ID: 34190006
Precinct in Cluster:
0019A, 0019B



PARAAN NG PAGBOTO
(1.) Ilman ang loob ng oval: ● sa tabi ng pangalan ng kandidatong napili.
(2.) Gumamit lamang ng "marking pen" sa pagmarka.
(3.) HUWAG bumoto ng labis sa nakatalagang bilang sa napiling posisyon.

Signature of Chairman

PRESIDENT / Vote for 1			
1. BINAY, JOJO (UNA)	3. DUTERTE, RODY (PDPLN)	5. ROXAS, MAR DAANG MATUMID (LP)	
2. DEFENSOR SANTIAGO, MIRIAM (PRP)	4. POE, GRACE (IND)	6. SEÑERES, ROY (WPPMM)	
VICE PRESIDENT / Vote for 1			
1. CAYETANO, ALAN PETER (IND)	3. HONASAN, GRINGO (UNA)	5. ROBREDO, LENI DAANG MATUMID (LP)	
2. ESCUDERO, CHIZ (IND)	4. MARCOS, BONGBONG (IND)	6. TRILLANES, ANTONIO IV (IND)	
PARTY LIST / Vote for 1			
1 AGRI	30 KABAYAN	59 AASENSO	88 ACTS-OFW
2 ASEAN, INC.	31 ACT TEACHERS	60 AAMBIS-OWA	89 PBA
3 METRO	32 ANG KABUHAYAN	61 AAB	90 MANILA TEACHERS
4 TRICAP	33 KMM	62 ABONO	91 ANAC-IP
5 ABANG LINGKOD	34 YACAP	63 AMIN	92 ABANTE RETIREES
6 DIWA	35 TAMA	64 AGHAM	93 BUTIL
7 AKIN	36 GABRIELA	65 ANUPA	94 KAMAS PILIPINAS
8 AGAP	37 SANLAKAS	66 DISABLED/PWD	95 ATING KOOP
9 SBP	38 ABAKADA	67 TINDERONG PINOY	96 ACT-CIS
10 ADDA	39 ABS	68 CONSLA	97 1-CARE
11 AWAT MINDANAO	40 LPGMA	69 SENIOR CITIZENS	98 MATA
12 ANAKALUSUGAN	41 UNIDO	70 MIGRANTE	99 DUMPER PTDA
13 CLASE	42 KM NGAYON NA	71 AMOR-SEAMAN	100 BH (BAGONG HENERASYON)
14 AKBAYAN	43 ANGKLA	72 CIBAC	101 PM
15 ALL-FISH	44 ALONA	73 NACTODAP	102 1-SAGIP
16 AKO BICOL	45 TGP	74 A TAMBAY	103 1-PABAHAY
17 SINAG	46 MAGDALO	75 BANAT	104 CANCER
18 1-ABILIDAD	47 OPWFC	76 UMALAB KA	105 MTM PHILS
19 GLOBAL	48 ALE	77 A.L	106 1-AALALAY
20 1-ANG EDUKASYON	49 ATING GURO	78 AN WARAY	107 AANGAT TAYO
21 COOP-NATCCO	50 AVE	79 KUSUG TALISUG	108 ABAMIN
22 ALAY BUHAY	51 A TEACHER, INC.	80 ANG NARS	109 ANG PROLIFE
23 ACP	52 ANAKPAWIS	81 BAYAN MUNA	110 BUHAY
24 1-GB	53 RAM	82 MARINO	111 APPEND
25 1PACMAN	54 CWS	83 ANG KASANGGA	112 KGB
26 MELCHORA	55 KABATAAN	84 AMA	113 AGBIAGI
27 1-AHAPO	56 PISTON	85 KAP/KAKASA-KA	114 AWAKE
28 TINGOG SINIRANGAN	57 TUCP	86 FICTAP	115 AMEPA OFW
29 PBB	58 KALINGA	87 SAMAKO	



Ballot ID: 34190006
Precinct in Cluster:
0019A, 0019B



SENATOR / Vote for 12			
1. ALBANI, SHARIFF (IND)	14. DORONA, RAY (IND)	27. LAPID, MARK (AKSYON)	40. PANGILINAN, KIKO (LP)
2. ALI, ALDIN (MPPPM)	15. DRILON, FRANK (LP)	28. LIBAN, DANTE (IND)	41. PETILLA, CARLOS JERICO (LP)
3. ALUNAN, RAFFY (IND)	16. GADON, LARRY (KBL)	29. MAGANTO, ROMEO (LAKAS)	42. RECTO, RALPH (LP)
4. AMBOLODO, INA (LP)	17. GATCHALIAN, WIN (NPC)	30. MANZANO, EDU (IND)	43. ROMUALDEZ, MARTIN (LAKAS)
5. ARQUIZA, GODOFREDO (IND)	18. GORDON, DICK (IND)	31. MONTANO, ALLAN (UNA)	44. ROMULO, ROMAN (IND)
6. BALIGOD, LEVITO (IND)	19. GUINGONA, TG (LP)	32. MONTAÑO, MON (IND)	45. SANTIAGO, DIONISIO (IND)
7. BELGICA, GRECO (IND)	20. HONTIVEROS, RISA (AKBYN)	33. NAPAÑAS, GETULIO (UNA)	46. SOTTO, VICENTE (NPC)
8. BELLO, WALDEN (IND)	21. KABALU, EID (IND)	34. OPLE, SUSAN (NP)	47. TOLENTINO, FRANCIS (IND)
9. CAM, SANDRA (PMP)	22. KAPUNAN, ATTY. LORNA (AKSYON)	35. OSMEÑA, SERGIO III (IND)	48. VALEROSO, DIOSDADO (IND)
10. CHAVEZ, MEL (MPPPM)	23. KIRAM, PRINCESS JACEL (UNA)	36. PACQUIAO, MANNY (UNA)	49. VILLANUEVA, JOEL TESDAMAN (LP)
11. COLMENARES, NERI (MKBYN)	24. LACSAMANA, ALMA MORENO (UNA)	37. PAEZ, MR. COOP (IND)	50. ZUBIRI, MIGZ (IND)
12. DE LIMA, LEILA (LP)	25. LACSON, PANFILO PING (IND)	38. PAGDILAO, SAMUEL (IND)	
13. DOMAGOSO, ISKO MORENO (PMP)	26. LANGIT, REY (UNA)	39. PALPARAN, JOVITO JR. (IND)	
MEMBER, HOUSE OF REPRESENTATIVES / Vote for 1			
1. AGARAO, BENJIE (LP)	2. SAN LUIS, EDGAR (NUP)	3. SANTOS, FIDEL (IND)	
PROVINCIAL GOVERNOR / Vote for 1			
1. ALBERTO, BERLENE (IND)	3. EJERCITO, JORGE ANTONIO (IND)	5. SUCANO, NEMESIO (IND)	
2. EJERCITO, EMILIO RAMON III (UNA)	4. HERNANDEZ, RAMIL (NP)		
PROVINCIAL VICE-GOVERNOR / Vote for 1			
1. AGAPAY, KAREN (NP)	2. ALARVA, ANGELICA JONES (LP)	3. LAJARA, CHRISTIAN NIÑO (UNA)	4. SAN SEBASTIAN, BRO RICO G. (IND)
MEMBER, SANGGUNIANG PANLALAWIGAN / Vote for 2			
1. AGARAO, BENJO (LP)	2. EJERCITO, GEORGE GERALD (UNA)	3. SAN LUIS, RAI-ANN AGUSTINE (NUP)	
MAYOR / Vote for 1			
1. EJERCITO, GIRLIE (UNA)	2. GAMIT-TALABONG, TERRY (NP)		
VICE-MAYOR / Vote for 1			
1. MADRIAGA, MELVIN (UNA)	2. TRINIDAD, PETER CASIUS (NP)		
MEMBER, SANGGUNIANG BAYAN / Vote for 5			
1. ABELLA, RACHELLE (NP)	6. CABELA, NOEL (UNA)	11. GARCIA, GUILLERMO (NP)	16. NOMBRE, JOJO (IND)
2. ARROYO, ARNEL (NP)	7. CAPISTRANO, FRED (UNA)	12. GARCIA, JAN (UNA)	17. SACLUTI, ERWIN (IND)
3. BABAAN, ENJENG (NP)	8. CULLANO, ARIEL (UNA)	13. GUAN, JULIUS (UNA)	18. SUBIAGA, LANDO (UNA)
4. BASCO, ANGELITO (NP)	9. EJERCITO, JOHN PAUL (UNA)	14. LAZARO-SACLUTI, JULIE (NP)	19. ULAT, SHEILA (NP)
5. BERNALES, NIÑO (UNA)	10. FABIAN, RICARDO (NP)	15. LAZARTE, JOH II (IND)	